

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE**

**Annual Meeting of the National Contact Points for the OECD Guidelines for  
Multinational Enterprises**

**DENMARK NATIONAL CONTACT POINT PEER REVIEW REPORT**

**16-17 June 2015**

*The attached peer review of the Danish NCP is submitted to Delegates for comments.*

*The complete document is available in pdf format only.*

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### 1. Executive Summary: Key Findings and Recommendations

The Denmark National Contact Point (NCP) for the OECD Guidelines underwent a voluntary peer review in March 2015. The broad purpose of the review was to support the Denmark NCP to assess, and where necessary, improve its performance and effectiveness in relation to its functions as an NCP under the Guidelines. The Denmark NCP also intends to use this peer review to inform a domestic review of the Parliamentary Act on the Danish NCP. A Peer Review team comprised of Norway, Germany and the UK conducted the review, which included a series of consultations with the Denmark NCP and its key stakeholders in Copenhagen.

The Denmark NCP was revised in 2012 under the Parliamentary Act on the Danish NCP. Through this act, the NCP was named the Mediation and Complaints Handling Institution for Responsible Business Conduct (MKI). Based on its consultations, the Peer Review Team observes that the new Denmark NCP is generally perceived across stakeholder groups as a highly credible institution that is visible, accessible, transparent, impartial and accountable. This report shares further detailed findings and recommendations on the core functions of the NCP, including its institutional arrangements, its promotion of the Guidelines, and its handling of specific instance complaints.

**1.1 Institutional Arrangements:** The NCP draws significant legitimacy from key aspects of its institutional arrangements, including its independent structure, its multi-stakeholder composition reflecting key constituencies, and the fact that it is empowered to initiate complaints, conduct investigations, and issue final statements. At the same time, the Peer Review Team observes implications from the fact that the NCP draws its mandate from two sources, the OECD Guidelines and the Danish Parliamentary Act. Specifically, the domestic legislation places greater emphasis on the complaints-handling function of the MKI, which may contribute to a lack of clarity among stakeholders on the promotional mandate of the MKI as Denmark's NCP.

*With regard to its institutional arrangements, the Peer Review Team recommends that the Danish NCP:*

- *Clarify and confirm the mandate of the MKI as Denmark's NCP to promote the OECD Guidelines and communicate this clearly to stakeholders;*
- *Raise the profile of the OECD Guidelines within the domestic mandate of the MKI;*
- *Reconcile inconsistencies between the domestic mandate of the MKI and the OECD mandate of the MKI as Denmark's NCP, such as the statute of limitations on complaints.*

**1.2. Promotion of the Guidelines and Handling Enquiries:** The Denmark NCP has undertaken a number of activities to raise awareness about the NCP and promote the Guidelines, including speaking engagements, collaborations with key stakeholder partners, publications that are widely disseminated and an active website. The NCP is also currently completing a consultative process to develop greater strategic focus for its future promotional activities. Stakeholders expressed a desire for more practical guidance from the NCP on implementation of the Guidelines.

*With regards to the promotion function, the Peer Review Team recommends that the Danish NCP:*

- *Shift the focus of promotion activities from awareness-raising to providing practical guidance on implementation of the Guidelines, including leveraging learning from specific instance complaints;*
- *Continue to take forward the initiative to develop strategic focus for its promotion activities, develop a more proactive stakeholder outreach strategy as part of that initiative, and share learning and results from these experiences with other NCPs;*

**1.3. Dealing with Specific Instances:** The Denmark NCP has developed comprehensive rules of procedure for handling specific instance complaints. Nevertheless, the relevant case experience of the NCP is limited. A high number of complaints have been rejected because the complaints did not pertain to the Guidelines. Parties to accepted complaints were generally positive about their experiences participating in the procedures, although this view was not uniform. Stakeholders raised specific concerns about confidentiality with respect to the identities of parties and the evidentiary threshold for complaints.

*With regard to specific instances, the Peer Review Team recommends that the Danish NCP:*

- ⑩ *Clarify with stakeholders the NCP's expectations around confidentiality and anonymity of parties named in specific instance complaints;*
- ⑩ *Clarify requirements around the evidentiary threshold necessary to substantiate a specific instance complaint with stakeholders;*
- ⑩ *Consider requiring complainants to identify relevant sections of the OECD Guidelines as part of their complaint;*
- ⑩ *Assess the specific needs of SMEs as respondents in complaints, given the high proportion of SMEs in the Danish economy;*
- ⑩ *Leverage learning from specific instance complaints more effectively, in support of the promotion agenda of the NCP;*

**1.4. Proactive Agenda:** Although the Denmark NCP has undertaken certain activities to contribute to the proactive agenda, this engagement has been limited. There may be opportunities for greater engagement with the proactive agenda, which would support the request from stakeholders for more guidance from the NCP on implementation of the Guidelines in practice.

*With regard to the proactive agenda, the Peer Review Team recommends that the Danish NCP:*

- *Seek additional opportunities to engage Danish business and civil society in the Proactive Agenda initiatives of the OECD.*

**1.5 Follow-Up:** The Peer Review Team invites the Denmark NCP to report back on implementation of these recommendations within one year.

## 2. Introduction

The Denmark National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) underwent a voluntary peer review in March 2015.

**2.2. Goals and Objectives:** The objectives of the peer review process were aligned with the objectives set forth in the OECD core template for NCP peer reviews. In this, the objectives of the process included:

- To assess the Denmark NCP's functioning and operation against the core criteria for NCPs described in the OECD Guidelines and their implementation procedures;
- To identify the NCP's strengths and accomplishments as well as any gaps and opportunities for improvement;
- To offer specific recommendations to the Denmark NCP to support its improvement.

The Peer Review process also has an objective to serve as a learning tool for reviewed and participating NCPs. More specific objectives of the Denmark NCP peer review are detailed in the Terms of Reference that guided the process (see Annex A).

**2.3. Context for Peer Review:** Three other factors informed the context for the voluntary peer review of the Denmark NCP. (a) The peer review of the Denmark NCP took place 2.5 years after the restructuring of the Denmark NCP. As such, the Peer Review Team notes that the NCP is still to some extent in its start-up phase, during which the emphasis has been on establishing its rules of procedure and raising its visibility. Nevertheless, the NCP has undertaken a significant number of stakeholder-focused activities and conducted several specific instance complaints during this time. (b) The peer review took place while the OECD Core Template for Peer Reviews was being developed. This template seeks to bring greater consistency and coherence to NCP peer review arrangements. As such, the Denmark NCP peer review process sought to align itself as much as possible to the core template. (c) The Parliamentary Act on the Denmark NCP contains a review clause, which states that the Act of the NCP should be evaluated and revised in 2015. The Denmark NCP intends to use this peer review to inform the domestic process.

**2.4. Composition of Peer Review Team:** The Peer Review Team consisted of representatives from NCPs from Norway<sup>1</sup> (lead reviewer), Germany and the UK. A representative of the US NCP participated as an observer. The OECD Secretariat participated in the preparation of the peer review report and in the on-site visit. Shift was engaged by the Denmark NCP to provide independent support to the process, including organising the on-site visit and drafting the peer review report on behalf of the peer review team.

**2.5. Process:** Prior to its site visit, the peer review team reviewed relevant documentation, including: the Act on the NCP and the Executive Order (including public comments), the Denmark NCP website, written procedures for managing specific instance complaints, promotion materials, annual reports of the Denmark NCP, stakeholder awareness survey data, statements on specific

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<sup>1</sup> The official mandate of the representative from the Norway NCP ended shortly before the on-site visit. The Denmark NCP, the other members of the review team and the OECD Secretariat, in consultation with the Chair of the Working Party on Responsible Business Conduct, agreed to his continuation in the peer review team in his personal capacity.

instances, and other relevant materials provided by the NCP. The review team also sought inputs from BIAC, TUAC and OECD Watch on the performance of the Denmark NCP.

In March 2015, the peer review team conducted a 2-day site visit to engage with the Denmark NCP and its domestic stakeholders, including: institutions relevant to the broader CSR context in Denmark, Danish business associations, Danish civil society organisations, and parties to specific instances. A full list of stakeholders consulted is included as Annex B.

### 3. Context

**3.1. The Establishment of the New Danish NCP:** Denmark has been an adherent to the Declaration on International Investment and Multinational Enterprises since 1976. Initially, the Denmark NCP was established in the Ministry of Employment. However, this prior version of the NCP was widely perceived as ineffective by all stakeholders. The NCP lacked visibility, did not undertake significant promotion activities, lacked resources, and lacked clear procedures for handling specific instances.

