In 2016, the NCP had special focus on human rights in the textiles sector. In October 2016, the NCP published a final statement in a case concerning human rights infringements in the textiles sector in Bangladesh. In this case, the NCP found that the respondent company had failed to carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises, since the company had, among other things, failed to make the necessary demands – and to follow up – to ensure that the supplier respected the employees' fundamental human rights and labour rights, including the right to occupational health and safety in the workplace.

It is no secret that this has been an extremely difficult case, but also a case from which we have learned a good deal. The NCP attaches great importance to developing its consideration of cases. We have therefore among other things requested feedback from the parties to this case, and included this in the NCP’s internal evaluation of the consideration of the case. We have special focus on improving the mediation process and creating the best possible conditions for the parties to achieve a solution that promotes the OECD Guidelines for Multinational Enterprises, for the benefit of the parties and for society.

The issues in this case are not only relevant for the respondent company, but also for the textiles sector in general. The NCP has therefore focused on this sector as an action area and has also held a workshop for textiles companies requiring help to learn more about incorporating due diligence processes, and also to obtain specific instruments to use in this work. The workshop was the first in a series which the NCP expects to hold going forward.

Besides the textiles sector, the building and construction sector, the financial sector and procurement in the public sector have been identified as special focus areas in which the NCP plans to hold workshops for interested companies. We are continuously developing the workshop format, in close dialogue with companies and other stakeholders, in order to fulfil our obligation to promote the OECD Guidelines on the most practical and relevant basis possible for the parties involved.

Other activities also took place in 2016. In November, in cooperation with DIEH (the Danish Ethical Trading Initiative) the NCP held a dialogue meeting for public institutions at both state and municipal level in order to discuss how public institutions work with due diligence in areas such as their procurement processes. The purpose of the meeting was to investigate the need for information, and any barriers to carrying out due diligence, in order to support the public institutions already engaged in this work, and to highlight this area for institutions that do not yet work actively with due diligence.

At the end of 2016, the NCP gained a new member. Jens Erik Ohrt, Consultant at the Danish Confederation of Trade Unions (LO), resigned from the NCP. Jens Erik has been a member of the NCP since 2012, and I would like to thank Jens Erik for his strong dedication to the work of the NCP and for his contribution to the NCP’s consideration of cases. We have also welcomed a new member. On the recommendation of LO, the Danish Minister for Industry, Business and Financial Affairs has nominated Rasmus Raabjerg Nielsen, Consultant at LO, where he works with CSR and international labour rights.

On behalf of the Danish NCP.
Mads Øvlisen, Chairman
Case handling process:

**Complaint**

**Initial assessment**
Does the complaint meet the formal criteria?
- No → Rejection
- Yes

**Maximum of 2 weeks from the complaint is received***
- Opportunity for independent resolution
  The institution encourages the parties to resolve the matter themselves
  - The parties succeed in resolving the matter → Case concluded
  - The parties do not succeed → Mediation

**Maximum of 2½ month from the complaint is received***
- Preliminary investigation
  If the parties fail to resolve the matter on their own, the institution conducts a preliminary investigation to decide whether to consider the matter further
  - Rejection

**Maximum of 3 months from the complaint is received***
- Mediation facilitated by the institution
  - If mediation does not succeed → Maximum of 6 months from The complaint is recieved***
- If mediation does not succeed

**Actual investigation**
- The institution undertakes an actual investigation of the matter
  - The complaint cannot be documented
  - Statement based on investigation
    - The institution announces a statement with criticism and recommendation for improvement
  - Statement that clears the responding party

**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
- 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

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* Tentative timeframe for the case handling
The Mediation and Complaints-Handling Institution for Responsible Business Conduct

The Mediation and Complaints-Handling Institution for Responsible Business Conduct is the Danish National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises. The OECD Guidelines oblige the countries that have adopted the Guidelines to establish National Contact Points (NCPs).

The purpose of the NCP is to consider cases of possible infringement of the OECD Guidelines for Multinational Enterprises. The NCP may consider complaints concerning private enterprises, Danish public authorities and Danish state or regional authorities.

Complaints 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 subsuppliers, for example, which individual enterprises may 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 NCP consists of a Chairman and one expert member, who are appointed by the Danish Minister for Industry, Business and Financial Affairs, and three members who are nominated by their respective organisations and appointed by the Danish Minister for Industry, Business and Financial Affairs.

This year, the NCP has welcomed a new member, Rasmus Raabjerg Nielsen. Rasmus is a Consultant at LO, where he works with international CSR, and EU and international issues, including labour rights. Rasmus also has a background from the Danish Ministry of Industry, Business and Financial Affairs and the European Commission. Rasmus is nominated by LO.

