Proposal for strategic focus areas for the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct

19 January 2015

1. Introduction

OECD Watch appreciates the opportunity to submit a proposal to the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct ('the Institution'), functioning as the OECD National Contact Point (NCP) for the OECD Guidelines in Denmark, to guide the Institution's work plan for the period 2015-6. This proposal is intended to inform the Institution about sectors of particular strategic importance to Danish public and private enterprises and opportunities where the Institution can make a significant contribution to awareness raising about the OECD Guidelines for Multinational Enterprises ('the Guidelines'). OECD Watch looks forward to discussing the proposal in greater detail with the Institution on February 25th in Copenhagen.

In this proposal OECD Watch first puts forward an overview and analysis of OECD Guidelines cases filed by civil society organisations (CSOs) to identify in which sectors and countries corporate misconduct has been addressed through the OECD Guidelines' Specific Instance procedure. This context provides a key point of departure for identifying potentially relevant work areas and sectors for the Institution. The proposal further provides an outline of high-risk industrial sectors in which Danish companies are active, along with an overview which rights these companies are thought to be at greatest risk of violating. The proposal ends with a set of recommendations for the Institution to take up when further shaping its work plan for the period 2015-6.

The methods used to develop the present proposal include a qualitative and quantitative analysis of the OECD Watch case database and desk research primarily involving corporate databases, company websites, news websites, and other online sources. In drafting the proposal, the OECD Watch secretariat consulted the full OECD Watch membership as well as several other (in particular Danish) CSOs. Among others, Amnesty International Denmark, IBIS, the Danish 92 Group, and Danwatch provided valuable input.

The remainder of the proposal is structured according to the following sections:

- *Overview and analysis of trends in OECD Guidelines cases filed by CSOs*
- *High-risk sectors in which Danish companies are active (including a description of the rights at risk and controversies involving Danish companies)*
- *Suggestions for focussing the Institution's work in 2015-2016*

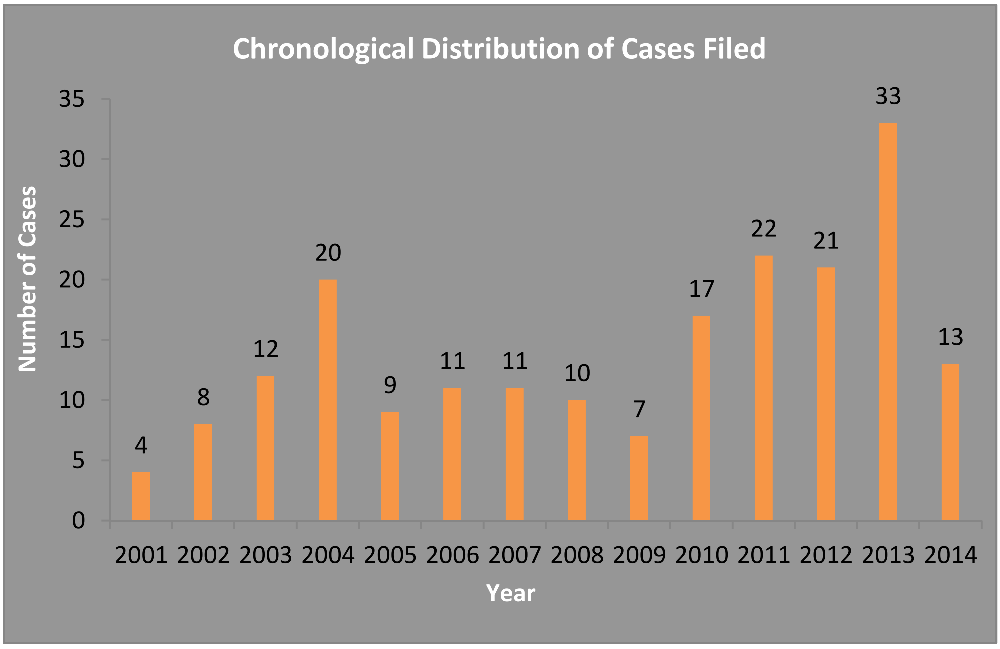
2. Overview of OECD Guidelines cases filed by CSOs

Since the specific instance dispute resolution mechanism was established in 2000, OECD Watch has documented and analysed cases filed by CSOs at NCPs around the world in our online case database. The purpose of doing so is to help NGOs, NCPs, unions, businesses, and other stakeholders learn from the experiences of their colleagues and counterparts, to critically monitor the effectiveness of the specific instance mechanism in resolving disputes and grievances, and to compare and contrast NCPs' handling of cases. The database contains all relevant, non-confidential information about the cases, including the complaint, case developments, supporting documents, letters and statements, and follow-up measures. It serves as a rich source of information for a statistical analysis that provides significant insight into how the complaint procedure has functioned.

Nearly 200 CSO cases filed

The OECD Watch case database shows that from the first case filed in 2001 through to December 2014, a total of 195 cases have been filed by CSOs. Additionally, at least 157 have been filed by trade unions. The trade union cases are not monitored by OECD Watch, but they are recorded in the case database maintained by TUAC.[1] As revealed in Figure 1, analysis of the chronological distribution of cases filed by NGOs indicates that civil society use of the specific instance procedure has been relatively limited, with an average of only approximately 14 cases being filed per year since 2001. 2013 saw a high point of 33 cases, but the number dropped to just 13 in 2014. OECD Watch's analysis indicates that the limited use of the specific instance mechanism is due to the poor track record of NCPs in effectively and properly handling cases, high costs (both in time and financial resources) associated with filing an OECD Guidelines case, and a general lack of awareness of the mechanism among impacted individuals and communities.