The current Denmark NCP was established in November 2012 as the Mediation and Complaints Handling Institution for Responsible Business Conduct (MKI).<sup>2</sup> The NCP was established through a legislative act of the Danish Parliament (June 2012) and an Executive Order (September 2012). The Parliamentary Act and Executive Order were informed by public comments and submissions from various stakeholder groups, and the new institutional arrangements (described below in Section 4) sought to respond to the perceived deficiencies of the previous NCP.

**3.2. Role of NCP in Denmark's RBC Framework:** Denmark has a longstanding culture of robust dialogue on corporate social responsibility (CSR). At a broad level, there is a high level of awareness of CSR issues among government, business, civil society stakeholders and the broader public. The new NCP therefore exists within a landscape of many existing actors and initiatives with mandates relevant to CSR. Most notable among these is the Danish Council for CSR, a 17-member multi-stakeholder body, which serves as a key advisor to government on CSR issues with a mandate that includes promotion of CSR within society, and whose recommendations helped to shape the new NCP. In addition, several other government entities, industry associations, and multi-stakeholder initiatives also address issues related to responsible business conduct, as they apply to their own particular domains and industries. The NCP collaborates in its activities with these different institutions in various ways (Further description of this collaboration is included in Section 5, Promotion of the Guidelines).

**3.3. Relevant Aspects of the Danish Economic Context:** The Danish economy is largely comprised of small and medium-sized enterprises. The largest multinational enterprises operate globally in sectors such as shipping, pharmaceuticals and renewable energy, with other sectors

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<sup>2</sup> This report uses the term 'NCP' as a default when referring to the Mediation and Complaints Handling Institution for Responsible Business Conduct (MKI), which is tasked with serving as Denmark's NCP. However, the report deliberately uses the term 'MKI' where it refers to particular aspects of the institution arising from its domestic legislative mandate.

such as finance, services to the extractives industry, food and agriculture, textiles and electronics also represented.

The graphs below, based on data submitted by Denmark to the OECD, show detail by industry for the stocks of inward and outward direct investment for Denmark at year-end 2012. Table 1 shows the inward direct investment position by major industrial sector, and table 2 provides more detailed information by industry within the manufacturing sector. Table 3 shows the outward direct investment position by major industrial sector, and table 4 provide more detailed information by industry with the manufacturing sector.

Table 1: Inward investment position by major industrial sector of Denmark at year-end 2012

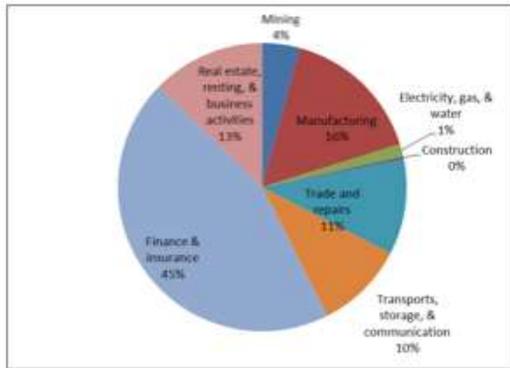


Table 2: Inward investment position in manufacturing of Denmark by industry at year-end 2012

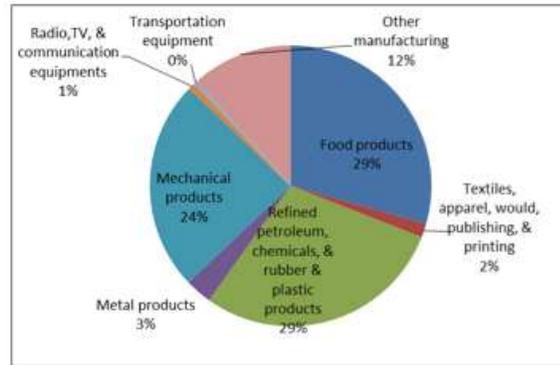


Table 3: Outward investment position by major industrial sector of Denmark at year-end 2012

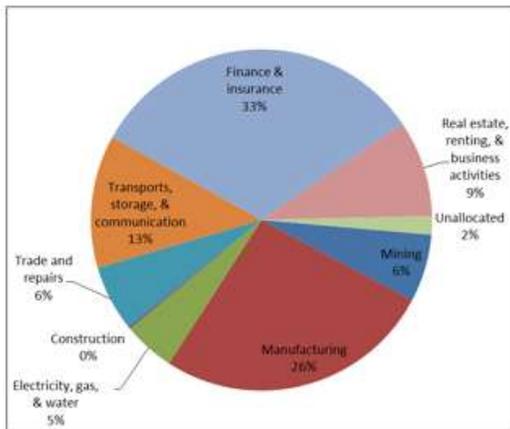
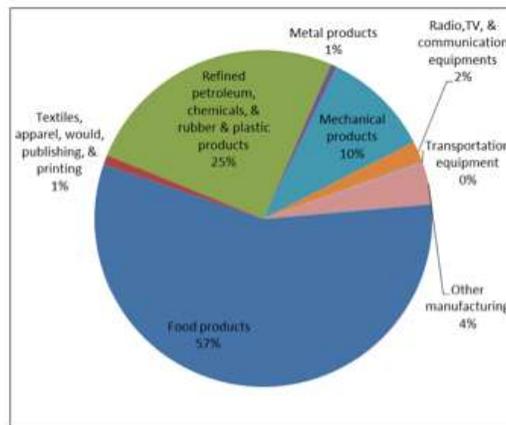


Table 4: Outward investment position in manufacturing of Denmark by industry at year-end 2012



## 4. Institutional Arrangements

### 4.1. Overview of Institutional Arrangements

4.1.a. Mandate: The Danish Government has designated the Mediation and Complaints Handling Institution for Responsible Business Conduct (MKI) to serve as Denmark's National Contact Point for the OECD Guidelines (NCP). Under the OECD Guidelines, its mandate therefore includes fulfilling the functions of an NCP as described in the OECD Guidelines and the related implementation procedures, including (a) promotion of the Guidelines and handling enquiries and (b) contributing to the resolution of issues that arise relating to implementation of the Guidelines in specific instances.

However, as a public institution established by Danish law, the MKI draws its domestic mandate from the Danish legislation that established it, which differs in some aspects from the OECD Guidelines and their implementation procedures.

- The legislation places significant emphasis on the complaints-handling function of the MKI (as evidenced, for example, by the name of the institution, which does not include the term 'National Contact Point');
- The MKI can accept complaints brought against a Danish private or public company, Danish government or regional authorities, and Danish private or public organizations or their business associates (whereas the OECD Guidelines are addressed to multinational business enterprises);
- In addition to receiving complaints, the MKI has the authority to initiate complaints at its own discretion, although it has as yet not used this authority;
- The MKI can only accept complaints related to business conduct or activities occurring in the past five years (whereas the implementation procedures of the OECD Guidelines and their implementation procedures do not have a similar time-bound eligibility for specific instances).

4.1.b. Structure and Composition: The law creating the NCP established the NCP as an independent body, housed within the Danish Business Authority, which is located within the Ministry of Business and Growth. The NCP is comprised of 5 members: A Chairperson, an Expert Member, and three members appointed on the basis of recommendations from the Confederation of Danish Industry (business), the Confederation of Trade Unions (trade unions) and the Danish 92 Group (a network of NGOs). All members are officially appointed by the Minister for Business and Growth, on the basis of those recommendations. Members are compensated for their time, with the Chair receiving a fixed annual stipend and other members compensated on the basis of time spent working on NCP business.

4.1.c. Resources: The NCP has a dedicated secretariat housed within the Danish Business Authority consisting of three full-time persons. The NCP has an annual budget of 3m DKK (+/- 400k Euro). The funds of the NCP are allocated to the Danish Business Authority in order to establish, operate and assist the NCP and provide guidance on responsible financial management and other related tasks. Funds are administered at the discretion of the secretariat, in consultation with the Chair and the full NCP at certain thresholds..

4.1.d. Reporting: The NCP is required to report annually on its activities, which it publishes on its website and disseminates to stakeholders. Under the Executive Order, the NCP has an obligation to report annually to the Danish CSR Council. The NCP also reports annually to the OECD.