Chairman: Mads Øvlisen, former business executive and current adviser to the UN Global Compact

Expert member: Professor Linda Nielsen, University of Copenhagen

Rasmus Raabjerg Nielsen, Consultant at the Danish Confederation of Trade Unions (LO), nominated by LO

Professor (MSO – with special responsibilities) Karin Buhmann, Dr. Scient. Admin. & PhD, Copenhagen Business School, nominated by the Danish 92 Group

Kim Haggren, Director of Business Law and CSR, Confederation of Danish Industry (DI), nominated by DI
The NCP’s final statement concerning the textiles sector

On 17 October 2016, the Mediation and Complaints-Handling Institution for Responsible Business Conduct (the Danish NCP) published its final statement in a case concerning compliance with the OECD Guidelines for Multinational Enterprises.

The case concerned whether a Danish textiles company, PWT Group A/S, had acted in accordance with the OECD Guidelines and carried out due diligence with regard to a supplier in Bangladesh that produced clothing for the company. The supplier was located in the Rana Plaza building, which collapsed in April 2013, killing 1,138 people and injuring more than 2,000.

The NCP found that PWT Group did not apply processes for due diligence in compliance with the OECD Guidelines. PWT Group failed to set the necessary requirements and did not take steps to ensure that the supplier respected the employees’ fundamental human and labour rights, including occupational health and safety, in the company’s operations. PWT Group could not, however, be held responsible for the collapse of the Rana Plaza building.

In its statement, the NCP made a number of recommendations to PWT Group to ensure that its future due diligence activities fulfil the requirements in the OECD Guidelines. The NCP will follow up on the statement after one year and request the company to prepare a report on its follow-up on the recommendations and on its work to develop decision-making and risk systems.

In conjunction with the publication of the statement, the Chairman wrote:

"With this statement, the NCP wishes to underscore that companies should respect the principles of the OECD Guidelines, including that they make demands on suppliers to take appropriate measures to ensure health and safety in the workplace. This obligation now also includes a risk assessment of the safety of building structures."

The final statement can be found on the NCP’s website: www.virksomhedsadfaerd.dk, under Statements – Final Statements.
Central concepts in the NCP's final statement concerning the textile sector, and what companies can learn from this case

The NCP's final statement in the case concerning the complaint raised by Clean Clothes Danmark and Aktive Forbruger (Active Consumers) in relation to PWT Group A/S describes a number of central concepts that are important to defining the responsibilities of Danish companies in relation to foreign suppliers. In particular "due diligence" and "directly linked" are concepts that other companies should be aware of and consider in their responsible supply chain management and application of the OECD Guidelines for Multinational Enterprises.

Due diligence describes the processes a company is expected to have established to identify areas where there is a risk of adverse impact, to prevent and remedy any adverse impact and, finally, to account for the company's efforts to handle adverse impacts.

Due diligence thus includes the duty to identify, prevent and remedy actual and potential adverse impacts, as described in the OECD Guidelines.

A distinction is made between how due diligence is to be implemented within a company and in relation to its suppliers. According to the OECD Guidelines, companies must avoid causing or contributing to adverse impacts through their own activities. Companies must also seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This means that companies must require their suppliers to prevent adverse impacts. Companies must follow up that this actually takes place in practice.

In the PWT case, it was not clear to the company how "directly linked" to a supplier located at the Rana Plaza building should be interpreted pursuant to the OECD Guidelines, and its significance. The company had, among other things, explained that it did not have clothing produced by the supplier at the time that the building collapsed, and thus did not believe that it was directly linked to the adverse impact.

In its final statement, the NCP found it to be documented that the company had clothing produced up to very shortly before the collapse, and that there was no documentation that the business relationship had ceased. The NCP thus did not consider it significant that no clothing was being produced for the company when the building collapsed. The NCP assessed that the respondent and the supplier were also directly linked at the time of the accident, cf. the OECD Guidelines, Chapter II, item 12.

The company is therefore expected to use its leverage and influence on the supplier at whose location the adverse impact occurred.

According to the NCP's statement, companies' systematic due diligence activities in relation to suppliers should include the following: demands on suppliers in the form of a CSR policy, request for suppliers to conduct self-assessment based on a risk analysis, review of self-assessments to determine which aspects are to be inspected (taking into account the supplier's importance and industry/country risks), and reporting on results and follow-up.

Companies should furthermore ensure that the company's CSR policy complies with the OECD Guidelines for Multinational Enterprises, particularly with regard to fundamental human and labour rights.