Figure 1: Chronological distribution of cases filed by CSOs, 2001-2014



Source: OECD Watch[2]

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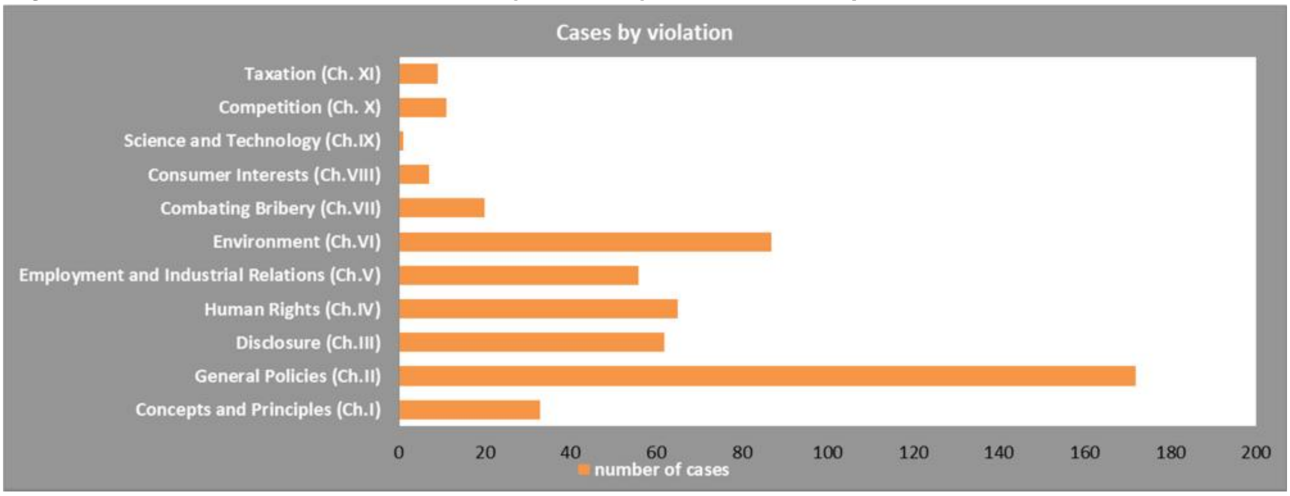
[1] TUAC, Cases, http://www.tuacoecdmneguidelines.org/cases.asp (accessed 5 January 2015).
[2] OECD Watch, case database, www.oecdwatch.org/cases (accessed 4 January 2015).

Most common type of cases

As can be seen in Figure 2, Chapter II ("General Policies"), which includes provisions on human rights, sustainable development, and the supply chain, is the most frequent chapter cited in CSO complaints, found in 87% of all complaints. Since the inclusion of a specific chapter on human rights (Chapter IV) during the 2011 update of the OECD Guidelines, this chapter has been referenced in nearly all cases filed by NGOs. Other provisions that have frequently been cited in CSO complaints include environmental violations (44% of cases), failure to disclose relevant information (31% of cases) and violations of labour rights (28% of cases). If the 157 cases filed by trade unions are also taken into account, Chapter V on Employment and Industrial Relations is the most cited chapter of the OECD Guidelines.

Figure 2: OECD Guidelines cases filed by CSOs, by Guidelines chapter cited, 2001-2014



Source: OECD Watch[3] Note: the number of violations adds up to more than the total number of cases filed because most cases reference multiple Guidelines' chapters.

Uneven distribution of cases among NCPs

The 198 cases registered in the OECD Watch case database as of January 2015 have been unevenly distributed over the 46 existing NCPs. Figure 3 reveals that, with 66 cases, the UK NCP has received the majority of complaints filed by CSOs. After the UK, the NCPs that have received the most CSO cases since the 2011 Update of the OECD Guidelines came into force are the US NCP (eight cases), the New Zealand NCP (seven cases), the Canadian NCP (five cases) and the Dutch NCP (five cases). In contrast, 21 NCPs have never handled a complaint from CSOs, including those in eastern Europe (Slovenia, Romania, Hungary, Poland, and the Czech and Slovak republics), three in southern Europe (Greece, Spain and Portugal), four in northern Europe (Iceland, Lithuania, Latvia and Estonia), the Middle Eastern and North African countries (Egypt, Israel, Jordan, Morocco, Tunisia and Turkey), and two in Latin America (Colombia, Costa Rica). Note that some of these NCPs have handled trade union cases.

The Danish NCP has received four cases from CSOs, of which only one is currently registered in the OECD Watch case database: the 2006 case filed against DLH by Nepenthes.[4] The Danish NCP has handled several other cases from unions (three cases) and individuals (eight cases).

