



## **Draft case handling procedures NCP Denmark (English version)**

### Background:

These are the draft case handling procedures of NCP Denmark. They have been updated to reflect the updates from June 2023 of the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (hereafter the OECD Guidelines) as well as recent case handling experiences in NCP Denmark. It should be noted that not all updates of the OECD Guidelines are reflected in the draft as the NCP Act<sup>1</sup> still act as the overall legal framework for NCP Denmark's work.

The case handling procedures will be translated into Danish at a later stage. Both the English and Danish version will be posted on NCP Denmark's website after stakeholders' comments have been taken into account and the draft has been finalised.

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<sup>1</sup> [Lov om mæglings- og klageinstitutionen for ansvarlig virksomhedsadfærd](#)

## Introduction to these case handling procedures

This document outlines NCP Denmark's procedures for handling specific instances. In OECD terminology complaints or cases handled by NCPs are called specific instances. These case handling procedures are based on the Danish NCP Act and Executive Order as well as the OECD Guidelines' Implementation Procedures and serves as a guide for both the complainant and the respondent as to what to expect when submitting or receiving a complaint.

The case handling procedures have been updated according to the updates in the OECD Guidelines published in June 2023 but can be subject to further updates.

Please keep in mind that this guidance describes how a typical specific instance is handled. NCP Denmark may choose to deviate from these procedures if it deems it necessary, drawing on experiences from previous cases or from other NCPs. Also, the description of the case handling is not exhaustive. Please contact the Secretariat if more details about the case handling is needed.

### 1. About NCP Denmark

NCP Denmark is the National Contact Point to the OECD Guidelines. It is an independent institution mandated by the Danish Government to inform about the OECD Guidelines and act as a non-judicial grievance mechanism to contribute to the resolution of complaints related to the topics covered by the OECD Guidelines, i.e. due diligence, disclosure, environment and climate, science and technology, corruption, employment standards, human rights, tax, consumer rights etc.

#### 1.1. What is a National Contact Point (NCP)?

The Danish government has appointed a National Contact Point to the OECD Guidelines – an NCP - as part of Denmark's obligations as an adherent<sup>2</sup> to the OECD Guidelines. The OECD Guidelines are governments' expectations to companies on how companies should address their impacts on people, planet and society and is a leading, voluntary standard for responsible business conduct. There are currently 52 NCP's around the world.

The OECD Guidelines apply to businesses of all sectors, sizes and ownership structures, and cover key sustainability issues – from climate change and environment to technology, corruption, human rights and labour standards.

The purpose of the NCPs is to further the effectiveness of the OECD Guidelines.

NCPs do that through:

- Promotion and information about the OECD Guidelines.

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<sup>2</sup> "Adherent" means those countries who have signed and joined the OECD Guidelines.

- Working as a non-judicial grievance mechanism where they help contribute to the resolution of complaints that arise in relation to the implementation of the Guidelines

In addition, where appropriate and in coordination with relevant government agencies, NCPs may also provide support to their government in order to develop, implement, and foster coherence of policies to promote responsible business conduct.

### 1.2. Who is NCP Denmark?

NCP Denmark consist of 5 members appointed by the Danish Government; a chairperson, an expert member and 3 members nominated by the Confederation of Danish Industry, the Danish Trade Union Confederation and the Danish 92-Group (a coalition of Danish NGOs) respectively. They are supported by a Secretariat in the Danish Business Authority which is an authority under the Danish Ministry of Industry, Business and Financial Affairs.

### 1.3. NCP Denmark's mandate

The Danish National Contact Point to the OECD Guidelines – NCP Denmark – is established by law in 2012 as the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct.

NCP Denmark is an independent institution mandated to handle specific instances (complaints) concerning whether Danish companies, public authorities, and public and private organisations act in observance of the OECD Guidelines for Multinational Enterprises. In other words, whether the entities have observed the international guidelines and their due diligence obligations on human rights, labour rights, environmental standards, corruption etc.