## **4.2. Observations of the Peer Review Team:**

4.2.a. Legitimacy from Institutional Structures: The Denmark NCP is perceived as highly credible by its business and civil society stakeholders. Both business and civil society stakeholders pointed to the multi-stakeholder composition of the NCP and their role in offering nominations as key aspects of the NCP's legitimacy. Civil society stakeholders also pointed in particular to the independence of the NCP and the NCP's authority to initiate complaints as key factors contributing to the NCP's legitimacy, despite the fact that the NCP has not as yet utilised this authority. The Peer Review Team also observes that the NCP appears to have sufficient human and financial resources to fulfill its functions.

4.2.b. Concerns about the Dual Mandate: Through its consultations, the Peer Review Team identified several potential implications from the dual sources of the mandate of the NCP (the OECD Guidelines and related implementation procedures on the one hand, and the domestic legislation on the other). Specifically, the Peer Review Team observed that many stakeholders lack clarity on whether promotion of responsible business conduct is in fact part of the MKI's mandate. This lack of clarity can potentially create pressure on the NCP to justify its existence and its resource allocation solely on the basis of the complaints that it has handled, rather than on the full scope of its activities. In addition, the five-year statute of limitations included in the domestic legislation may mean in practice that the Denmark NCP would reject a case that would otherwise be admissible under the Guidelines. This may raise questions related to the Denmark NCP's compliance with the Guidelines and their implementation procedures in this regard and to functional equivalence across NCPs. These issues are discussed in more detail in later sections of this report.

## **5. Promotion of the Guidelines**

### **5.1. Promotion Activities**

One of the core functions of an NCP is to promote the OECD Guidelines and handle enquiries. The Denmark NCP has undertaken a number of activities both to raise its own profile with stakeholders and to promote the Guidelines, through engagement and speaking opportunities and through the dissemination of publications and resources. Moreover, the Denmark NCP has undertaken initiatives to understand and improve the effectiveness of its promotion activities.

5.1.a. Speaking Engagements with Business Associations: The Danish NCP has presented on the OECD Guidelines and the role and vision of the NCP, including at events organised by business associations: the Chamber of Commerce; the CSR Forum Resource Group; Danish architects association; Danish Confederation of Industries; the Danish Federation of Small and Medium-Sized Enterprises; the Danish Association of Company Law; the KPMG CSR Network; and companies in Kolding (city in Denmark).

5.1.b. Collaborating with Government Partners on Specific Topics: The Danish NCP has attempted to reach new audience by participating in events organised by various government partners on specific topics, including, the Danish Export Credit Agency (Danish Export Control Seminar); the Ministry of Food, Fisheries and Agriculture (on responsible sourcing in palm oil and soy); the Social Protection Agency (on human trafficking and forced labor); and the CSR Council (on public procurement).

5.1.c. Engagement with Stakeholders: The NCP has engaged with civil society stakeholders through a variety of forums, including meetings hosted by the NCP to focus on the how parties can use the specific instance procedure. The NCP has also participated in multi-stakeholder forums in Denmark on CSR, such as the annual CSR awards.

5.1.d. Publications: The NCP has translated the OECD Guidelines into Danish, and these are available on the NCP website.<sup>3</sup> The NCP has published a brochure about the NCP and the complaints procedures, and translated this into English, French and Spanish. The brochure is available on the NCP website, has been distributed in Denmark to businesses and stakeholders, and has been distributed internationally through Danish embassies to businesses, NGOs, trade unions, and others. The NCP publishes an annual report, which is distributed in Denmark, translated into English, and available on the NCP website.

5.1.e. Tools for Business: The NCP undertook a revision of the CSR Compass, a free online tool originally developed by the Danish Confederation of Industries, to help companies understand and comply with international guidelines for social responsibility in the supply chain ([www.csrcompass.com](http://www.csrcompass.com)). The tool is aimed at small and medium-sized enterprises, and includes an overview of the various international frameworks relevant to responsible business conduct, including the OECD Guidelines.

**5.2. Initiatives to Understand and Improve Promotion Activities:** The Danish NCP has undertaken two initiatives to understand how to better promote the OECD Guidelines through its activities.

5.2.a. Stakeholder Awareness Surveys: The NCP has commissioned two professional surveys (in December 2012 and December 2014) to assess business and stakeholder awareness of the OECD Guidelines and the NCP. The survey in 2014 showed an increase of 10% in business awareness of the Guidelines (from 23% in 2012 to 33% in 2014). The data in the survey was segregated by company size, showing better awareness among larger companies, and also identified the primary sources of information stakeholders use to learn about the Guidelines and the NCP.

5.2.b. Strategy Development for Promoting the Guidelines: The NCP prepares an annual communication and activity plan for its promotion efforts. Many of these promotion efforts have sought to leverage platforms created by other institutions to raise awareness among broader audiences about the OECD Guidelines. In December 2014, the NCP initiated a process to develop a more strategic focus for its promotion activities for 2015-2016 by seeking input from

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<sup>3</sup> <http://businessconduct.dk>

experts and stakeholders. The NCP requested and received submissions and suggestions from three expert groups: SOMO/OECD Watch, the Danish Institute for Human Rights, and Global CSR. In March 2015, the NCP used these ideas as a basis for discussion with domestic stakeholders about the strategic focus of the NCP's promotion activities. The process expects to result in a more focused strategy for the NCP's future work.

### **5.3. Observations of the Peer Review Team:**

**5.3.a. Lack of Stakeholder Clarity Over the Promotion Mandate:** In several stakeholder consultations, stakeholders offered differing perspectives over whether promotion was in fact part of the mandate of the MKI, or whether this role resided with the CSR Council. The Peer Review Team notes that the NCP's function of handling specific instances is clearly emphasised in the institution's name (Mediation and Complaints Handling Institution for Responsible Business Conduct), on the Denmark NCP's website (which has a strong focus on the procedures for handling specific instances), and in the domestic legislative mandate of the MKI. The lack of clarity among stakeholders on the promotion part of the NCP's mandate suggests that there may be a misalignment of expectations among some stakeholders about the role of the MKI in fulfilling all of the functions of an NCP under the OECD Guidelines.

**5.3.b. Initiative to Develop Strategic Focus:** The Peer Review Team heard consistent feedback from stakeholders that the NCP was very responsive to invitations to speaking engagements. However, the Peer Review Team observes that the NCP's approach in promotion has thus far often been more reactive than proactive and strategic. The Peer Review Team therefore considers noteworthy the initiative of the Denmark NCP to develop a strategic focus for its promotion activities and stakeholder outreach, and its efforts to do so through a consultative process.

**5.3.c. Promotion through Collaboration:** The Peer Review Team took note of the many existing efforts of the Denmark NCP to raise awareness of the NCP and promote the OECD Guidelines through collaboration with government entities, business associations, multi-stakeholder bodies and stakeholders. The Peer Review Team noted the willingness expressed by stakeholders during the consultations to expand and strengthen that collaboration.

**5.3.d. Focusing Promotion on Practical Implementation:** At the same time, stakeholders pointed to the need for promotion activities to focus more on practical implementation of the Guidelines. Stakeholders expressed interest in more guidance on the specific steps businesses should take to implement the Guidelines in practice, and support from the NCP to ensure that the advice and guidance that multi-stakeholder initiatives and industry associations are generating for their members is aligned with the Guidelines. The Peer Review Team observes that this expressed need could be addressed both through targeted promotion activities of the NCP and through greater involvement of the NCP in the Proactive Agenda.

## 6. Specific Instances

**6.1. Procedures for Handling Specific Instances:** The Denmark NCP has clear, transparent and predictable procedures for handling specific instance complaints, based on a 5-stage approach with indicative timeframes. The stages consist of: (1) Initial Assessment; (2) Opportunity for Independent Resolution; (3) Preliminary Investigation; (4) Mediation; and (5) Actual Investigation. These procedures are described below, while the case experience of applying these procedures is addressed in the section that follows.

6.1.a. Initial Assessment: In the Initial Assessment phase, the Secretariat evaluates complaints for eligibility criteria, objective justification, and reasonable documentation. The NCP's procedures indicate that the initial assessment phase should take no more than two weeks. (Further detail on the factors assessed by the NCP as part of the initial assessment is provided in Annex C).

6.1.b. Independent Resolution: In complaints that are accepted at the initial assessment phase, parties are then provided with an opportunity for independent resolution, before the NCP becomes engaged in the matter. This period is scheduled for up to 2 months.