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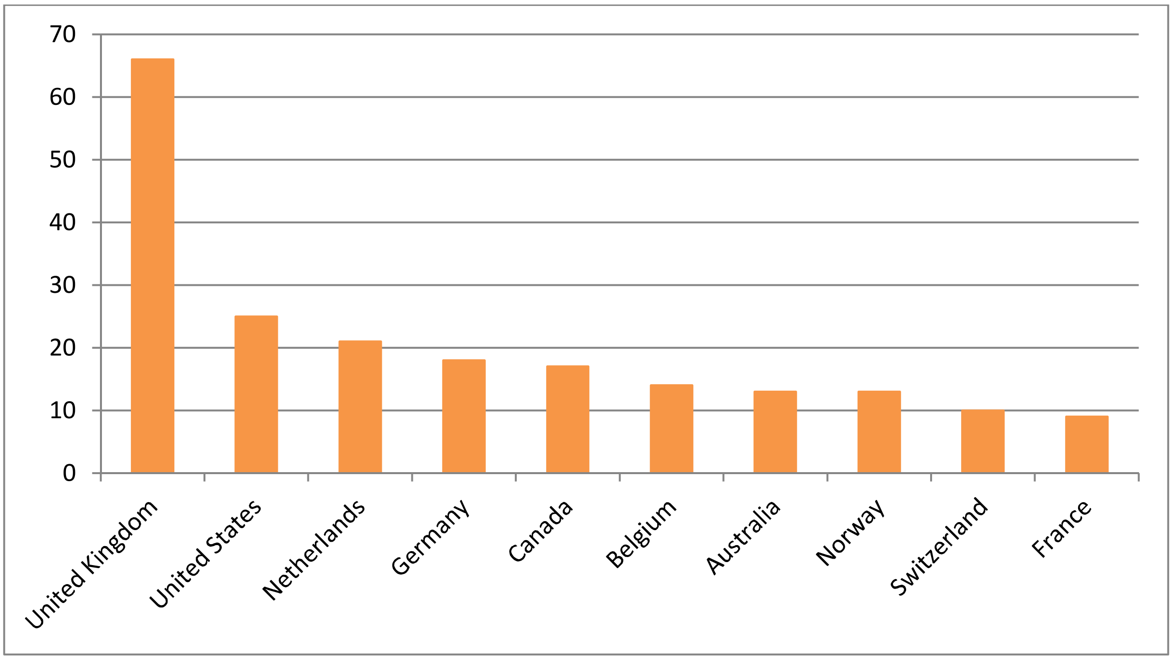
[3] OECD Watch, case database, www.oecdwatch.org/cases (accessed 4 January 2015).

Figure 3: NCPs handling Guidelines complaints by CSOs, 2001-2014



Source: OECD Watch[5]

Geographical location of alleged violations of the OECD Guidelines

In terms of geographic distribution, the OECD Guidelines are clearly being put to use beyond the borders of adhering countries. As can be seen in Figure 4, the Democratic Republic of the Congo (DRC) is the most frequently cited location of alleged violations of the Guidelines. All of the DRC complaints relate to operations of mining companies. In recent years, a number of cases have been filed regarding the human rights policies and global operations of companies headquartered in the United Kingdom.[6] Nine cases citing human rights abuses and environmental impact have been filed against companies operating or financing the Baku-Tbilisi-Ceyhan (BTC) oil pipeline that runs from Azerbaijan, via Georgia to Turkey. The cases filed in New Zealand all relate to the adequacy of the on-going repair of homes damaged in the 2010 and 2011 Canterbury earthquakes. The cases alleging violations of the OECD Guidelines in Uzbekistan relate to seven cotton dealers from France, Germany, Switzerland, and the United Kingdom for knowingly profiting from (forced) child labour in the Uzbek cotton industry. The cases filed regarding breaches of the OECD Guidelines in India, Bahrain, and the Philippines reference various issues and violations.

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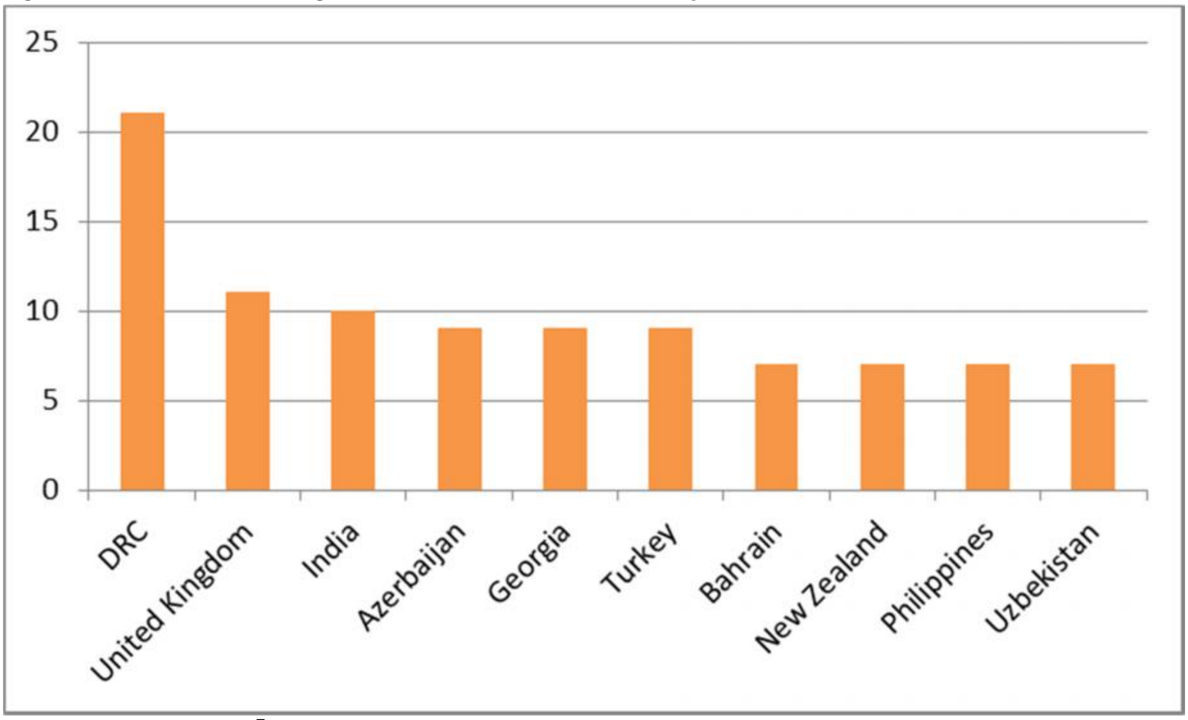
[4] OECD Watch case database, "Nepenthes vs Dalhoff, Larsen & Hornemann (DLH)" http://oecdwatch.org/cases/Case_112 (accessed 4 January 2015).