The Danish NCP is unique as very few other NCPs is mandated to handle complaints against public authorities and organisations. NCP Denmark's mandate also allow it to take up cases on its own motion if appropriate.

NCP Denmark can either offer mediation to the parties or conduct an actual investigation to determine whether a corporate or public entity has observed the OECD Guidelines. NCP Denmark can provide recommendations but cannot prescribe remedy or compensation to impacted parties.

### 1.4. How does NCP Denmark work?

The Danish NCP works in accordance with the core effectiveness criteria set out for NCPs in the OECD Guidelines. The Danish NCP is thus always working with the following principles in mind:

- **Accessibility:** It should be easy to access the NCP and get their assistance in matters related to responsible business conduct. It is free of charge to submit

a complaint with NCP Denmark. The NCP Secretariat can guide you, for example, with the requirements for complaining.

As a rule, complaints can be submitted in English or Danish. Please contact the Secretariat regarding other languages and possibilities of translation and interpretation. NCP Denmark may be able to help with translation.

NCP Denmark can also appoint a representative or an adviser if it deems it necessary.

- **Impartiality and equitability:** These principles are the foundation for the continued trust and confidence of stakeholders, parties in a particular complaint and the general public alike. It is also a reason behind the organisation of the Danish NCP, which is independent from the Danish government, and includes both experts on responsible business conduct as well as stakeholders in its decision making.

NCP Denmark strives to ensure that the parties can engage in the process on fair and equitable terms. All parties are given reasonable access to sources of information relevant to the issue and procedures. NCP Denmark seeks to facilitate access and participation in a matter sensitive to language and literacy, cultural constraints, logistical or practical limitations.

In its daily operations, NCP Denmark ensures that there is no conflict of interests in relation to the handling of case handling. This includes addressing potential or perceived conflicts of interests of people engaged by the NCP to mediate and assist the parties.

The NCP is subject to the impartiality provisions of the Danish Public Administration Act.

- **Transparency:** Transparency is a core principle for the NCPs and their conduct. NCP Denmark strives to maintain a balance between transparency and confidentiality to build confidence in the process and effective implementation of the Guidelines while upholding the NCP Act. NCP Denmark publishes its case handling procedures and publishes minutes from its meetings (in Danish), though not from discussion of complaints as the cases are exempt from public information until finished. NCP Denmark also recognises that there are circumstances where maintaining confidentiality of certain facts and arguments brought forward by the parties is justified and conducive to solving the issues.
- **Predictability:** NCP Denmark strives to ensure predictability by supplying clear and publicly available information about the grievance procedure, its stages, possible outcomes and expected timelines. NCP Denmark engages with parties to ensure that they have a clear picture of what to expect.
- **Visibility:** NCPs should be easy to find and contact. NCP Denmark's [website](#) holds all the most updated information about NCP Denmark, its institutional

set-up, members, case handling procedures etc. NCP Denmark is currently also present on SoMe at [Linked-In](#).

- **Accountability:** In light of their role to enhance the profile of the Guidelines, NCPs should be held account for their activities. NCP Denmark produces an annual report (in Danish) which is published on its website and shared with the Ministry of Industry, Financial and Business Affairs, Danish Business Authority and other relevant stakeholders. NCP Denmark also engages in peer learning activities through the NCP Network.
- **Compatibility with the Guidelines:** NCP Denmark will strive to operate in a way that is compatible with the Guidelines, however taking into account its legal foundation. When handling specific instances, this notably means working with parties to avoid any situation where agreements are contrary to the Guidelines.

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

### 1.5. NCP Denmark expects cooperation in good faith from the parties

NCP Denmark expects the parties to participate in good faith. This means that the parties show a genuine commitment to finding solutions to the issues raised and give serious considerations to any offer of good offices made by the NCP.

Good faith engagement in this context also means:

- Responding in a timely fashion,
- Maintaining confidentiality where appropriate and consistent with these case handling procedures,
- Refraining from misrepresenting the issues and the process, notably in public communications, and
- Refraining from threatening or taking reprisals against parties involved in the procedure, or against the NCP itself.

