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Multinational Enterprises**

LESSONS LEARNED FOR FUTURE VOLUNTARY PEER REVIEWS

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The present document contains a note commissioned by Norway to SHIFT on the lessons learned from the voluntary peer review of the Norwegian NCP [DAF/INV/NCP/RD(2014)2 and 5] for future NCP peer evaluations. It is circulated for consideration under item 5 of the agenda of the 15th NCP meeting [DAF/INV/NCP/A(2014)1/REV1].

Marie-France Houde, Head of the MNE Guidelines Unit, marie-france.houde@oecd.org

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***NCP Peer Review Methodology:
Lessons Learned from NCP Norway Peer Review***

***Offered by SHIFT,
incorporating observations from Peer Review delegation members and NCP Norway***

Overview and Purpose

When the Norwegian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises volunteered for a Peer Review process in 2013, the process built on experiences from the two prior Peer Reviews of the Netherlands (2009-10) and Japan (2012). The three Peer Reviews did however vary reflecting different institutional arrangements, experiences and available resources.

The purpose of this document is to present some observations from our lessons learned as a Peer Review facilitator for NCP Norway that could help more NCPs benefit from a Peer Review process, taking into account varying degrees of experience, levels of activities, and resources – including those available for the Peer Review Process itself.

The document is structured as follows:

- A. Core elements and options for the peer review methodology, identifying key process components, templates and resources, and ways to 'scale up' or 'scale down' the review;
- B. Towards a More Consistent Methodology for Peer Reviews: Suggestions for operationalization of OECD Guidelines Core Criteria for Functional Equivalence in the Activities of NCPs and the Guiding Principles for Specific Instances.

Annexes:

- 1. Description of the Norway NCP Peer Review, including key process steps;
- 2. Lesson learned and observations from the Norway Peer Review experience (drawing from the observations of the Peer Review delegation members and NCP Norway);

A. Core Elements and Options for Peer Review Methodology

Future peer reviews might incorporate the following core elements as a basis for the peer review process, which can be tailored to fit the context for each NCP.

Core Elements for Peer Review Methodology
<ol style="list-style-type: none"> 1. Purpose and Objectives 2. Terms of Reference 3. Background Information / Preparatory Material 4. Delegation Visit / Stakeholder Consultations 5. Delegation Report and Recommendations

For each element, an explanation of the ‘essentials’ of the element is offered, and different options for implementation (depending on the availability of resources) are suggested:

1. Purpose and Objectives:

‘Essentials’: The NCP being reviewed should actively shape the purpose and objectives of the Peer Review process. This may be different for each NCP, and a Peer Review process does not necessarily need to address all aspects of an NCP mandate. The more specific the NCP can be in the value it seeks from the Peer Review process, the more equipped the delegation will be to support those objectives. Suggestions for specific objectives:

1. Tools for Peer Reviews: Possible Peer Review Objectives
<ul style="list-style-type: none"> • Assess performance of NCP, and make appropriate recommendations from comparative NCP experience, against core aspects of mandate, including Promotional Activities, Specific Instances, and Proactive Agenda;
<ul style="list-style-type: none"> • Assess institutional arrangements of NCP, and make appropriate recommendations from comparative NCP experience, to identify opportunities for more effective implementation of mandate;
<ul style="list-style-type: none"> • Assess performance of NCP across functions, and make appropriate recommendations from comparative NCP experience, against core criteria of: Visibility, Accessibility, Transparency, and Accountability;
<ul style="list-style-type: none"> • Assess performance of NCP in addressing Specific Instances, and make appropriate recommendations from comparative NCP experience, against criteria of: Impartial, Predictable, Transparent, and Equitable;
<ul style="list-style-type: none"> • Promote awareness of NCP among domestic stakeholders through engagement via the Peer Review Process;
<ul style="list-style-type: none"> • Seek advice from fellow NCPs on specific identified challenges facing the NCP (such as limitations on resources, limited visibility or awareness, perceptions of credibility in handling specific instances, relationships with specific sets of stakeholders);
<ul style="list-style-type: none"> • Share lessons with the NCP system from the volunteering NCP’s experience, particularly for fellow NCPs that are similarly situated, in terms of institutional design, resources, and key challenges;