[5] OECD Watch, case database, www.oecdwatch.org/cases (accessed 4 January 2015).

[6] Examples include 6 UK-based telecom companies for their global operations, Alliance Boots related to global tax evasion, Innospec and BAE, Airbus, Rolls Royce related to export credits.

Figure 4: Location of alleged violations in cases filed by CSOs, 2001-2014



Source: OECD Watch[7]

Alleged violations of the OECD Guidelines by industrial sector

Companies operating in the extractives (mining, oil, and gas) sector have been the most frequent subject of CSO complaints. As indicated in Figure 5, when taken together, complaints involving the mining, oil and gas sectors account for almost half of all CSO complaints. The financial sector is also witnessing a sharp increase in attention in OECD Guidelines cases. The 2011 update of the OECD Guidelines confirmed that the Guidelines apply to all sectors of the economy, including financial institutions, and at the outset of 2015 the financial sector has become the third largest subject of CSO complaints. As a subset of the financial sector, insurance companies were also the subject of a number of 2013 complaints. Complaints related to the telecom sector are a new phenomenon since 2013 when two UK NGOs alleged that UK telecom companies provided services that allegedly contributed to human rights abuses.

It is this analysis of OECD Guidelines cases by industrial sector that is particularly relevant for informing Institution's focal areas for 2015-6. OECD Watch assumes that industrial sectors that have been the subject of a large number of OECD Guidelines cases can be considered to be 'high risk' sectors for OECD Guidelines violations. As will be seen below, Danish businesses are active in a number of these high-risk sectors, including extractives (mining, oil & gas, and lumber), finance, agriculture, garment & textiles, and renewable energy.

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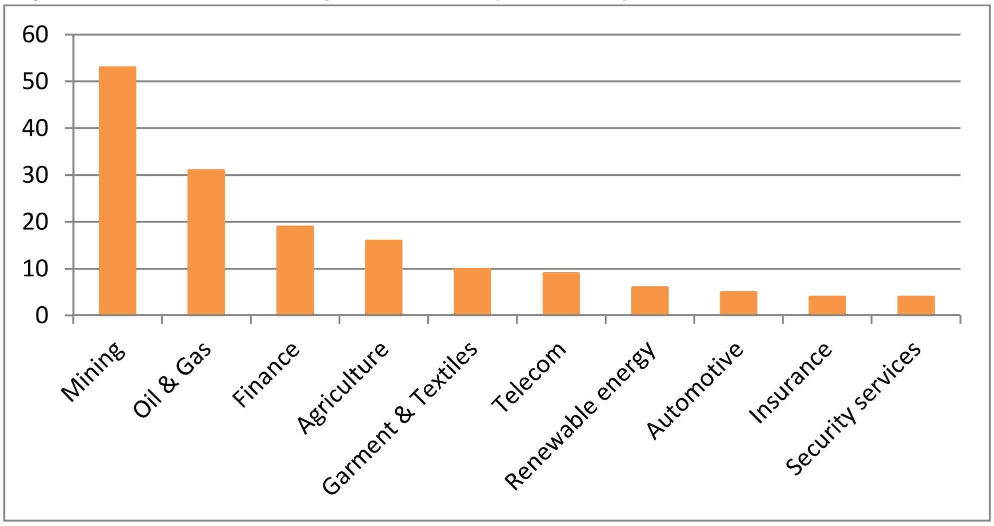
[7] OECD Watch, case database, www.oecdwatch.org/cases (accessed 4 January 2015).

Figure 5: Guidelines complaints filed by CSOs, by industrial sector, 2001-2014



Source: OECD Watch[8]

3. High-risk sectors in which Danish companies are active

Brief overview of the Danish economy

Despite its relatively small size, the Danish economy punches above its weight and is considered a modern, high-tech economy, with globally-competitive firms in shipping, pharmaceuticals and renewable energy and a public infrastructure that supports a comprehensive welfare state, including universal higher education and healthcare. According to the 2014 Index of Economic Freedom, Denmark's openness to global trade and investment has enabled the country to become one of the world's most competitive and flexible economies with a strong judicial system, which is independent and free from corruption and which enforces contracts reliably[9].