6.1.c. Preliminary Investigation: If the parties are unable to reach independent resolution within a 2-month period, the NCP conducts a preliminary investigation. The Secretariat assesses the information provided by the parties and seeks additional information where warranted, including contacting the parties, conducting additional desk-based research, etc. The Secretariat then makes a recommendation to the NCP for proceeding with mediation.

6.1.d. Mediation: The Chair of the NCP is the presumptive mediator when complaints reach this stage. The Chair has the option to engage other NCP members in the mediation, where conflicts of interest may be present or where caseload requires. The NCP also has the option to hire external co-mediators to assist the NCP mediator where deemed necessary. Where mediation is successful, the NCP issues a statement about the agreement and conducts follow-up to ensure implementation of mediation agreements one year after the agreement is reached. The mediation is expected to take no longer than 3 months.

6.1.e. Actual Investigation: Where mediation is unsuccessful, the NCP conducts an actual investigation and issues an initial statement that names the parties, relevant provisions of the Guidelines, and a timeframe for a result of the investigation. The investigation might include additional outreach to parties, to government entities such as foreign embassies and to other stakeholders, as necessary, to provide the NCP with additional information on geographical or industry context or information about the business conduct and alleged impact at the centre of a complaint, as appropriate. The investigation phase is expected to conclude within 6 months, by which time the NCP will issue a final statement that determines whether or not the Guidelines have been breached and makes recommendations to the company as to how it can comply with the Guidelines. The NCP conducts follow-up on its statements to see whether recommendations have been implemented, one year from the date of the statement.

**6.2. Case Experience:** Since the restructuring of the NCP in 2012, the NCP has received 11 complaints. Of these, 8 were rejected at the Initial Assessment Stage, 1 was resolved

independently by the parties, 1 was resolved in part through independent resolution by the parties and in part by actual investigation and final statement, and 1 is currently pending.

6.2.a. Rejected Complaints (8): Of the 8 rejected complaints, 6 were rejected because the issues raised in the complaint were considered by the NCP not to be covered by the OECD Guidelines. Two of these complaints were referred to other relevant Danish government institutions (Danish Consumer Ombudsman and Danish judicial system). Of the remaining two rejected complaints that were considered to be relevant to the Guidelines, one complaint was rejected because there was no connection established between the alleged breach of the Guidelines and a Danish subsidiary company. This complaint was referred to the NCP in the country where the company was headquartered. Another complaint was rejected on two grounds: part of the complaint referred to business activities that occurred more than 5 years previous to the complaint, and part of the complaint was rejected due to a lack of sufficient documentation.

6.2.b. Accepted Complaints (3): One complaint was resolved independently by the parties. The complaint involved the due diligence practices of a multinational food and agricultural company. The agreement reached by the parties details concrete steps the company will take to institute effective due diligence practices throughout its operations. The parties released a joint media statement about their agreement.<sup>4</sup> A second accepted complaint involved wages and retention of identity documents among migrant farmworkers in a Danish agricultural small enterprise. The complaint was partially resolved by the parties during the independent resolution phase. However, the NCP determined that the resolution reached by the parties did not address all of the claims raised in the initial complaint, and the NCP proceeded to actual investigation on allegations of retention of worker identity documents. The investigation was unable to determine whether the Guidelines had been breached. The NCP issued a final statement on the case and a general statement on the issue of identity document retention more generally. A third accepted complaint is currently pending.

**6.3. Stakeholder Perceptions on the NCP Caseload and Case-Handling Experience:** Parties to specific instance complaints expressed varying levels of satisfaction with the procedures, depending on their individual experiences. Notably, the majority of parties indicated that they would use or participate in the complaints procedures again and encourage their peers to do so. However, some stakeholders raised areas of specific concern related both to elements of the written procedures and the implementation of those procedures in practice.

6.3.a. General satisfaction: Several parties expressed satisfaction with the procedures and stated that they would use or participate in the complaints procedure again and encourage their peers to do so. In one complaint that was independently resolved by the parties, the complainant expressed that NCP procedure provided both sufficient leverage and a new platform for further direct dialogue between the parties, which led to a satisfactory resolution

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<sup>4</sup> These media statements are available at: <https://www.ms.dk/en/news/actionaid-denmark-dairy-giant-can-become-role-model-developing-countries>, and <http://www.arla.com/about-us/news-and-press/2015/pressrelease/arla-foods-to-ensure-responsible-approach-to-african-markets-1104299/>

for all parties. However, not all parties were satisfied with the procedure, expressing concerns about the good faith of other parties using the NCP procedure.

6.3.b. Time Limitations: NGOs in general, and the complainant in one rejected complaint, expressed concerns about the 5-year statute of limitations. They noted that complaints involving environmental harm often take more than five years to develop, due to the nature of the harm. As a result, they fear that the NCP might be unavailable as a forum for addressing some complaints involving environmental harms.

6.3.c. Evidentiary Threshold: Stakeholders expressed lack of clarity over how the evidentiary threshold for complaints is applied in practice. In particular, stakeholders pointed to the complaint that was in part rejected on these grounds. They had anticipated that they had provided sufficient documentation aligned with NCP's written guidance and were surprised by the rejection. That experience contributed to a lack of clarity on how the NCP applies the evidentiary threshold in practice.

6.3.d. Confidentiality: Both business and civil society stakeholders raised concerns about the expectations and practices of confidentiality. While all parties recognize the importance of confidentiality once a mediation is underway, there are differing expectations about whether and at what stage the identity of parties can be shared publicly. Business stakeholders understand the NCP procedure to prevent disclosure of the identity of parties named in specific instances unless and until the later stages of the NCP procedure. Civil society stakeholders expressed a need to be able to publicly state that a case has been filed, in order to explain to their own stakeholders why public campaigning may have been temporarily suspended. These misaligned expectations can create additional challenges to constructive dialogue in specific complaints.

#### **6.4. General Observations of the Peer Review Team:**

6.4.a. A Focus on Procedure: As an overarching point, the Peer Review Team notes that the Denmark NCP is a new institution still seeking to strengthen its legitimacy. The NCP therefore focused significant attention in its early stages on developing a strong procedural foundation as a basis for that legitimacy. Some stakeholders perceive this procedural focus as overly formal and legalistic, while it is precisely these aspects that provide comfort to other stakeholders. The NCP is now testing that procedural guidance through early complaints.

6.4.b. The High Number of Rejected Complaints: The Peer Review Team observes that a significant percentage of complaints (8 of 11) have been rejected by the NCP, which merits further reflection. A large number (6) of these complaints were rejected because they concerned issues beyond the mandate of the NCP and were unrelated to the OECD Guidelines.<sup>5</sup> This may be due to several factors: (1) as a new institution, several potential

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<sup>5</sup> By way of example, rejected complaints concerned: (a) dissatisfaction with goods purchased on the internet, (b) alleged defamation on a website; (c) alleged medical malpractice; and (d) disputes over patent rights. In some of these complaints, complainants were referred to more appropriate national institutions, such as the Consumer Ombudsman and the national judicial system.

complainants did not understand the scope of the NCP's mandate; (2) the Denmark NCP procedures do not require potential claimants to identify relevant chapters of the OECD Guidelines alleged to have been breached. This may make it easier for potential claimants to file complaints without first seeking to understand the mandate of the NCP.

6.4.c. Understanding the Caseload of the Denmark NCP: In undertaking this peer review, the Denmark NCP sought to understand why it was not receiving a larger number of complaints, and whether stakeholders perceived additional barriers to bringing complaints. The Peer Review Team was able to draw several observations from the consultations on this question:

- (a) Many stakeholders are evaluating the NCP and keenly observing how the NCP handles early complaints, as a way to assess whether the NCP procedure can deliver the types of outcomes they seek in a resource-efficient way;
- (b) Denmark offers the availability of several other forums and strategies for raising and addressing issues (including through other dialogue mechanisms, such as industry-specific multi-stakeholder initiatives and labour bodies, or through public campaigning). Stakeholders are still weighing the costs and benefits of whether the NCP provides the most effective and efficient vehicle for achieving the desired objectives. Some stakeholders perceive the NCP as a forum of last resort, when other forums have failed to produce satisfactory outcomes. Others perceive the 'cost' of adhering to the confidentiality provisions of the NCP as significant;
- (c) One early case decided by the NCP, in which it rejected a claim on the basis of insufficient documentation, may have negatively influenced perceptions about the NCP among some civil society stakeholders. Stakeholders were surprised by that rejection and did not fully understand the basis of the NCP's decision.