The threat or use of any reprisals against a party involved in the proceedings, external mediators or employees of the NCP during or after the conclusion of the proceedings is impermissible. Should the NCP be aware of any threat or reprisals, the NCP will, in accordance with the Guidelines, take any available steps within its capacity to provide adequate protection to the person at risk.

## **2. Submitting a Complaint**

Anyone can submit a complaint, whether it is an NGO with an interest in the matter, a trade union, a customer, an employee, a concerned individual, a politician or a local community affected by a company's activities. The complaint should be about a company,

organisation or public authority operating in or out of Denmark, subject to the admissibility criteria below (see step 1 – initial assessment).

You cannot remain anonymous when filing a complaint. However, if necessary, NCP Denmark can anonymise the complaint towards other parties if you are concerned of reprisals.

There are no costs associated with complaining. Complaints can be submitted in English or Danish. Please contact the secretariat regarding other languages and possibilities of translation and interpretation.

You may follow [the template on the NCP Website](#) to ensure that you submit everything necessary for the complaint, but it is not a requirement.

### 3. NCP Denmark's complaint handling procedures

When NCP Denmark receives a complaint, it seeks to assist the parties in solving the issue by seeking mutual agreeable solutions compatible with the OECD Guidelines.

Depending on the characteristics of each case, this assistance may include supporting constructive dialogue (including mediation), facilitating agreements between the parties and/or issuing recommendations. The aims of such assistance may include furthering the implementation of the OECD Guidelines in the future and/or addressing adverse impacts in a way consistent with the OECD Guidelines.

NCP Denmark's case handling procedures consist of the following steps, which each have different levels of publicity and indicative timeframes:

Steps	Description	Indicative timeframe	Publicity
<b>Step 1: Initial assessment</b>	Assessment based on the formal requirements of whether the case should be further considered	2 -3 months	No publicity
<b>Step 2: Bilateral dialogue</b>	If the complaint is approved for further consideration, the parties are encouraged to resolve the case without involvement of NCP Denmark.	2 months	No publicity
<b>Step 3: Preliminary investigation</b>	If the parties do not resolve the matter themselves, NCP Denmark requests further information to determine whether it can dismiss that non-observance has taken place.	3-4 months	Limited Publicity
<b>Step 4: Mediation</b>	If non-observance cannot be dismissed, NCP Denmark may offer mediation to help the parties resolve the issues raised.	3-6 months	Limited Publicity

<b>Step 5: Actual investigation &amp; final statement</b>	If the complaint is not resolved through mediation, NCP Denmark investigates the case further. This is concluded with a final statement.	3-6 months	Full Publicity
<b>Step 6: Follow-up</b>	After one year, NCP Denmark follows up with the parties on the implementation of the mediation agreement or any recommendations from the final statement.	2-3 months	Full Publicity

### Step 1: Initial Assessment

When NCP Denmark receives your complaint, you will receive a confirmation of receipt of the complaint together with information on when you can expect a response from NCP Denmark.

If the complaint falls within NCP Denmark's mandate, NCP Denmark will carry out an initial assessment of the complaint taking into account the following requirements:

- *Does the complaint meet the formal requirements?*  
The complaint must be submitted in writing with the following information:
  - The name and contact information of the person filing the complaint and your interest in the matter. If you are complaining on behalf of others, this should be clearly described.
  - The identity of the company, organisation, or authority of concern,
  - A short and clear description of what the complaint entails.

The complaint may be rejected if the purpose of the complaint is to harass the company, authority, or organisation.

You cannot remain anonymous when filing a complaint. However, if necessary, NCP Denmark can anonymise the complaint towards other parties.

- *Is the complaint material?*  
Meaning is it covered by the Guidelines and is it relevant to the implementation of the Guidelines? The complaint must concern a topic under the OECD Guidelines (for example human rights, environment, employment, corruption etc.), and it should include a potential or actual breach on of more of the recommendations in the Guidelines. It is not a requirement, though, that the complainant references the specific chapter or paragraph.