Denmark exports of goods and services totalled DKK 960.697 million in 2012. Its main trading partners, to which nearly 50% of goods and services are exported to, are Germany, Sweden, the United States, the United Kingdom and Norway. In 2012 almost 40% of Danish exports comprised the export of services, with sea transport representing almost of half all services exported. The largest groups of goods exported by Denmark include oil, pharmaceuticals, mink fur, windmill parts, and food.[10] Other leading industries are shipbuilding, manufacturing of iron and steel, chemicals, machinery and transportation equipment, textiles and garments, electronics, furniture and other wood products, and medical equipment.[11]

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[8] OECD Watch, case database, www.oecdwatch.org/cases (accessed 4/1/2015).

[9] Heritage Foundation, 2014 Index of Economic Freedom – Denmark, http://www.heritage.org/index/country/denmark (accessed 15/12/2014).

[10] Statistics Denmark, Denmark in figures 2014. p24. http://www.dst.dk/pukora/epub/upload/17954/dkinfigures2014.pdf (accessed 15/12/2014).

[11] CIA, World Factbook, https://www.cia.gov/library/publications/the-world-factbook/geos/da.html (accessed 5/1/2015)

High-risk sectors and controversies involving Danish companies
After having assessed the significance of major Danish companies and industry sectors and the perceived risk associated with these sectors, OECD Watch concludes that the following sectors involving Danish companies (either through their direct activities, or through their business relationships) are those with the highest risk of breaches of the OECD Guidelines:

- *Energy and extractives (including mining, oil & gas, and timber)*
- *Renewable energy*
- *Finance & banking*
- *Shipping & logistics*
- *Pharmaceuticals*
- *Food & drink (including agricultural supply chains)*
- *Textiles*
- *Electronics*

Each of the following sectoral sub-sections begins with a brief indication of (human) rights that are at particular risk from industrial activities in the sector. This is followed by the anonymised results of a brief media scan for Danish companies active in the sector that have been involved in controversies related to actual or alleged rights abuses. The listing of the controversies is not intended as an accusation or to condemn the companies involved, but merely to provide an indication and examples of issues that the Institution may be interested in exploring further.

Energy and extractives (including mining, oil & gas, and timber)
The extractive sector is widely recognized as having significant and extensive adverse impacts on human rights. Risks associated with the oil and gas sector, mining of metals and minerals, and energy production include increased CO_2 emissions and air and environmental pollution as a consequence of oil and gas extraction and refinery, land grab, land degradation in vulnerable areas, depletion of natural resources, destruction of livelihoods around oil and gas extraction sites, unsafe and unhealthy working conditions during the production refinery of oil, violation of trade union rights, corruption and bribery when securing oil concessions, and anti-competitive behaviour. Specific risks associated with the mining of metals include low wages, excessive overtime, child labour and forced labour (in e.g. China, India and Brazil), and the financing of conflicts as consequence of mining of minerals (in e.g. the Democratic Republic of Congo). In addition, extractive industries can cause or contribute to the violation of indigenous rights, including the right to free, prior, and informed consent. Communities can be subject to forced eviction to make way for energy projects.

The energy sector, either directly or through its supply chain, can have impacts on the rights to food and water, should productive land be used, instead, for mining or energy production activities or if operations contaminate drinking water sources. Finally, those that protest energy projects are at risk of retaliation from private or government security forces, resulting in violations of the rights to life, health and personal integrity.[12] The OECD is developing a guide for due diligence and stakeholder engagement in this sector that identifies potential human rights impacts and provides recommendations to companies to prevent, mitigate, and address them.

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[12] UN Office of the High Commissioner for Human Rights, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf (accessed 17/12/2014).

Risks associated with the logging and import of timber from abroad include loss of biodiversity, destruction of virgin forests, include increased CO_2 emissions as a consequence of logging, unsafe working conditions and violation of labour rights, land grab, corruption and bribery when securing wood concessions, and fraud with sustainability certification. Similar to the extractive sector, the timber industry can affect the land and natural resource rights of indigenous and non-indigenous communities who live or depend on the forest. Given that a relatively low percentage of hardwood has a sustainability certificate and the high probability that this wood is being imported from countries that have a high risk profile in terms of human rights or environmental violations, the risks for this sector are greatest for the import of tropical hardwood. Timber companies operating in the Amazon have been documented using bonded labour involving members of indigenous communities.[13]

- Major companies operating in the energy and extractive sector include:
  - *A.P Møller-Mærsk*: Though primarily known for its shipping activities, Denmark's largest company A.P.Møller-Mærsk is also active in the energy sector, particularly through its business relationships.[14]
  - *Dalhoff Larsen & Horneman (DLH):* DLH is a Danish owned group that is one of the world's leading traders in timber and timber products.[15]
  - *Dong Energy:* Dong Energy is Denmark's largest power producer, which is majority owned by the Danish state. The company bases its business on procuring, producing, distributing and trading in energy and related products in Northern Europe, but sources the coal used for its electricity generation from abroad, including Colombia.[16]
  - *International Woodland Company (IWC):* IWC is an investment company specialized in forest investments and management of private timberland investment programmes. IWC is owned by Danish pension funds Sampension, Teachers' Pension Fund, PKA and Nordea Liv & Pension.[17]
  - *A/S United Shipping & Trading Company:* The United Shipping & Trading Company is a global group of companies active in the supply of fuel to the shipping market, oil risk management, logistics solutions, tanker shipping and IT solutions.[18]

- Controversial business practices in the energy and extractives sector
  - *Angola*: A Danish energy company does business with a state-owned oil company, which is reportedly not forthcoming and transparent with its financial statements, and demands that business partners use its preferred subcontractors.
  - *Brazil*: A Danish conglomerate is being investigated in Brazil over allegations that the company bribed a Brazilian energy company's executives in exchange for contracts.