At the same time, the Peer Review Team notes that increasing the number of complaints brought before the NCP is a shared responsibility of the NCP and its stakeholders, rather than the responsibility of the NCP alone. Stakeholders generally perceive the NCP in its case-handling function to be accessible, predictable, and impartial – with clear and transparent procedural rules and a multi-stakeholder composition that reflects key constituencies. While the NCP can continue to make improvements to its procedures on the basis of stakeholder feedback, it must nevertheless rely to some extent on its stakeholders to bring complaints before it.

6.4.d. Promotion through Specific Instances: The Peer Review Team noted the effective way in which the Denmark NCP used learning from one specific instance to raise the profile of the issue of worker document retention. At the same time, the Peer Review Team questions whether the NCP's procedures around anonymity of parties to specific instances might have the effect of hindering the NCP's ability to further strengthen its promotion activities through learning from specific instances. For example, one case that was settled through direct dialogue by the parties resulted in a commitment by the business to undertake clear and specific steps as part of its future due diligence. This example could potentially be quite useful to the NCP's promotion activities in providing a robust illustration of what good due diligence steps might look like in practice. However, the NCP's ability to speak to this case example may, in procedure or in practice, be limited by the anonymity protections of the parties to the case, despite the fact that both parties have issued joint public media statements.

**6.5. Assessment Against OECD Criteria for Handling Specific Instances:** The implementation procedures for the OECD Guidelines provide four criteria for NCPs in the handling of specific instances: (a) impartiality; (b) predictability; (c) equitability; and (d) compatibility with the OECD Guidelines.

**6.5.a. Impartiality:** At a general level, the Denmark NCP is perceived by most stakeholders to act in an impartial way, without bias towards business, government or civil society. This is in large part achieved by the NCP's structure, with various stakeholder perspectives represented by the members of the NCP. Although the NCP since 2012 is housed within the Danish Business Authority under the Ministry for Business and Growth, stakeholders did not express any concerns that this institutional positioning creates any potential conflict of interest for the NCP within the Danish context. This was different from the attachment of the previous NCP was to the Ministry of Employment.

**6.5.b. Predictability:** The Denmark NCP has established a high degree of predictability with regard to its procedures and decision-making processes. The 5-stage procedure for handling complaints is explained in detail on the NCP website, in its publications, and in various speaking engagements by the NCP members and secretariat. The procedure provides clear eligibility criteria, guidance on that criteria, and indicative timeframes for each stage of the procedure. However, two factors raise challenges and opportunities to further enhance the predictability of the NCP procedures: (1) the lack of clarity among stakeholders over how the evidentiary threshold is applied in practice; and (2) the misaligned expectations of stakeholders over when and how the identity of parties named in specific instance complaints is treated.

**6.5.c. Equitability:** The Denmark NCP procedures and practices include aspects that seek to address perceptions of equitability between parties. For instance, the procedures clearly identify what types of information should be shared by and with parties, which can help to ensure that parties feel they have equal access to information. The Peer Review Team observes three factors that could potentially raise challenges and opportunities to further enhance the equitability of the NCP procedures.

- (1) Analysis of equitability often assumes an imbalance of power between large corporations with substantial resources and smaller civil society complainants with more limited resources. However, given the Danish economic context, the Danish NCP procedure may need to pay special attention to the needs and vulnerabilities of small and medium-sized enterprises that may be named in a specific instance complaint.
- (2) The NCP 5-stage procedure allows a stage for the parties to pursue resolution independently. However, in some complaints, this stage may not be appropriate, as it could have the effect of exacerbating existing power imbalances between the parties, which a mediated process can help to address.
- (3) The NCP procedures require the NCP to complete its initial assessment within two weeks of receiving a complaint. This relatively short timeframe may be insufficient for particularly complex complaints to be fully considered by the NCP. It could also potentially create time pressures which might prevent opportunities to ensure that companies properly understand the NCP procedures and the complaint being filed, before facing the independent resolution phase. This may be particularly relevant for complaints brought against SMEs, who may be less familiar with the OECD Guidelines and have limited resources to apply to their participation in the procedure.

6.5.d. Compatible with the Guidelines: The Denmark NCP procedures and practices are largely compatible with the OECD Guidelines, with one important exception. The 5-year limitation for eligibility of complaints is not in alignment with the OECD Guidelines.

## **7. Cooperation with NCPs**

**7.1. Overview:** The Danish NCP has undertaken several activities relevant to its cooperation with other NCPs and its participation in events involving NCPs. Specifically:

7.1.a. Peer Learning: The Denmark NCP participated in NCP peer-learning and capacity-building workshops in Salzburg (2014), Norway (2014) and Vienna (2015). In June 2014, the Danish ambassador to the OECD hosted a luncheon with other NCPs to share lessons learned and experiences on information and promotion of the OECD Guidelines. Additionally, the Denmark NCP disseminated its final statement on the retention of workers' documents through the OECD to all NCPs.

7.1.b. Participation in International Events: The Denmark NCP regularly participates in international events such as the OECD Global Forum on Responsible Business Conduct, and international advisory bodies such as the EU High-Level Group on CSR and the UN Forum on Business and Human Rights.

7.1.c. Cooperation in Specific Instances: The Denmark NCP referred a specific instance case to the UK NCP, because the company in question was headquartered in the UK.

## **8. Proactive Agenda**

**8.1. Overview:** The Denmark NCP has contributed to the Proactive Agenda through various activities. For example, (a) the NCP organised a CSR seminar for companies in India; (b) the NCP revised its CSR Compass tool, an online due diligence guide for small and medium-sized enterprises, which it made available through its website to businesses in all countries; (c) the NCP proposed a project for the Proactive Agenda on due diligence, to assess and align how different NCPs assess and understand the sufficiency of a company's due diligence. The peer review consultations also suggest that there may be additional opportunities for the Denmark NCP to link Danish businesses to various initiatives of the OECD as part of the Proactive Agenda (discussed below in Section 10, Recommendations)

## **9. Assessment of Denmark NCP's Performance Against OECD Core Criteria for NCPs**

The OECD Guidelines and their implementation procedures provide flexibility in terms of how states might structure their respective NCPs. However, the Guidelines and implementation procedures articulate a goal of functional equivalence across NCPs, by identifying 4 core criteria that should guide the structure and operations of all NCPs: (a) Visibility; (b) Transparency; (c) Accessibility; and (4) Accountability.

**9.1. Visibility:** The Denmark NCP has achieved a high degree of visibility in key sectors of Danish business and civil society. Although stakeholder awareness survey data demonstrates that there is more work to be done in this regard, the stakeholders consulted by the peer review team represented key players in Denmark's landscape for responsible business conduct, all of whom had significant levels of engagement with the NCP. While individual businesses and stakeholders may not be as aware of the NCP, the network organisations they rely upon are. The NCP's visibility is particularly noteworthy in comparison to the previous NCP located within the Ministry of Employment, which several stakeholders referred to as, 'the best kept secret in Denmark'. Some of the activities contributing to the NCP's high degree of visibility include:

- The NCP has an active website which is regularly updated;
- The NCP participates in regular speaking engagements hosted by business, government and stakeholder organisations, as well as hosting its own events for these audiences;
- The NCP has a significant number of publications, including a brochure about the NCP, detailing the procedures for filing complaints, and an annual report published each year which is disseminated to its stakeholders and made available on its website;
- The NCP has also sought to raise its visibility abroad, in the international contexts in which Danish businesses operate, by distributing materials to businesses and stakeholders through the networks of its foreign embassies.

**9.2. Transparency:** The Denmark NCP has made significant achievements in many areas related to transparency. Some of the key factors contributing to the NCP's transparency include:

- The NCP's website, publications and annual reports, all of which detail the activities of the NCP;
- The clear and transparent procedure for handling specific instance complaints, which is described in detail on the NCP website and in the NCP's publications;
- Information on the NCP website and its annual reports about the specific instance complaints handled by the NCP, including anonymised case descriptions, the status or final determination of those complaints, and any public statements made by the NCP.

One issue that may diminish transparency of the NCP relates to agreements reached independently by parties at Stage 2 of the NCP's 5-stage procedure. The NCP evaluates these agreements to ensure that they have satisfactorily addressed the complaints raised in accordance with the OECD Guidelines. However, detailed information about the nature of the complaints, the identities of the parties, and the agreements reached is not shared publicly with the business and civil society stakeholders of the NCP.