- *Is the perceived infringement happening in Denmark or is the company, organisation, or authority Danish?*

The complainant must involve a potential infringement on Danish soil or concern a company, authority, or organisation domiciled in Denmark. The company is normally registered in the CVR register (see [www.cvr.dk](http://www.cvr.dk)).

For complaints against companies /authorities/ organisations that are not residing in Denmark, NCP Denmark will send the complaint to the OECD contact point in the country where the infringement occurred or where the company is resident.

In some specific complaints, the issues raised might take place in multiple adherent countries or concern multiple companies or a company with headquarters in one country and subsidiaries in multiple countries both adherents and non-adherents. In these cases, NCP Denmark will coordinate with other NCPs.

- *Does the complaint fall within the statute of limitations?*

The Danish NCP Act has a statute of limitations stating that NCP Denmark may only accept specific instances, which are brought to the NCPs attention no later than 5 years after the act or omission in question has ceased taking place.

This means, that if the company or entity in question has ceased the incidence you complain about or has solved the issue more than 5 years ago, NCP Denmark cannot handle the complaint.

- *Is the complaint substantiated?*

You must enclose documentation when submitting a complaint.

NCP Denmark assesses whether the complaint is supported by sufficient and credible information. This could be a description of events together with correspondence between the complainant and the respondent, investigations, photos, original documents, video documentation etc. A reference to a documentary is usually not considered sufficient documentation.

If NCP Denmark assesses that your complaint lacks sufficient documentation, NCP Denmark may request further documentation. NCP Denmark's Secretariat can guide you on documentation needed.

- *Is there a link between the enterprise's activities and the issue raised in the specific instance?*

Based on the description of the complainant's description of the specific instance and the submitted supportive documentation NCP Denmark assesses if there seem to be a connection between the enterprise's activities and the issue raised in the specific instance.



Non-observance of the Guidelines can occur directly through the accused corporation, authority, or organisation's own activities, or more indirectly through value chains or business partners.

- *Would the examination of the issue contribute to the purposes and effectiveness of the Guidelines?*

This part of the assessment is broad and can contain a wide range of issues related to the purpose of the Guidelines. Guidance from OECD suggests that the NCPs can take into account whether further examination of the issues would address the concerned company's potential adverse impacts on people, planet and society, but also whether, on a more general note, it would enhance the contribution of business to sustainable development or economic, environmental and social progress. Furthermore, NCPs should examine whether facilitation an exchange between the parties, discussing the issues and expectations of the Guidelines and/or developing meaningful recommendations could be an effective means as to resolve the issues.

- *Are there parallel proceedings that might limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines?*

Parallel proceedings - whether same or similar issues are handled by other judicial or non-judicial institutions domestically or internationally – is by itself not a hindrance for NCP Denmark to handle the case but may cause a need for coordination with other authorities. You should inform NCP Denmark about any such parallel proceedings that you are aware of when you submit the complaint.

#### *Purpose and indicative timeframe of the initial assessment*

It is important to note that at this point of the investigation, NCP Denmark does not make a determination as to whether the OECD Guidelines have been observed.

NCP Denmark does not have an obligation to enlighten the case beyond what it received from the parties at this point but may ask for clarifications.

NCP Denmark will notify the respondent about the complaint and give them 14 days to comment on the complaint.

When NCP Denmark has carried out the initial assessment – typically within 2-3 months, depending on the need for coordination with other NCP's or authorities – we will inform both parties whether the complaint has been accepted for further examination or rejected as well as inform of next steps in the case handling.

#### *Publicity*

There is no publicity of the result of the initial assessment in this step of the case handling according to the Danish NCP Act, so we kindly request both

parties to respect that and not publish anything themselves about the submission of this case unless both parties agree otherwise. a notice will only be published after the conclusion of step 3 – the preliminary investigation.

## Step 2: Bilateral Dialogue

If the initial assessment from NCP Denmark finds that the complaint warrants further examination, NCP Denmark asks the parties (the complainant and the respondent) to try to resolve the matter between themselves. If they agree to establish a dialogue, as a rule, they have two months to resolve the case themselves without the involvement of NCP Denmark. NCP Denmark will only be involved to review an eventual agreement to assess whether it is compatible with the OECD Guidelines.