Companies should review their suppliers' self-assessments in conjunction with an analysis of industry and country risks and, on this basis, select which circumstances are to be inspected.

Companies should report and communicate this work, as well as the measures taken by the supplier to prevent potential risks.

Companies can find inspiration for this work in the UN Global Compact, the UN and OECD. All of these organisations have developed a number of guides to specific due diligence practices, and these can be found on the website of the Business & Human Rights Resource Centre. For Danish companies, it may be particularly relevant to refer to the CSR Compass, a free online supplier management tool developed in accordance with the international guidelines for CSR.

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1 OECD Guidelines, Chapter II, item 11.
2 OECD Guidelines, Chapter II, item 12.
3 OECD Guidelines, Chapter II, item 10, and Chapter IV, item 5, and related commentary no. 45.
4 https://www.business-humanrights.org/
5 http://www.csrcompass.com/
Due diligence in the NCP's statement
and other NCPs' statements

In the wake of the publication of the NCP's statement of 17 October 2016, on 20 December 2016 the NCP held an information meeting on due diligence in NCP cases for companies, sector organisations and NGOs.

At the meeting, the NCP’s Chairman Mads Øvilsen, addressed the expectations of companies’ due diligence activities, including on the basis of the NCP's final statement concerning the textile sector. Attorney Thomas Trier, Nordic Law Group, reviewed a number of statements concerning due diligence from other NCPs. Even though the Danish NCP and other national NCPs are non-judicial mechanisms that do not have the authority to make legally binding decisions, their statements do contribute to greater knowledge of society's requirements and expectations of companies' due diligence.

Review of the NCPs' statements showed that a good deal can be concluded from the concrete expectations of the companies' due diligence in practice, in particular that companies must take a systematic approach to due diligence activities and be able to document this work.
Due diligence – human rights during the past five years at the National Contact Points, by Attorney Thomas Trier Hansen

In May 2011, the new revised OECD Guidelines for Multinational Enterprises entered into force. Some of the most significant changes were the integration in the guidelines of the UN’s Guiding Principles on Business and Human Rights in Chapter IV of the Guidelines, and the harmonisation of the reference to human rights in Chapter with the Principles. Since then, the OECD’s National Contact Points have had the opportunity to assess whether companies have carried out due diligence in practice. This article reviews whether it is possible to derive any general trends from this practice, and whether the various NCPs’ statements share any common aspects.

About the cases

During the 2011-2016 period, on a global basis the NCPs received 89 complaints concerning human rights. Just over one third of them were not accepted for further consideration, e.g. because the NCP was not the right contact point, or the matter had been considered by another body.

Around one fourth of the cases received are still subject to consideration. In conjunction with these cases, the NCP in question may have performed an initial assessment of whether the complaint could be subject to further consideration. In some cases, these assessments may also include statements that can contribute to an understanding of whether a situation is subject to the Guidelines, and these cases are therefore also included in the review to a certain extent.
Furthermore, several cases were concluded after mediation, or after the parties had achieved an agreement. In such cases, the NCP has limited opportunity to comment on compliance with the due diligence requirement. Nonetheless, they may give certain indications of what the Guidelines cover. Finally, not all cases were related directly to the due diligence issue.

Cases have been received by NCPs in every part of the world, but cases have primarily been concluded by the NCPs in Europe and the USA. This article is based on 15 cases which reflect which situations and companies are subject to the Guidelines, and how the content of due diligence and elements of the statements are understood.

Who can be the subject of a complaint to a national NCP, and which rights are the focus of the complaints

The NCPs typically consider cases concerning companies irrespective of size and industry. They often concern the manufacturing industry, or the mining industry, but also financial enterprises. Export credit agencies and similar state bodies have also been the subject of complaints, and in December 2016, the Swiss NCP assessed that an NGO may also be subject to the Guidelines.

Even though the conditions at subsuppliers, including labour conditions, often attract most attention, all rights may be involved. The question of the rights of indigenous peoples, including the issue of free, prior and informed consent, the right to water and the right to privacy are further examples of complaints considered.

Which situations are typically assessed by the NCPs

The Guidelines specify that there must be a link between the respondent company and the adverse impact on a human right. This link may be that the company has caused or contributed to adverse impacts through its own activities. It may also be the case that the adverse impacts are directly linked to the company’s own business activities, etc. through a business relationship.

The NCPs have mainly considered the latter situation. Out of the 15 cases reviewed, there has only been one instance where this was not the case, although the NCPs which considered this complaint did not find that the respondent had infringed the Guidelines.