**9.3. Accessibility:** The NCP has taken significant steps to enhance its accessibility.

- Domestically, the NCP organised a meeting with NGO and trade union stakeholders on the specific instance procedure, to make sure that potential complainants understood how to file a complaint;
- Abroad, the NCP undertook efforts through its embassy network to make international stakeholders more aware of the expectations of the OECD Guidelines, the existence of the NCP, and the procedures for raising specific instances.

- The secretariat has in some instances provided informal feedback to potential complainants on their complaints, identifying steps the complainant could take to improve its chances for admissibility;
- The NCP secretariat is available by phone or email, ready to respond to enquiries and discuss its role and the Guidelines with relevant entities and members of the public.

**9.4 Accountability:** The Denmark NCP has a high degree of accountability.

- The Denmark NCP’s composition is multi-stakeholder, with three of the five members nominated by the key constituency groups of business, trade unions and NGOs.
- The NCP publishes, and is required to publish, an annual report on its activities and periodically reports to the CSR Council and the OECD on its activities;
- The Act on the Danish NCP includes a clause requiring review and revision in 2015-2016.

## 10. Recommendations

### 10.1. Overview

Throughout its consultations, the Peer Review Team was impressed by the level of credibility the Denmark NCP has cultivated in the eyes of its key stakeholders in government, civil society, business and the broader CSR landscape in Denmark. One stakeholder summarised the broad perceptions of the NCP as follows: “Accountable, reliable, open and balanced.”

The restructuring of the NCP in 2012 has resulted in strong institutional structures that provide the basis for a legitimate and effective institution. While still in its early years, the NCP has demonstrated a high level of activity and a number of noteworthy initiatives in terms of raising its visibility and promoting the Guidelines. The NCP’s handling of specific instances is based on a strong procedural foundation.

Nevertheless, the peer review process identified some specific areas for further consideration by the Denmark NCP as it seeks to further strengthen its performance. Within that spirit of continuous improvement, the Peer Review Team offers the following recommendations for the Denmark NCP’s consideration.

### 10.2. Recommendations Related to Institutional Structures:

**10.2.a. Clarify the Dual Mandate:** The Denmark NCP draws its mandate from two sources: the OECD Guidelines and the domestic legislation establishing the MKI as Denmark’s NCP. The domestic mandate has been understood by stakeholders to focus on the complaints-handling function of the NCP, and there remains a lack of clarity among stakeholders about the promotion mandate of the MKI as Denmark’s NCP. The upcoming domestic review of the NCP may provide an opportunity to clarify the MKI’s mandate in the following ways:

**10.2.a.1. Confirm the Promotion Mandate with Stakeholders:** The Peer Review Team encourages the NCP to proactively seek opportunities to clarify and confirm this promotion mandate with key stakeholders, for example: through dialogue with the CSR Council, in its

promotion and awareness-raising activities (including speaking engagements, website, and publications), and in conversations with stakeholders that may take place as part of the review of the Act on the Danish NCP. Clarifying the mandate can help to ensure that Danish stakeholders understand the full scope of responsibility of the MKI as Denmark's NCP, build greater legitimacy for the NCP's promotion activities, and ensure that the NCP is evaluated on the full scope of its functions, rather than its case-handling function alone.

10.2.a.2. Raise the Profile of the OECD Guidelines within the Mandate: As part of clarifying its mandate, the Peer Review Team encourages the Denmark NCP to seek opportunities to raise the profile of the OECD Guidelines within its mandate (including speaking engagements, website, and publications). Connecting the MKI's mandate more clearly to the OECD Guidelines would help to provide the NCP with a distinctive focus and purpose within the broader CSR landscape in Denmark, helping to differentiate its role and expertise from other CSR actors. This will have the added effect of enhancing the NCP's promotion of the Guidelines, by more explicitly tying its awareness-raising activities to its promotion efforts. Moreover, it may help to reduce the relatively large number of rejected complaints filed with the NCP which do not pertain to the OECD Guidelines, by educating stakeholders about the scope of the NCP's role.

10.2.a.3. Reconcile Inconsistencies: The dual mandate also creates the risk of inconsistencies between the domestic legislation and the OECD Guidelines and their implementation procedures. The most noteworthy among these is the 5-year statute of limitations. This limitation excludes the applicability of the Guidelines to complaints that would otherwise be admissible under the Guidelines and their implementation procedures.

10.2.b. Criteria for Using the Authority to Initiate Complaints: The Peer Review Team recognises that the part of the mandate of the MKI to initiate complaints extends beyond the mandate for NCPs under the OECD Guidelines and their implementation procedures. The Peer Review Team therefore does not believe it has a strong basis for offering recommendations to the NCP on this part of its mandate. Nevertheless, the Peer Review Team recognises that domestic civil society stakeholders perceive the NCP's authority to initiate complaints as central to the legitimacy of the institution, and therefore relevant. The NCP has not yet utilised its authority to initiate complaints, and the Peer Review Team recognises the challenges of doing so in practice. At one level, these challenges are practical, in terms of what impact initiating a case would have on the dynamics for mediation or problem-solving. At another level, there are challenges related to both perceptions and legal justification, in terms of justifying which complaints are initiated against which companies on what basis.

The NCP may therefore wish to review the criteria for initiating complaints, which are included in the NCP's case-handling manual, to ensure that they can effectively help the NCP to navigate and govern the use of this authority. Moreover, the MKI should publicize these criteria with stakeholders, in order to align stakeholder expectations around self-initiated complaints, as many stakeholders seemed unaware that these criteria exist.

### **10.3. Recommendations Related to Promotion**

10.3.a. Focus on Implementation in Practice: Throughout the consultations, the Peer Review Team heard a desire from stakeholders for more focus from the NCP within its promotion activities on implementation of the Guidelines in practice. Multi-stakeholder initiatives and industry associations mentioned wanting to ensure that the guidance they provide to their business members is aligned with the OECD Guidelines, while other stakeholders also encouraged this focus on practical implementation. While it may be inappropriate for the NCP to offer specific implementation advice for a specific company or in a specific context, it may nevertheless be possible for the NCP's promotion activities to focus more on how companies are implementing the OECD Guidelines in practice and creating dialogue around that implementation.

For example, the specific instance case involving the due diligence practices of a food and agriculture company resulted in an independent resolution that detailed concrete, credible steps for enhanced due diligence. The parties in that case issued a joint media statement detailing those steps. The experience of that company in implementing the agreement may provide the basis for illustrative examples of implementation in practice that the Denmark NCP's stakeholders are requesting.

10.3.b. A More Proactive and Strategic Approach to Promotion: The Peer Review Team encourages the NCP to share learning and results from its consultative initiative to develop a strategic focus for its promotional activities with other NCPs. The Peer Review Team also encourages the NCP to develop a stakeholder outreach strategy, in order to target its promotion activities and ensure maximum impact. As part of this process, the Peer Review Team further encourages the NCP to continue its collaborative approach with other state institutions to expose new target audiences to the Guidelines.

10.3.c. Reconcile Translations of the Guidelines: Several stakeholders noted potentially significant nuances of language in the Danish translations of the OECD Guidelines, such as language around 'infractions' and 'violations'. The Peer Review Team encourages the NCP to review these translations and clarify any inconsistencies, as well as ensuring alignment in the English versions of promotional materials with the language of the Guidelines.

## **10.4. Recommendations Related to Specific Instances**

10.4.a. Clarify Expectations Around Confidentiality: Business and civil society stakeholders demonstrated differing expectations with respect to how the identity of parties should be handled in complaints filed with the NCP. The Peer Review Team recommends that the NCP clarify its expectations around these issues, in terms of how the identity of parties is handled in practice. This misalignment of expectations can challenge the legitimacy of the NCP procedure, as a currently pending case demonstrates, where different parties have different expectations about whether public statements are in compliance with or contrary to the NCP's procedures.

As the NCP seeks to clarify these expectations, the Peer Review Team observes two distinctions which may be helpful: (1) The distinction between the confidentiality that must protect the dialogue between the parties as part of a problem-solving approach, as opposed to the protecting the identity of the parties who are participating in a procedure. (2) The distinction

between protecting the identity of parties when a complaint has been filed, as opposed to once a complaint has been accepted.

This may also enhance the learning function of specific instances, by enabling the NCP to more effectively leverage learning from specific instances in its promotion activities. In one recent case in which the parties reached an independent resolution, the parties issued a joint public media statement explaining the terms of their agreement. Nevertheless, the NCP is prevented by its procedures from speaking about these parties by name, unless the parties explicitly consent.