NCP Denmark kindly asks the parties to indicate within a timeframe of 2 weeks, whether they wish to pursue this solution.

If the parties do not wish to engage in dialogue without the involvement of NCP Denmark or they do not manage to come to an agreement, the case handling will continue to a preliminary investigation.

### Publicity

If the parties reach a solution among themselves, the case will be closed without any public statement from NCP Denmark. If the parties do not manage to reach a solution, a notice will only be published after the conclusion of step 3 – the preliminary investigation.

## Step 3: Preliminary Investigation

If the parties do not resolve the matter themselves or do not wish to do so, the matter will proceed to a preliminary investigation. The purpose of the preliminary investigation is to establish *whether the NCP can dismiss* that the alleged violation of the OECD Guidelines has taken place.

In order to do that, NCP Denmark investigates the case in greater detail than the initial assessment by asking both parties for further documentation of the facts in the case, usually with a deadline of 4 weeks. The initial requirements for the complaint still apply, but NCP Denmark takes on a more active role in the examination of the case.

The preliminary investigation results in a partial procedural decision where NCP Denmark decides whether it will process the case any further and potentially offer to mediate between the parties. The parties are consulted before the partial decision is made where they get 2 weeks to comment on the preliminary investigation.

NCP Denmark will then complete its preliminary investigation and may dismiss the case or continue the case handling with an offer of mediation or actual investigation.

As a rule, 3-4 months have been allocated for the preliminary investigation, but this depends on a concrete assessment in the individual complaint.

#### Publicity

If the case is rejected, a short description of the complaint and NCP Denmark's reasons to reject the complaint is published on NCP Denmark's website and linked-in-account but *without* mentioning the identity of the parties in accordance with the NCP Act.

If the case is continued, a short description *with* the identity of the parties, are published together with basic information of the case and the alleged violation of the OECD Guidelines as well as information on whether mediation or actual investigation will be carried out.

### Step 4: Mediation

If an offer of mediation from NCP Denmark has been made, the parties will have 2 weeks to decide whether to accept the offer. If the parties do not accept, the case will continue to an actual investigation.

Compared to an actual investigation, mediation offers more flexibility and less time consuming for the parties as well as greater control of the potential outcome. Often it is also less time consuming for the parties. The parties are not committing in advance to any particular outcome as parties will discuss and agree on the framework for mediation including the scope of the mediation and what will be published.

#### What is mediation in NCP Denmark?

Mediation can be seen as "assisted negotiations", where a third party – in this case NCP Denmark - helps the parties towards a settlement of a dispute to the satisfaction of both parties. It is a voluntary and non-judicial process, requiring both parties to engage in good faith aimed at searching for constructive and mutually agreed solutions compatible with the OECD Guidelines.

The Chair of the NCP is responsible for the mediation and can act as a mediator. The Chair can also assign the task to other members of the NCP, or the NCP Denmark may choose to appoint an external, professional mediator in consultation with the parties. In cases involving external mediation, the NCP secretariat will formalise this through a contract with the mediators. If the NCP appoints an external mediator, the NCP negotiates and pays the mediator's salary. The NCP may also cover expenditures such as pre-approved travel costs.

The role of the mediator is to facilitate discussions and guide the parties to propose potential solutions. If an NCP member serves as a mediator and the parties do not reach an agreement, that member will not participate in any further examination of the case, unless both parties explicitly consent.

Mediation normally takes place at Danish Business Authority in Copenhagen, Denmark, as it hosts the Danish NCP Secretariat. Other locations can be considered. If physical mediation is not possible for all parties, for example because of fear reprisals, the mediation may be conducted in a virtual, hybrid or written format.

#### *The process of mediation*

The process of mediation typically consists of two stages: Pre-mediation and actual mediation. During the first stage a mediator is chosen, and the appointed mediator discusses the framework of the mediation with the parties, either separately or jointly. The discussion can include scope, expectations, interests, format, etc. and should result in a signed mediation plan or contract. This plan does not constitute an agreement on the specific instance but serves as terms of reference for the *process* of mediation.