2. Terms of Reference:

‘Essentials’: To create a reference document to guide the peer review process. The peer review delegation should be centrally involved in shaping and endorsing these. The Terms of Reference need not be lengthy or detailed. However, we would recommend answering these basic questions:

2. Tools for Peer Reviews: Terms of Reference Essentials	
I. What is the purpose and objectives of the peer review process?	<i>These might be stated with an over-arching purpose and a short list of key framing questions that the peer review process will seek to answer.</i>
II. What are the key process steps in the peer review process?	<i>These might include: background information requested by the delegation; type, number and format of stakeholder consultations; report drafting.</i>
III. What is the indicative timeframe for undertaking and completing each process step?	<i>This may be included as an indicative workplan.</i>
IV. What are the roles and responsibilities of different actors?	<i>These might include: members of the delegation, the NCP being reviewed, the OECD Secretariat, and an additional relevant parties (i.e., independent support, if present);</i>

3. Background Information / Preparatory Material:

‘Essentials’: The delegation’s visit will be much more productive if its preparation includes reviewing basic background information. In the table below, three ‘levels’ of preparation are offered, suggesting different steps depending upon the resources available to be invested in the process – including both the resources of the NCP to be reviewed and the time resources of the delegation members.

3. Tools for Peer Reviews: Background Information Options (to be adjusted to Peer Review Objectives – see 1 above)	
Level (Limited Resources)	1 <ul style="list-style-type: none"> • Review annual reports of NCP • Review website and publications of NCP • Review Specific Instance case-load of NCP
Level (Intermediate Resources)	2 <ul style="list-style-type: none"> • Short background paper prepared by NCP or OECD Secretariat, summarizing: institutional structure, promotional activities, specific instance caseload and outcomes, proactive agenda • Self-Assessment of NCP against the questions posed in the Peer

	<p>Review Terms of Reference</p> <ul style="list-style-type: none"> Brief stakeholder survey, asking stakeholders to rate NCP on a limited number issues being addressed in peer review, using either quantitative metrics (rating scale) or limited number of open-ended questions about the performance of the NCP on issues relevant to the peer review;
<p>Level 3 (Substantial Resources)</p>	<ul style="list-style-type: none"> Extensive background paper, prepared by NCP, OECD Secretariat or independent support, providing desk-top summary of all materials and documents relevant to issues being addressed in peer review; Extensive stakeholder survey, asking stakeholders extended, specific questions relevant to issues being addressed in peer review.

4. Delegation Visit and Stakeholder Consultations:

‘Essentials’: To allow the Peer Review delegation to interact with key stakeholders, in order to be able to assess performance and perceptions of the NCP on issues being addressed in the peer review. Identifying how many stakeholders, which stakeholders, and through what format are decisions that the peer review delegation and the NCP should make together, based on the specific objectives of the peer review process.

This should include time with the NCP at the beginning of the visit, and again at the end of the delegation’s visit to share any feedback, as well as time for the delegation to debrief among itself its key findings from the visit. A sample agenda for the delegation visit is included below.

4. Tools for Peer Reviews: Sample Agenda
- Meeting with Host NCP
<p>- Meetings with Stakeholders:</p> <ul style="list-style-type: none"> Government Business Civil Society Trade Unions Others (including Academia?)
<p>- Meetings with Parties to Specific Instances:</p> <p><i>(Depending on whether NCP has Specific Instances, and whether stakeholder meetings address handling of Specific Instances)</i></p>
- Dedicated Time throughout Agenda for Delegation to Debrief from Meetings
- Meeting with Host NCP to Share Initial Feedback

5. Delegation Report and Recommendations:

‘Essentials’: To provide a document that can share key observations, learning and recommendations from with the NCP being reviewed and the NCP system as a whole. Brevity is key.

5. Tools for Peer Reviews: Lessons from Report Drafting

- The report drafting process was aided by having independent support dedicated to driving the process; this may be a role the OECD Secretariat can play in the future;
- Important to allocate time for multiple rounds of review and input from the delegation;
- Clear Terms of Reference will aid the drafting process, to ensure alignment among all members of the delegation on the objectives of the report and its recommendations;
- The objective of ‘brevity’ in the final report is easier articulated than achieved.