[13] United Nations, Report of the Special Rapporteur on contemporary forms of slavery, http://www.ohchr.org/Documents/Issues/Slavery/SR/A-HRC-18-30-Add.2_en.pdf (accessed 5 January 2015).
[14] Maersk, The Maersk Group, http://www.maersk.com/en/the-maersk-group/about-us (accessed 16 January 2015).
[15] DLH, Welcome to the DLH Group, http://www.dlh.com/About-the-DLH-Group.aspx (accessed 16 January 2015).
[16] Dong Energy, About us, http://www.dongenergy.com/en/about-us (accessed 16 January 2015).
[17] International Woodland Company, About IWC, http://www.iwc.dk/about/ (accessed 16 January 2015).
[18] A/S United Shipping & Trading Company, Company profile, http://ustc.dk/USTC/Company-profile.aspx (accessed 16 January 2015).

- *Brazil*: A Danish timber company has been accused in the past of importing illegal Brazilian mahogany.
- *Colombia:* A significant amount of the coal used to generate electricity in Danish power plants is sourced from Colombia, where workers are reportedly suffering from deplorable working conditions, harassment and in some cases fatalities caused by accidents. According to a 2012 SOMO report[19] on the origins of coal used in the Netherlands, energy companies do not sufficiently disclose material information related to its sourcing of hard coal.
- *Liberia*: A Danish timber company, has been accused of buying illegal timber from Liberia which funded the regime supporting Charles Taylor and the Liberian war (2000-2003). Civil society organisations claim that the trade was lucrative and ultimately criminal since the deals were with corrupt Liberian logging companies operating illegal concessions.
- *Europe*: Transparency and conflicts of interest in the European Parliament, unearthed by civil society, reveal direct links between a Danish MEP and various Danish companies, including a Danish company operating in the energy sector.
- *United States*: The recent bidding by a US-based investment company a stake in a Danish energy company, which would have seen the investment managed from tax havens, revealed that the Danish State could be open in the future to sell offs and that the head of the company may have been courting the US investment house, rather than seriously considering the highest bidder.
- *Arctic*: A Danish energy company is deeply invested in arctic drilling, which they intend to facilitate throughout the entire year. Greenpeace and other civil society organisations are against arctic drilling because of the potential environmental damage it could cause.
- *Rainforests:* A Danish investment company has been involved in controversial purchases of rainforests in Peru and huge tropical plantations in Brazil, Panama, Uganda, Mozambique and Cambodia.

Renewable energy

Danes are market leaders in renewable energy, particularly wind energy. Though commonly perceived to be a sustainable industry, the renewable energy sector, and the wind industry in particular, can adversely affect human rights. The citing of projects on indigenous territory without their consent and/or causing their displacement is a violation of rights protected under the UN Declaration on the Rights of Indigenous Peoples and regional human rights treaties. Several OECD Guidelines complaints have been filed against the wind energy industry related to indigenous peoples' rights.[20]

- Major companies operating in the renewable energy sector include:
  - *Vestas Wind Systems:* Vestas Wind Systems is among the world's largest manufacturers, sellers, installers, and servicers of wind turbines.[21]
  - *Vindenergi Danmark*: Vindenergi Danmark is a Danish cooperative and an independent energy trading company. It sells electricity from wind turbines owners and is one of the largest commercial players in the wind energy market.[22]

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[19] SOMO, The Black Box, http://www.somo.nl/publications-en/Publication_3737 (accessed 5 January 2015).
[20] See, for example the case against Statkraft (http://oecdwatch.org/cases/Case_280) and KfW IPEX-Bank (http://oecdwatch.org/cases/Case_183).
[21] Vestas Wind Systems, Company profile, http://www.vestas.com/en/about/profile (accessed 16 January 2015).

- Controversial business practices in the renewable energy sector:
  - *Mexico:* A Danish company is producing windmills for producing windmills for a large wind farm in southern Mexico where local communities have protested the wind farm project. The local communities claim the wind farm would have adverse impacts on their livelihoods due to the economic and cultural significance of the land. Protesters, including the indigenous Ikojts of San Dionisio del Mar, are contesting the project's land-use contract dating back to 2004, claiming it was signed based on incomplete information and a lack of adequate consultation. As the project entered construction phase in 2012, tensions have escalated. At the end of October 2012, according to reports by local civil society, protesters were allegedly subject to intimidation and death threats from individuals linked to the wind farm project. A complaint to the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank, which funds the project, was submitted in 2013. A compliance review is on-going.[23]
  - *Scotland:* A wind turbine exploded in high winds in Scotland in 2011 (and possibly also in 2008) making headline news and highlighting.

Finance & banking

Risks associated with the financial sector, including banks and pension funds, include investing in and offering services to companies that do not adhere to international human rights, labour rights and environmental standards, increased CO_2 emissions due to under-investment in low carbon economy and investment in companies with high emissions, and anti-competitive behaviour.[24] As clarified by the OHCHR and the OECD, financial institutions can cause, contribute or (most often) be directly linked to human rights abuses through their business relationships, requiring them undertake human rights due diligence of potential investments or investment strategies.