A business relationship can take many different forms. This might, for example, concern suppliers; investments (virtually irrespective of the size of the investment); joint ventures or recipients’ use of the product, even if the recipient has not been approved.

What is required of the company

Even though, in principle, many different relations may be subject to the Guidelines, the NCPs also make it clear that if the respondent has not itself caused or contributed to the adverse impact, it will not hold responsibility under the Guidelines for the actual adverse impact on human rights. This responsibility is held by the business contact that caused or contributed to the adverse impact.

Clear communication and documentation

The respondent is assessed in order to determine whether it has systematically communicated its expectations of its business relationships and assessed which significant risks might exist with regard to the business relationships and the entire human rights aspect. The respondent is also expected to be able to document how it handles due diligence in its own activities and communicates this internally and externally. The respondent holds the duty of documentation. If the respondent cannot adequately document its approach, there is a significant risk that the NCP will find that the respondent did not comply with the Guidelines.

Even though the respondent is also expected to be able to measure and communicate progress in its follow-up of its activities, this matter is rarely considered directly by the NCPs. In individual cases it is emphasised, however, that failure to report externally on its efforts to address adverse impacts related to business relationships is an infringement of the Guidelines.
Systematic and robust approach to the risk assessment and follow-up

Even though it is acknowledged that there is no one-size-fits-all model for due diligence, the focus of several cases seems to have been whether the respondent can describe how it has taken a systematic approach to assessing significant risks, and to taking decisions in this respect, and whether this approach is robust. This might concern, for example, well-considered systematic screening of business relationships in order to ensure a pragmatic approach, especially if there are numerous business relationships. This approach also means that prioritisation of subsequent follow-up activities is accepted. There also appears to be an expectation that risk assessments are continuously updated.

The NCPs also give weight to equivalently systematic follow-up on the company’s risk assessment and how this exerts its leverage and influence on the business relationship in order to ensure the prevention, or mitigation and remediation of the consequences of adverse impacts. How this should take place in practice is highly dependent on the specific situation, and not much can be derived from the relatively few cases. It is clear, however, that a lack of systematic follow-up or passivity, even after the adverse impact has occurred, will lead to the respondent being assessed to have infringed the Guidelines. It is also apparent from some of the statements that a specific range of measures, rather than individual measures, can have a certain effect. Initiatives whereby leverage and influence is exerted together with other operators in the industry are recognised by the NCPs as an important approach, although this does not exempt the respondent from using its own opportunities to exert leverage and influence, just as a constant effort must be made to exert leverage and influence in business relationships.

Summary

Even though since 2011 the NCPs have been able to assess compliance by companies et al. with the OECD Guidelines’ expectations concerning due diligence, the basis for the assessment of practice is still very narrow.

Many statements are relatively brief and therefore only include few interpretations, and they are naturally also based on very specific situations.

Nonetheless, there is emphasis on documentation, and on systematic and robust approaches to both the identification of risks and follow-up measures, and also with regard to exerting and increasing leverage and influence on business relationships. Communication of expectations and actions also appears to be a significant element of compliance with the Guidelines.

The format of the final statements varies considerably between countries, which can impede comparison and identification of any trends. It would be appropriate to create a fixed format with guidelines for the structure of the statements. This would also ensure a degree of transparency for the party submitting the complaint, the respondent and any interested parties.
One of the tasks of the Mediation and Complaints-Handling Institution is to increase awareness of the OECD Guidelines for Multinational Enterprises. In order to strengthen its information activities, the NCP selected a number of action areas for special focus in 2016, and this focus will be maintained in 2017.

The financial sector
During 2016, the NCP commenced the work of focusing on the operationalisation of the OECD Guidelines in the financial sector. There is assessed to be a general need for information and knowledge in the sector, and there is a lack of awareness of the OECD Guidelines and the obligation to carry out due diligence for investors.

In October, NCP member Linda Nielsen took part in a dialogue meeting with pension companies and NGOs organised by Action Aid Denmark, at which she gave a presentation on the NCP, the OECD Guidelines and socially responsible investments.

Social responsibility in public procurement
Procurement by the public sector concerns very considerable amounts on an annual basis. Municipalities, regions and state institutions can use this purchasing power to ensure the demand for and support the supply of goods and services that have been produced in socially responsible conditions.

The NCP wishes to assist the public sector in promoting social responsibility in public sector activities, including guidance on compliance with the Guidelines in the area of public procurement.

Like private enterprises, public procurement officers have an obligation to comply with international guidelines for multinational enterprises, including the OECD Guidelines for Multinational Enterprises and the UN’s Guiding Principles on Business and Human Rights. This entails, among other things, that public authorities must carry out due diligence to identify, prevent and mitigate possible adverse impacts on the CSR principles, including human and labour rights.