10.4.b. Clarify Expectations Around Documentation: The NCP Procedures provide guidance on the types of documentation that may be relevant in substantiating a claim. Nevertheless, stakeholders expressed confusion and a lack of clarity over how that standard is applied in practice. The NCP Secretariat is able to provide further guidance to potential claimants about the sufficiency of their documentation, and should continue this practice. Given the lack of clarity on this issue, the Peer Review Team also recommends that the NCP make particular efforts in its argumentation of rejected complaints to provide the reasoned basis for its decision that submitted documentation was insufficient and the types of documentation that would have led to a different determination.

10.4.c. Consider Requiring Complainants to Identify Relevant Aspects of the OECD Guidelines: The Denmark NCP should consider requiring complainants to identify as part of their complaints the relevant chapters of the OECD Guidelines. This would require complainants to consider the relevance of their complaint to the Guidelines, and likely have the effect of lowering the high percentage of complaints filed with the NCP that are not relevant to the Guidelines. This would also likely have the effect of helping to clarify the scope and purpose of the NCP to its stakeholders. Finally, this would enhance transparency in the NCP's determination at the initial assessment stage by requiring the NCP to specifically consider how company behavior links to identified sections of the Guidelines. Such a requirement need not create an additional barrier to accessibility by requiring expertise in the Guidelines, as the Secretariat could continue the informal support it has provided to potential complainants as they shape their complaints for submission.

10.4.d. Assess Needs of SMEs as Respondents: Given the large percentage of small and medium-sized enterprises in the Danish economic context, the Peer Review Team recommends that the NCP assess the specific needs of SMEs involved in a specific instance. SMEs might typically have more limited human resources to commit to an NCP procedure and lack the expertise or resources to develop that expertise. There may be useful adaptations to the NCP's procedures or additional resources (including the national business association for small and medium-sized enterprises) that would support the experience of SMEs in the NCP complaints-handling procedure. For example, while the formality of procedures may provide predictability and comfort to some stakeholders, it may not be appropriate in all circumstances. The NCP might consider earlier engagement with the parties in such complaints to ensure their understanding of the NCP's procedure and the objectives and content of the Guidelines. The NCP might also include an assessment of whether stage 2 (independent resolution) is appropriate in all complaints, or whether this stage could be detrimental to the procedure or place one party at a disadvantage.

10.4.e. Leverage Learning from Complaints: One of the primary values of specific instance complaints is to leverage learning from those complaints. That learning can take the form of further promotion of the Guidelines, implementation in practice, or better understanding of the NCP's procedures (in the case of rejected complaints, for instance). With a high percentage of rejected complaints, there may be opportunities for the NCP to leverage learning from those complaints to further clarify for stakeholders the scope and procedures of the NCP, in terms of the issues covered by the NCP, sufficiency of documentation, etc. Moreover, with complaints resolved independently by the parties, the agreements between the parties can become useful opportunities for further promotion of the Guidelines.

10.4.f. Feedback from Parties to Specific Instances: The NCP may wish to consider ways in which it could more systematically receive feedback from parties to specific instances on perceptions about the procedure. Such feedback could be particularly useful to the Denmark NCP, given that the NCP is still testing the application of its procedures in practice and further building its legitimacy through its performance in handling complaints. It could do so through a formal written feedback system for all parties who bring or are named in complaints, or through informal but systematic outreach to parties, either by the Secretariat or by individual members of the NCP. This type of feedback can be an important part of the continuous improvement of the NCP's procedures and practices. Such feedback can be useful in complaints that are rejected, as it can help to determine whether the NCP has clearly communicated the reasons the case was rejected and how it could provide clearer guidance in the future. For accepted complaints, it can help the NCP to understand which aspects of procedure and practice that are working well and opportunities for improvement.

## **10.5. Recommendations Related to the Proactive Agenda**

10.5.a. Seek Opportunities to Engage Danish Business in the Proactive Agenda: The Peer Review Team notes that the Proactive Agenda may provide interesting opportunities to support the efforts of the Denmark NCP. Danish businesses may have interesting practical experiences to contribute to various initiatives under the Proactive Agenda, and their involvement can have the added benefit of raising the profile of the OECD Guidelines in Denmark and improving understanding of implementation in practice. The Peer Review Team therefore encourages the Denmark NCP to seek relevant opportunities and encourage participation from Danish businesses in various initiatives under the Proactive Agenda.

## **11. Monitoring**

The Peer Review Team invites the Denmark NCP to report back on implementation of these recommendations within one year.

**Annexes:**

- A. List of Stakeholders Consulted
- B. Terms of Reference
- C. Factors Reviewed as Part of the NCP's Initial Assessment of Specific Instance Complaints

## **Annex A: List of Stakeholders Consulted**

### **Denmark NCP: Orientation and Wrap-Up Sessions**

- Members of the Denmark NCP – *Mads Øvlisen, Karin Buhmann, Kim Haggren and Jonas Christoffersen (Not present Jens Erik Ohrt)*
- NCP secretariat: *Marie Voldby and Ellen Marie Friis Johansen*

### **National Organizations and Networks**

- Council on Social Responsibility - *Anders Ladekarl*
- Danish Ethical Trading Initiative - *Hanne Gürtler*
- Danish Council for Sustainable Development - *Charlotte Fischer*
- Export Credit Agency - *Claus Primdal Sørensen*

### **Business Organizations**

- Confederation of Danish Industry – *Sara Krüger Falk*
- Danish Chamber of Commerce – *Louise Koch*
- FSR – Danish Auditors – *Birgitte Mogensen*
- Danish Shipowners' Association – *Maria Bruun Skipper*
- ATP (Danish Labour Market Supplementary Pension) – *Ole Buhl*
- Danish Federation of Small and Medium-Sized Enterprises - *Henning Høy Nygaard*
- Danish Agriculture & Food Council – *Lone Saaby*
- Danish Construction Association – *Henriette Thuen*
- Danske Advokater – *Jens Harkov Hansen*

### **Civil Society Organizations**

- Arranged under the auspices of the Danish 92 Group, including representation from Danish 92 Group, Amnesty International, Clean Clothes Campaign, Action Aid, and others – *Sanne Borges, Kim Christensen, Klaus Melvin, Troels Dam Christensen*

### **Parties to Specific Instances**

- Action Aid – *Troels Børrild*
- Arla Foods a.m.b.a - *Astrid Gade Nielsen*
- Greenpeas – *Peter Skov Johansen*
- United Federation of Danish Workers (3F) – *Jesper Nielsen*

## **Annex B: Terms of Reference for Denmark NCP Peer Review**

### **A. Overview**

The Denmark National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises has volunteered to conduct a peer review process. The Denmark NCP was re-established in June 2012 as the Mediation and Complaints-Handling Institution for Responsible Business Conduct, pursuant to a Danish Act adopted by the Danish Parliament. The NCP is comprised of five independent members (a chairman, one expert member and three organization representatives), who collectively reflect the key stakeholder groups served by the NCP, including industry, trade unions and civil society. The NCP has its own expenditure budget and a secretariat housed in the Danish Business Authority in the Ministry For Business and Growth

The Denmark NCP has volunteered for this peer review process in an effort to understand and improve its performance, by engaging with its stakeholders and peer NCPs. This peer review will also serve as a review of the Denmark NCP required by the domestic law under which the NCP was established, and must therefore be concluded by June 2015.

These Terms of Reference are intended to clarify the objectives, methodologies, and anticipated outputs for each stage of the Peer Review process.

### **B. Background on Peer Review Processes**

NCP voluntary peer reviews help individual NCPs by recognizing their strengths, identifying areas for improvement and generating specific recommendations to support their further effectiveness. At the same time, peer reviews also support the OECD system to meet the goal of functional equivalence across NCPs, by sharing lessons learned, good practices and common challenges.

The Denmark NCP peer review process follows and builds upon lessons from earlier peer reviews of the Norway NCP in 2013, the Japan NCP in 2012, and the Netherlands NCP in 2011. A peer review team, comprised of fellow NCPs and the OECD secretariat, will lead the peer review process, working in close collaboration with the Denmark NCP.