B. Towards a More Consistent Methodology for Peer Reviews

Although each NCP is unique, NCPs have several common characteristics along which future Peer Reviews might be organized:

- **Mandate:** Each NCP is tasked with (1) promoting the guidelines, (2) handling specific instances, and (3) contributing to the Proactive Agenda through cooperation with other NCPs.
- **Stakeholders:** Each NCP, to be effective, needs to engage with relevant domestic stakeholders from (1) government; (2) the business community; (3) the NGO community; (4) trade unions. (For specific NCPs, there may be additional relevant stakeholder categories or relevant sub-categories within these).
- **Core Criteria:** Each NCP is tasked by the Procedural Guidance to the Guidelines with the core criteria of: (1) Visibility; (2) Accessibility; (3) Transparency; and (4) Accountability;
- **Criteria for Handling Specific Instances:** Each NCP, in dealing with Specific Instances, is tasked with acting in ways that are: (1) Impartial; (2) Predictable; (3) Equitable; and (4) Compatible with the Guidelines.

In an effort to contribute to greater consistency in peer review methodologies, suggestions are offered on the following page, which attempt to align the peer review process with these common characteristics. The relevance of specific characteristics and issues will vary with individual NCPs, as will the process methodology for conducting a peer review aligned with these axes. This initial draft of suggestions is offered in the spirit of promoting greater consistency in future peer reviews, as a basis for further discussion among the NCPs, the OECD secretariat, and the institutional stakeholders.

Suggestions for Peer Review process Aligned with Core Criteria			
I. Core Criteria		Possible Peer Review Questions	
CORE CRITERIA	A. Visibility	<p>Through what activities and approaches has the NCP sought to achieve Visibility?</p> <ul style="list-style-type: none"> • <i>Through its Institutional Arrangements</i> • <i>In its Promotion Activities</i> • <i>In handling Specific Instances</i> • <i>In the Proactive Agenda</i> 	<p>Specifically, has the NCP promoted visibility through any of the following</p> <ul style="list-style-type: none"> • <i>A regularly updated website and/or newsletter;</i> • <i>Speaking engagements at conferences, workshops and meetings of relevant stakeholder gatherings;</i> • <i>Developing and disseminating publications;</i> • <i>Regular or periodic stakeholder engagement activities;</i> • <i>Publishing its annual report;</i>
	B. Accessibility	<p>Through what activities and approaches has the NCP sought to achieve Accessibility?</p> <ul style="list-style-type: none"> • <i>Through its Institutional Arrangements</i> • <i>In its Promotion Activities</i> • <i>In handling Specific Instances</i> • <i>In the Proactive Agenda</i> 	<p>Specifically, has the NCP promoted Accessibility through any of the following:</p> <ul style="list-style-type: none"> • <i>Made NCP materials available in all relevant native languages;</i> •
	C. Transparency	<p>Through what activities and approaches has the NCP sought to achieve Transparency?</p> <ul style="list-style-type: none"> • <i>Through its Institutional Arrangements</i> • <i>In its Promotion Activities</i> • <i>In handling Specific Instances</i> • <i>In the Proactive Agenda</i> 	<p>Specifically, has the NCP promoted Transparency through any of the following:</p> <ul style="list-style-type: none"> • <i>Publishing annual reports and disseminating these to Stakeholders with its activities and decisions?</i> • <i>Publishing a regular newsletter or updating its website regularly with its activities and decisions?</i> • <i>Publishing the initial assessments and final statements of Specific Instances, including the rationale for the NCP decision?</i>