- Major companies operating in the finance and banking sector include:
  - *Danske Bank:* Danske Bank is the largest bank in Denmark and one of the leading financial enterprises in northern Europe. The bank focuses on retail banking, but also provides personal banking services and services for corporations and institutions.[25]
  - *Jyske Bank:* Jyske Bank focuses on private banking services for private customers as well as small and medium-sized companies. It is the third biggest bank in the Danish market and has branches in Copenhagen, Cannes, Gibraltar, Hamburg and Zurich.[26]
  - *Nordea Bank:* As a result of a number of mergers and acquisitions of banks Nordea is the largest financial services group in Northern Europe and offers a full range of banking services, as well as life and pensions products. Its head office is located in Stockholm, Sweden, but it is still the second biggest bank in Denmark.[27]

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[22] Vindenergi Danmark, Vindenergi Danmark, http://www.vindenergi.dk/ (accessed 16 January 2015).
[23] IADB, http://www.iadb.org/en/mici/complaint-detail,1804.html?ID=ME-MICI002-2012 (accessed 17 December 2014).
[24] Banktrack, Banks and human rights, http://www.banktrack.org/show/pages/banks_and_human_rights (accessed 5 January 2015).
[25] Danske Bank, About us, http://www.danskebank.com/en-uk/About-us/Pages/About-us.aspx (Accessed 16 January 2015).
[26] Jyske Bank, About us, http://jyskebank.com/en/about (accessed 16 January 2015).
[27] Nordea Bank, About Nordea, http://www.nordea.com/About+Nordea/51332.html (accessed 16 January 2015.

- *Nykredit Bank:* Nykredit Bank is Denmark's largest lender with banking and mortgage lending as its core business. The bank is also one of the major private bond issuers in Europe.[28]
- *Other large banks:* Other large Danish banks include Arbejdernes Landsbank, FIH Erhvervsbank, Saxo Bank Sparekassen Kronjylland and Syd Bank

- Controversial business practices in the finance and banking sector:
  - *Denmark:* Danish police launched an investigation into whether a Danish bank's bonus program influenced bankers (also under investigation by the public prosecutor) to manipulate bond prices.
  - *Guatemala:* A Danish financial institutions have investments in a gold mine in Guatemala called Marlin[29], which has refused to follow orders from an international human rights commission to suspend operations until an environmental impact assessment[30] could be made. Local communities submitted a complaint against the mine's operator, Goldcorp, to the Canadian National Contact Point in 2009.[31]
  - *Africa:* According to media reports, 5 out of 8 Danish investment funds, buy government bonds in corrupt African countries where human rights are at risk. The countries include Angola, Congo, Nigeria, Gabon, Ivory Coast, Senegal, and the DRC.
  - *Rainforests:* Danish pension funds have invested in companies operating in developing country forests, including those in Peru, Brazil, Panama, Uganda, Mozambique and Cambodia, where it is highly likely the trade is involved in illegal logging and the displacement of local peoples
  - *Global:* Danish banks have investments in products that increase food speculation, which has been documented to raise food prices, risking sending millions of people into hunger and poverty.

Shipping & logistics

The shipping and logistics sector, while not receiving much attention globally, can affect many different rights. Labour rights are particularly implicated, including the right to safe working conditions and freedom of association. The sector can also have an adverse impact on the right to a healthy environment through its impact on air emissions, ballast water discharge, ship design, and ship recycling.[32] Denmark has one of the world's largest shipping industries and is of the key sectors for the Danish economy. The Danish government offers competitive and favourable regulatory framework conditions to attract more maritime companies to establish business in Denmark.[33]

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[28] Nykredit Bank, Our company, http://www.nykredit.com/aboutnykredit/info/company/our-company.xml (accessed 16 January 2015.

[29] Danwatch, Danske penge i giftig guldmine i Guatemala, https://www.danwatch.dk/en/node/167 (accessed 5 January 2015).

[30] David Mercer, Gold mine drives wedge in Guatemala community, Aljazeera, http://www.aljazeera.com/indepth/features/2012/10/2012102591134181236.html (accessed 5 January 2015).

[31] See OECD Watch case database, http://oecdwatch.org/cases/Case_172 (accessed 20 December 2014).

[32] BSR, Sustainability trends in the container shipping industry, http://www.bsr.org/reports/BSR_Sustainability_Trends__Container_Shipping_Industry.pdf (accessed 5 January 2015).

[33] Ministry of Foreign Affairs Denmark, The Danish maritime industry, http://www.investindk.com/Clusters/Maritime-industry (accessed 16 January 2015)

- Major companies operating in the shipping and logistics sector include:
  - *A.P Møller-Mærsk:* With DKK 366.236 billion in revenue in 2013, the A.P.Møller-Mærsk Group is Denmark's largest company and one of the largest shipping companies in the world. Though primarily known for its shipping activities, A.P.Møller-Mærsk is also active in the energy sector, particularly through its business relationships.[34]
  - *DSV A/S:* DSV is a global supplier of transport and logistics solutions, offering road, air and sea transportation.[35]

A/S United Shipping & Trading Company: The United Shipping & Trading Company is a global group of companies active in the supply of fuel to the shipping market, oil risk management, logistics solutions, tanker shipping and IT solutions.[36]