### **C. Objectives**

The broad goal of the Denmark NCP peer review process is to support the Denmark NCP to improve its performance and effectiveness. To achieve this broad goal, the peer review process has several specific objectives, including but not limited to the following:

- To engage with the NCP's domestic stakeholders, in order to solicit open and honest feedback on the performance and functioning of the Denmark NCP;
- To generate specific opportunities and recommendations for the Denmark NCP to strengthen its performance and address key challenges.

- To enable the Denmark NCP to benefit from the comparative experiences of counterpart NCPs on the specific challenges facing the Denmark NCP;
- To evaluate the Denmark NCP's performance against the criteria for NCPs described in the OECD Guidelines and the Procedural Guidance.
- To identify good practices of the Denmark NCP, based on feedback from domestic stakeholders and counterpart NCPs, which can be shared with the OECD system;

#### **D. Specific Areas of Inquiry Identified by the Denmark NCP for the Peer Review to Address**

The Denmark NCP will prepare a Background Note, discussed below, which will include a comprehensive overview of the NCP, a self-assessment of the NCP's performance to date, and a list of key areas of inquiry for the peer review process. Already, the Denmark NCP has identified several specific areas that it would like the Peer Review to explore:

- To uncover the advantages and disadvantages of the governance model and institutional structure of the NCP as an NCP based on law;
- To seek stakeholder perspectives on the complaints handling process for specific instances, including the NCP's dialogue with parties before the initial assessment, the documentation requirements of parties in the initial assessment phase, and perceived barriers to utilizing the NCP mechanism;
- To understand the effectiveness of the NCP's information and promotion activities concerning the OECD Guidelines, and how these could be strengthened;
- To address any other areas raised by the Denmark NCP's domestic stakeholders.

#### **E. Composition of the Peer Review Team**

The peer review team will be comprised of representatives from three counterpart NCPs and the OECD secretariat, based on expressions of interest from NCPs and invitations from the Denmark NCP to participate. The team includes:

- Hans Petter Graver (Norway NCP), who will serve as Chair of the team;
- Steven Murdoch (UK NCP)
- Malte Hauschild (Germany NCP)
- Cristina Tebar-Less (OECD Secretariat)
- Janne Haraldsen (Observer, Norway NCP)
- Paige Fetzer (Observer, US NCP)

The Denmark NCP has engaged Shift as independent support to the peer review process and the peer review team. Shift is an independent non-profit center for business and human rights practice, with broad experience supporting the NCP system in a variety of ways. Specific roles and responsibilities for this independent support are described below as part of Section E.

#### **F. Proposed Methodology**

The peer review process will consist of three phases of activity, each of which is described in greater detail below in section G, along with roles and responsibilities for different actors.

1. Preparatory Phase (Dec 2014 – Feb 2015)
2. Site Visit of the Peer Review Team (Proposed 4-6 March 2015)
3. Report Drafting, Finalization and Submission (Mar – Jun 2015)

## G. Detailed Description of Key Stages of the Process

1. **Preparatory Phase (Dec 2014 – Feb 2015):** During the preparatory phase, several initial activities will set the stage for the peer review team to conduct its work. Specifically:
  - The Denmark NCP will identify and invite peer NCPs to serve as Chair and members of the peer review team (Dec 2014);
  - Based on input from the Denmark NCP, Shift will draft **Terms of Reference** for the peer review process (Dec 2014);
  - The Denmark NCP will circulate the Terms of Reference to members of the peer review team for review, input and finalization (Jan 2015);
  - The peer review team will identify the types of background information from the Denmark NCP it would find most helpful to its review (Jan 2015);
  - Based on the inputs from the peer review team, Shift will develop a template for a **Background Note**. The background note will draw from and align itself to the greatest extent possible with the information indicated in the Core Template for Voluntary Peer Reviews, currently under discussion at the OECD (Jan 2015).
  - The Denmark NCP will prepare the **Background Note** as a key input into the peer review process. The note will include: (1) an overview of the Denmark NCP, including its evolution, structure, resources and key activities, as well as any other information requested by the peer review team through the template; (2) a self-assessment by the Denmark NCP of performance to date; (3) self-identification of key challenges facing the NCP (Jan 2015);
  - The Denmark NCP will identify and invite a **list of key domestic stakeholders** to be consulted as part of the review process (Jan 2015);
  - The peer review team will identify additional stakeholders it might wish to meet and topics of interest it wishes to explore during the consultations (Jan 2015);
  - The peer review team will engage with institutional stakeholders such as BIAC, TUAC and OECD Watch to solicit their feedback on the performance and functioning of the Denmark NCP (or may task Shift to do so based on the topics of interest the peer review team has identified) (Feb 2015);
  - Based on the inputs from the Denmark NCP and the peer review team, Shift will prepare an **agenda** for the peer review team's site visit and an **interview guide** for stakeholder consultations (Feb 2015);
  - The Interview guide will be shared with domestic stakeholders as part of the preparation for stakeholder consultations, including broad open-ended questions to solicit general feedback from stakeholders, specific questions exploring areas of inquiry identified by the Denmark NCP and the peer review team, and an invitation to raise additional topics of interest to stakeholders (Feb 2015).
  
2. **Stakeholder Consultations and Site Visit (March 2015):** The peer review team will conduct stakeholder consultations as a key part of a site visit to Copenhagen in March 2015. Specifically:

- The peer review team will meet with the Denmark NCP to discuss its initial review of the Background Note and better understand the context, performance of and challenges facing the Denmark NCP;
- The peer review team will hold **stakeholder consultations** with key domestic stakeholders, including: business enterprises, civil society organizations, trade unions, relevant government authorities, parties to specific instances handled by the Denmark NCP;
- The peer review team will hold a **working session** after the consultations have been completed to develop its key findings and recommendations;
- Shift will play a supportive role to the peer review team during these consultations and the working session, including taking notes of the key points of discussion and facilitating discussions as helpful and appropriate;
- The peer review team will hold a final consultative session with the Denmark NCP to share its initial findings and recommendations, as well as comparative experiences that could help the Denmark NCP address key challenges.
- The peer review team may choose to hold an session during the March 2015 OECD meeting in Paris (following the site visit), either to further develop its findings and recommendations or to host a learning session for additional NCPs that did not participate in the peer review process.

**3. Report Drafting, Finalization and Submission (Mar – Jun 2015):** The peer review team will prepare a report of its review of the Denmark NCP, highlighting key findings, good practices for the OECD system and recommendations for the Denmark NCP. The Denmark NCP wishes to emphasize the importance of the report generating practical and relevant recommendations for the Denmark NCP. Specifically:

- Under the direction of the peer review team and based on the discussion and conclusions of the working session, Shift will prepare a **Draft Peer Review Report** for the peer review team (Mar-Apr 2015);
- The peer review team will review the draft report and provide feedback and input (Apr 2015);
- The Denmark NCP will review the draft report to ensure factual accuracy (Apr 2015);
- Shift will prepare additional drafts of the report as necessary for review by the peer review team, leading to a final draft (Apr-May 2015);
- The peer review team will submit its **Final Peer Review Report** to the Denmark NCP (May 2015)
- The Denmark NCP will present the peer review report to the OECD at the June 2015 meeting of NCPs (June 2015).

## **Annex C: Factors Considered During Initial Assessment Stage of Specific Instances**

1. Eligibility Criteria: Basic eligibility criteria assessed by the NCP include: (a) the respondent is identified in the complaint; (b) a description of the complaint and the alleged impact; (c) whether the complainant is filing on his/her own behalf or on behalf of a third party; (d) the complainant's identity; (e) the complaint must be in writing; (f) the date of the incident; (g) whether the matter should be referred to another NCP.

2. Objective Justification: Objective Justification requires: (i) a determination by the Secretariat that the complaint concerns a relevant provision of the Guidelines; and (ii) that the complainant is acting in good faith. The NCP procedures do not require a complainant to identify the relevant sections of the OECD Guidelines that are alleged to have been breached, and the Secretariat can conduct its own analysis as to the applicability of the Guidelines. The good faith provisions refer to the willingness of the parties to participate in the NCP procedures and maintain confidentiality.

3. Reasonable Documentation: Reasonable documentation refers to the evidentiary threshold required by the NCP to accept a case. The NCP provides guidance that such documentation could include: description of the events, supplemented by photos, original documents, video documentation, etc., but not, for instance, solely a reference to a broadcasted television documentary. The Secretariat also determines whether the documentation establishes a connection between the infringement of the Guidelines and the company's activities (its own or directly related through a business partner). In complaints of insufficient documentation, the NCP requests additional information from the complainant.