	D. Accountability	Through what activities and approaches has the NCP sought to achieve Accountability? <ul style="list-style-type: none">• <i>Through its Institutional Arrangements</i>• <i>In its Promotion Activities</i>• <i>In handling Specific Instances</i>• <i>In the Proactive Agenda</i>	Specifically, has the NCP promoted Accountability through any of the following: <ul style="list-style-type: none">• <i>Regular public reporting on its activities and decisions, including an annual report disseminated to stakeholders;</i>• <i>Formal or informal advisory structures with government entities;</i>• <i>Formal or informal multi-stakeholder advisory structure;</i>• <i>Budget/Accounts</i>
	Institutional Arrangements	Are there ways in which the institutional arrangements of the NCP (e.g., its structure, its relationship to government, its human resources, its appointment procedures, its financial resources) have either enhanced or hindered the NCP’s performance or ability to achieve the four Core Criteria?	
	Stakeholder Perspectives:	How do different stakeholders assess the NCPs performance on achieving each of the four Core Criteria? <ul style="list-style-type: none">• <i>The NCP’s self-assessment?</i>• <i>Government stakeholders?</i>• <i>Business enterprises?</i>• <i>Civil society organizations?</i>• <i>Trade unions?</i>• <i>Academia?</i>• <i>Other stakeholders relevant to the NCP?</i>	
	Challenges:	According to the different stakeholders, what are the most significant challenges facing the NCP in terms of achieving each of the four Core Criteria?	
	Opportunities	What additional opportunities do different stakeholders and/or the delegation see to improve the NCP’s performance on each of the four Core Criteria?	
II. Specific Instance Criteria		Possible Peer Review Questions	

	A. Impartial	Through what procedures and practices has the NCP sought to be Impartial in its handling of specific instances?	Specifically, has the NCP sought to achieve greater impartiality through any of the following: <ul style="list-style-type: none"> • <i>Having NCP members and secretariat sign Conflicts of Interest policies;</i> • <i>Identifying conflicts of interest in practice and acting on this;</i> • <i>Using third parties where appropriate to prevent bias or the appearance thereof.</i> • <i>Communicating how conflicts of interest have been handled.</i>
Specific Instance Criteria	B. Predictable	Through what procedures and practices has the NCP sought to be Predictable in its handling of specific instances?	Specifically, has the NCP sought to achieve greater predictability through any of the following: <ul style="list-style-type: none"> • <i>Publishing procedural guidance for handling specific instances;</i> • <i>Providing indicative timeframes within that procedural guidance for steps in the process;</i> • <i>Adhering to process steps and indicative timeframes, and/or communicating clearly with parties about process;</i> • <i>Sharing drafts of initial assessments and final statements with the parties for factual corrections before publication.</i>
	C. Equitable	Through what procedures and practices has the NCP sought to be Equitable in its handling of specific instances?	Specifically, has the NCP sought to achieve greater equitability through any of the following: <ul style="list-style-type: none"> • <i>Routines for sharing the same information (unless restricted) with the parties during the process;</i> • <i>Identifying third-party resources that could benefit the parties and address resource or information inequalities</i>
	D. Compatible with the Guidelines	Through what procedures and practices has the NCP sought to be Compatible with the Guidelines in its	Specifically, has the NCP sought to achieve greater Compatibility with the Guidelines through any of the

	handling of specific instances?	following: <ul style="list-style-type: none">• <i>Seeking advice from other NCPs that have handled similar cases;</i>• <i>Asking the Investment Committee for clarifications;</i>• <i>Takings steps to ensure that agreements mediated by third parties are compatible with the Guidelines</i>
Institutional Arrangements	Are there ways in which the institutional arrangements of the NCP (e.g., its structure, its relationship to government, its human resources, its appointment procedures, its financial resources) have either enhanced or hindered the NCP's performance or ability to achieve the criteria for handling Specific Instances?	
Stakeholder Perspectives	How do different stakeholders assess the NCPs performance on achieving the criteria for handling Specific Instances? <ul style="list-style-type: none">• <i>The NCP's self-assessment?</i>• <i>Government stakeholders?</i>• <i>Business enterprises?</i>• <i>Civil society organizations?</i>• <i>Trade unions?</i>• <i>Academia?</i>• <i>Other stakeholders relevant to the NCP?</i>	
Challenges	According to the different stakeholders, what are the most significant challenges facing the NCP in terms of achieving the criteria for handling Specific Instances?	
Opportunities	What additional opportunities do different stakeholders and/or the delegation see to improve the NCP's performance on the criteria for handling Specific Instances?	
FOR NCPs WITHOUT SIGNIFICANT EXPERIENCE WITH SPECIFIC INSTANCES: <ul style="list-style-type: none">• <i>What are the primary reasons that the NCP has not had more experience with Specific Instances?</i>• <i>Are there aspects of procedure and practice that could be improved to provide more confidence, credibility, or legitimacy in the role of the NCP in handling Specific Instances?</i>• <i>Would additional focus on Promotion of the Guidelines support the Specific Instance aspect of the NCP mandate?</i>		