As part of its action strategy, in November 2016, in cooperation with DIEH (the Danish Ethical Trading Initiative) the NCP held a successful dialogue meeting attended by central state, regional and municipal operators in the public procurement area. The dialogue meeting discussed public procurement experience and the NCP provided information and guidance on the public sector’s obligation to adhere to the international CSR guidelines.
Social responsibility in the textiles sector

At the NCP’s conference on due diligence held in November 2015, the company representatives who attended expressed a wish for an exhaustive, in-depth review of the due diligence requirements, as they are specified in the OECD and UN Guidelines.

The NCP has therefore developed a series of workshops for companies with a need to begin working on due diligence in practice, to give them tools to continue this work under their own auspices.

The NCP’s due diligence workshops are intended to gather 12-15 companies within the same sector, or of the same size. In the first instance the NCP held a due diligence workshop for the textiles sector, which has been identified as a special focus area for the NCP’s information activities.

The workshop was held in October 2016 in cooperation with the Danish Institute for Human Rights and the Danish Ethical Trading Initiative (DIEH).

The workshop was targeted at the textiles sector and the issues that are specific to the sector, including in relation to the supply chain. The aim of the workshop was to give companies an overview of international CSR guidelines, as well as tools to implement processes for due diligence in their supply chains. The workshop was held at DK Company in Vejle, and during the workshop this company presented its work on incorporating due diligence processes in the supply chain.

The workshop included a theoretical review of international CSR guidelines, as well as concrete practical exercises which gave participants the opportunity to share knowledge and experience. Companies’ roles in relation to possible infringements of international CSR guidelines were reviewed, as well as how companies can identify, prevent and rectify actual and possible infringements concerning people and the environment. Companies could also get inspiration for the development of general CSR policies.

In 2017, the NCP will continue to hold due diligence workshops for various sectors.
Twice a year, the Danish NCP attends meetings at the OECD in Paris for all NCPs. The NCP also attended the annual UN Forum on Business and Human Rights. The theme of the 2016 Forum held on 14-16 November in Geneva was “Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy.”

This year, several sessions had special focus on investments, which is a topic to which the NCP also gives priority. There were several engaging presentations from e.g. institutional investors concerning their due diligence processes, and discussion of how investors should relate to “engagement”, “divestment” or other measures in terms of influencing the private enterprises in which they invest. Karin Buhmann from the NCP gave a presentation in a session organised by a number of NGOs, including DanChurch Aid, concerning the involvement of the local population in investigations of the effects of the agro industry.

Capacity building between NCPs

In recent years, more and more OECD NCPs have held capacity building seminars for the all NCPs. The aim of the seminars is to gather representatives from the national OECD NCPs worldwide in order to discuss shared concerns across the different NCPs. In April 2016, the Israeli NCP held a seminar with focus on the OECD Guidelines and strategies to disseminate information and knowledge of the international guidelines, and to discuss how to increase companies’ awareness. There was also discussion and an exchange of experience concerning the initial consideration in complaints, when the national NCPs either accept or reject a complaint.

In September 2016, the Italian NCP held a two-day seminar in Rome, at which the NCPs exchanged viewpoints and experience from the performance of their work. The seminar focused specifically on how the NCPs work to promote the OECD Guidelines among companies, and the focus of the NCPs in the initial consideration of a complaint. The attending NCPs presented concrete examples of cases.

For the second consecutive year, in November 2016 the Hungarian NCP held a meeting in Budapest with the aim of developing NCPs by learning from each other. NCP member Karin Buhmann gave a presentation based on the Danish NCP’s case concerning due diligence in the textiles sector. Participants from other NCPs, OECD Watch, labour organisations and employer organisations contributed to a lively debate on the NCPs’ organisation, independence, consideration of cases and complaints, and communication.
The Danish NCP cooperates closely with the other Nordic NCPs.

In August 2016, representatives of the Nordic NCPs met in Helsinki to discuss challenges and exchange experience on the NCPs’ work to promote the OECD Guidelines for Multinational Enterprises. The meeting was held by the Finnish NCP to mark the 40th anniversary of the OECD Guidelines.

Karin Buhmann of the Danish NCP gave a presentation on how the NCP considers complaints and works to promote compliance with the OECD Guidelines among Danish companies.

In conjunction with the Nordic NCP meeting, the Finnish NCP organised a conference for the Finnish business community and civil society on the OECD Guidelines and the NCP’s activities, including raising awareness of the OECD Guidelines and the opportunity for consideration of complaints concerning actual infringements.
Contact

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