Then the actual mediation can begin. The mediator calls for one or more meetings in order to understand the issues of the specific instance, find alignment and facilitate negotiation of an agreement. After each meeting, the mediator and the parties decide in consultation with NCP Denmark, whether the mediation is fruitful and should continue.

#### *Outcome of mediation*

An outcome from mediation can vary in scope and may include all topics of a submission or select topics, which the parties can reach agreement on. The agreement may consider the future conduct of a company such as policies and procedures and/or previous conduct such as acknowledgement of fault, remedy and redress of harm. The agreement is made by the parties, and the only requirement from the NCP is that the agreement is compatible with the OECD Guidelines.

#### *Timeframe of mediation*

It is the aim of NCP Denmark that the process of mediation is concluded within 6 months. A detailed time plan is made in collaboration with the parties for each specific instance.

#### *Publicity*

A successful mediation typically includes an agreement and/or a joint statement signed by both parties. NCP Denmark assesses whether the agreement is compatible with the OECD Guidelines.

NCP Denmark then a public statement from the NCP with a short description of the case, the mediation agreement and how the mediation results is in accordance with the OECD Guidelines.

The parties are consulted about the draft statement from NCP Denmark, typically with a 2 weeks' deadline. After the parties' views are taken into account, it will be published on NCP Denmark's website and linked-in-profile.

#### Step 5: Actual Investigation & Final Statement

An actual investigation is carried out if NCP Denmark finds that the complaint is not suitable for mediation or if mediation was offered but was not accepted or unsuccessful.

The purpose of the investigation is to determine whether OECD Guidelines have been observed and to potentially provide recommendations on actions to be taken for the respondent party to act in observance of the Guidelines.

In order to do that, NCP Denmark may ask the parties for further information and documentation, usually within a deadline of 4 weeks. Participation in the process by the parties continues to be voluntary. Even so, NCP Denmark will continue to further clarify the specific instance as best possible through available means. NCP Denmark may gather additional information and advice from external parties as well as conduct interviews and field visits.

The actual investigation is concluded with a final statement. The final statement will include a description of the complaint the parties' position, and a timeline of the case proceedings. Furthermore, the final statement will describe NCP Denmark's determinations on observance of the Guidelines. It may include recommendations to the respondent. Before the final statement is published, the parties are provided with a draft of the statement and are given 2 weeks to submit comments. NCP Denmark will take into account the comments and finalise the statement. Subsequently, NCP Denmark will publish the final statement on their website.

As a rule, 3 – 6 months have been allocated for the investigation, but this depends on a concrete assessment in the individual complaint.

#### Step 6: Follow-up

NCP Denmark will carry out follow-up on the implementation of a mediation agreement or recommendations made in a final statement after actual investigation, one year after its completion.

NCP Denmark contacts the relevant party to inquire whether the agreements or recommendations have been implemented. The relevant party are usually given 4 weeks to respond to NCP Denmark's questions. NCP Denmark may offer a follow-up meeting as well.

NCP Denmark will then publish a follow-up statement on the implementation. After drafting the follow-up statement, both parties will be given 14 days to provide any comments before the follow-up statement will be finalised and published. This statement replaces the original statement about the case, as the original statement is removed from the website.

## Q & A's

- **When is mediation offered and when is an actual investigation carried out?**

If your case is accepted for further handling after a preliminary investigation (Step 3), NCP Denmark will – as a rule – always offer the parties mediation. The offer of mediation will therefore almost always come before an investigation.

*Sometimes NCP Denmark does not offer mediation*

However, NCP Denmark may deem mediation unsuitable in the case of severe violations of the guidelines or if it seems unlikely that the parties will participate in good faith and reach a solution. In such a case, the parties will not be offered mediation, and NCP Denmark will initiate an actual investigation instead (see step 5).

- **What is the cost of submitting a complaint?**

It is free to submit a complaint to NCP Denmark. There is no complaints fee.