ANNEXES:**Annex 1. Description of the Norway NCP Peer Review Process**

The Norway NCP Peer Review process started with preparatory work in February 2013, a Stakeholder Survey in July 2013, the delegation's visit in October 2013, and finalization of the report in February 2014. The key elements of the process, described below in further detail, included the following:

1. The Terms of Reference
2. Independent Support
3. Background Information (Including Preparatory Material and Stakeholder Survey)
4. Delegation Visit and Stakeholder Consultations
5. Drafting of the Report

Key Elements of The Norway Peer Review Process	
1. Terms of Reference	<p><i>Purpose: to provide clarity for the NCP, the delegation and stakeholders about what the Peer review process would entail. The Terms of Reference identified:</i></p> <ul style="list-style-type: none"> • Objectives of the peer review process, • Proposed process steps, and • Roles and responsibilities for the delegation members and the independent support; • Role of NCP
2. Independent Support	<p><i>The NCP engaged Shift, an independent non-profit center for business and human rights practice, to provide independent support to the Peer Review process, including to:</i></p> <ul style="list-style-type: none"> • Assemble and provide background information for the delegation; • Support the delegation during stakeholder consultations, including with facilitative support as needed; • Provide drafting support for the report, based on input, review and feedback from the delegation. • Maintain progress on the process, across different stages; • Capture the methodology and providing resources that might be of benefit to future peer reviews;
3. Background Information (Stakeholder Survey and Preparatory Material)	<p><i>The independent support prepared a background paper for the delegation, providing information on the institutional arrangements, activities and performance of the NCP. The background paper drew from a number of sources, including:</i></p> <ul style="list-style-type: none"> • The annual reports of the NCP, • Documents that led to the institutional arrangements of the NCP, • The NCP's communication plans and other promotional outputs,

	<ul style="list-style-type: none"> • <i>The NCP's case experience from Specific Instances,</i> • <i>The self-assessed performance by the NCP itself, and</i> • <i>Perspectives of the NCP's stakeholders, gathered through a stakeholder survey.</i> <p><i>The purpose of surveying stakeholders in advance of the Peer Review included:</i></p> <ul style="list-style-type: none"> • <i>Raise awareness of the NCP's stakeholders about the NCP and the Peer Review process;</i> • <i>Provide the delegation with an initial sense of stakeholder perspectives on the NCP's performance; and,</i> • <i>Identify potentially constructive areas of inquiry</i> <p><i>The survey was sent in July 2013 by Shift to approximately 50 stakeholders identified by NCP Norway including key domestic constituencies, parties to specific instances, Norwegian OECD Watch, BIAC and TUAC in addition to other key stakeholders within academia and representing Norwegian indigenous peoples, via a web-based survey tool, and received approximately 40 responses</i></p>
4. Delegation Visit / Stakeholder Consultations	<p><i>Consultations with stakeholders took place over 2.5 days. Separate meetings were held with the NCP, with individual stakeholder sectors (government, business, civil society, trade unions, and academia), and with parties to two Specific Instances. The delegation also included a site visit to a Norwegian enterprise.</i></p>
5. Peer Review Report	<p><i>The Peer Review report was based on a consultative session of the Peer Review delegation held on-site during the delegation's visit. A draft was prepared by the independent support for review, input and comment by the delegation. Drafting took place from November 2013 to February 2014.</i></p>

Annex 2. Lessons Learned and Reflections for Future Peer Reviews

1. Flexibility in Design of the Peer Review Process: Although NCP's are established with a common mandate, each NCP is unique – not only in its institutional arrangements, but also in terms of its size, level of resources, activities and experiences. While the Peer Review process can and should be based on a common set of criteria, the peer review process will need to be flexible, to accommodate the different resources available to support the process and to take account of the scale and scope of activities of the particular NCP being reviewed.

- For NCPs with similar resources, levels of activity, and experience with Specific Instances as the Norway NCP, the Norway Peer Review process may be appropriate;
- For NCPs with more limited case experience with Specific Instances, it may be very appropriate for the Peer Review process to focus more exclusively on the promotion mandate, and/or a different approach to focusing on the Specific Instance component of the mandate;
- For NCPs with more limited resources for the Peer Review, the key process steps can and should be 'scaled down' to reflect this, while still allowing for a robust and meaningful peer review.

For Future Peer Reviews: *Even while benefiting from the experience of prior peer reviews, the process should be adapted and tailor-designed to the circumstances and resources of the NCP that volunteers for the peer review.*

2. Clarity of Purpose and Objectives of the Peer Review: The Terms of Reference can be a key tool for providing clear objectives for the Peer Review process.

- For some NCPs (particularly those with more resources, more activities, and Specific Instances), the Terms of Reference for the Norway Peer Review process may be an effective template from which to begin.
- For other NCPs, which may have more limited activities and experiences, the Peer Review process may be more useful and effective as a tool in helping both to raise awareness among the NCP's domestic stakeholders through engagement via the peer review process, and in identifying recommendations that might help the NCP take forward its promotion agenda more effectively.

For Future Peer Reviews: *The Terms of Reference should reflect these potentially different yet legitimate purposes for the Peer Review process. The NCP being reviewed should play a central role in shaping the purpose and objectives for the peer review process, by tailoring the Terms of Reference to reflect these. (See Section A, for possible objectives of the Peer Review process).*

3. Early Involvement of the Peer Review Delegation: While the NCP being reviewed should shape the purpose and objectives of the Peer Review process, the delegation should be involved as early as possible in the peer review process, in order to shape the process by which the delegation can most effectively help the NCP being reviewed to meet that purpose and objectives. This may include:

- Identifying their chair of the delegation,
- Helping to shape the terms of reference and process steps,
- Identifying the relevant background information that delegation members will find most helpful to their work, and
- Identifying the approach to stakeholder consultations that the delegation will find most helpful (including which stakeholders, how many consultations, through which formats).

For Future Peer Reviews: *This might be aided by an early, up-front, in-person meeting of the delegation (perhaps in the margins of a general meeting of NCPs).*

4. The Role of Pre-Visit Preparation: In the case of Norway, the delegation found the pre-visit preparatory work to be very helpful in making their on-site consultations more constructive. However, for future peer review processes, this preparation may not need to be as extensive as it was in the Norway case.

- The stakeholder survey, while helpful, may not be as relevant for all Peer Review processes.
- The background paper, while helpful, need not be as lengthy or extensive for future peer review processes.

For Future Peer Reviews: *A brief background paper could be prepared by the NCP itself, with or without the assistance of the OECD secretariat; and/or delegation members might simply be provided with existing background documentation. A less extensive stakeholder survey might be utilized, asking fewer*

questions of fewer stakeholders, while still maintaining the value the stakeholder survey component can bring to a process. (Suggestions for different ways to structure this background information are provided in Section A).

5. The Roles of Independent Support: While the members of the Norway Peer Review delegation found the independent support to be a valuable component of the process, it is recognized that many NCPs will not have the resources available to engage independent support for the peer review process. Nevertheless, the roles played by the independent support might still be necessary for the process to work effectively. The helpful roles played by the independent support in the Norway process (as identified by delegation members, included:

- Maintaining progress on the delegation's work prior to and after the peer review visit, given competing demands on the time of delegation members;
- Providing focus to the delegation's internal discussions and ensuring a broad perspective on issues;
- Assisting with several individual stakeholder consultations which benefitted from external facilitation and/or were potentially contentious; and
- Leading the drafting process of the delegation's report.

For Future Peer Reviews: *While it may not be possible or necessary in all cases to have independent support to play these roles, the roles themselves could be accounted for in the design of each peer review process. Specifically, the OECD secretariat may be able to take on some of these roles, and individual members of the Peer Review team could be tasked with playing specific roles.*