- Controversial business practices in the shipping and logistics sector:
  - *Argentina: P*esticides which are reportedly banned in the EU spilled at a terminal operated by an independent business unit of a Danish company in Buenos Aries and the company has been accused by workers for mismanagement, for not coming clean about the chemical spilled and for having substandard safety protocols.
  - *China:* In 2009, working conditions at the facilities of a Danish shipping company in Dongguan and Qingdao China were reported to be very poor, so poor in fact that they prompted riots by the workers. The global trade union movement has also alleged that the company's container factory in Dongguan violates ILO-conventions and Chinese Labour law.
  - *Costa Rica:* Trade unionists were arrested by the local police at protests concerning concessions at terminals operated by an independent business unit of a Danish company.
  - *El Salvador:* In the early 2000s, drivers for a Danish company accused the company of abusive labour conditions, including excessively long shifts, minimal wages and running anti-union busting campaigns including firing and blacklisting at least 100 drivers.
  - *United States:* A Danish company was sued by the US for doing business with Iran & Sudan, using US-registered ships, breaching Washington's embargo on the two countries.
  - *Europe:* Officials accused 14 container shipping firms of anti-competitive pricing in 2013.
  - *Global:* A global shipping boom has resulted in skyrocketing CO2 emissions by the industry. Critics have accused the industry of failing to take sufficient action to reduce emissions.[37]

Pharmaceuticals

The most obvious right implicated by the operations of pharmaceutical companies is the right to health.[38] In particular, this right can be undermined through poorly designed or implemented clinical

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[34] Maersk, The Maersk Group, http://www.maersk.com/en/the-maersk-group/about-us (accessed 16 January 2015).

[35] DSV A/S, About DSV, http://www.dsv.com/About-DSV (accessed 16 January 2015).

[36] A/S United Shipping & Trading Company, Company profile, http://ustc.dk/USTC/Company-profile.aspx (accessed 16 January 2015).

[37] The Guardian, MPs attack shipping industry's 'irresponsible' inaction on emissions, http://www.theguardian.com/environment/2009/jun/01/travel-and-transport-climate-change (accessed 5 January 2015).

[38] Human rights guidelines for Pharmaceutical companies in relation to access to medicines,

trials. The former UN Special Rapporteur developed Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, which addresses some of the rights issues in the sector.

- Major companies operating in the shipping and logistics sector include:
  - *H. Lundbeck:* Lundbeck is a global pharmaceutical company and one of Denmark's most research-intensive enterprises. The company's products are targeted to improve the life of people diagnosed with brain diseases.[39]
  - *Nomeco:* Nomeco is Denmark's pharmaceutical wholesaler, specialised in health logistics. The company is a fully owned subsidary of the German Phoenix Group which is the fifth largest pharmaceutica wholesaler.[40]
- *Novo Nordisk A/S:* Novo Nordisk is a global healthcare company with production facilities in seven countries. The company focuses on diabetes care, haemostasis management, growth hormone therapy and hormone replacement therapy.[41]

- Controversial business practices in the shipping and logistics sector:
  - *India:* In 2006, A Danish pharmaceutical company tested new diabetes drugs on people in 32 countries. In India, the trial and research was severely criticized and ultimately stopped mid-trial because it was revealed that previous tests of the same drugs on animals caused tumours. Despite knowing that the drugs had adverse effects on the animals, the trial was launched on humans.
  - *South Africa*: A Danish pharmaceutical company averted becoming involved in a controversy by resigning from a South African pharmaceutical campaign which opposed South Africa's intellectual property reforms.
  - *United States:* In 2011, the Danish company's drug pentobarbital was being used in the US to execute prisoners by lethal injection. After a public outcry in Denmark, where the death penalty is abolished, the company responded by working on simplifying its distribution model in order to ascertain the final buyer.

Food & beverage (including agricultural supply chains)

Food and beverage companies can have wide-ranging human rights impacts along their entire supply chain, from land and natural resource rights where the commodities are sources to labour rights violations in the production and retail stages. Risks associated with the agricultural sector include increased CO2 emissions and water and soil contamination as a consequence of food production and transportation, impairing animal welfare, deforestation as a consequence of the production of soy and palm oil, unsafe and unhealthy working conditions, violation of trade union rights, gender inequality,

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https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FHealth%2FGuidelinesForPharmaceuticalCompanies.doc&ei=goupVKCBJI3BPLfHgLAE&usg=AFQjCNFQTXpk01vYzhcNXTyY0aFksKCC1w&sig2=r3rcKjmAd_4lDQ8eqbhpOQ (accessed 5 January 2015).

[39] Lundbeck, About us, http://www.lundbeck.com/global/about-us (accessed 16 January 2015).

[40] Nomeco, About us, http://www.nomeco.dk/nomecodk/i-site.nsf/pages/aboutus.html (accessed 16 January 2015).

[41] Novo Nordisk, Novo Nordisk in short, http://www.novonordisk.com/about_us/default.asp (accessed 16 January 2015).

low wages, child labour, damage to public health due to consumption of unsafe products, land grab and depletion of natural resources. The OECD is developing a guide for due diligence in this sector that identifies potential human rights impacts and provides recommendations to prevent, mitigate, and address them.

- Major companies operating in the food and beverage sector include:
- *Arla Foods:* Arla Foods, originally a Danish-Swedish cooperative, is the largest dairy group in Europe. Arla processes more than 90 percent of the Danish and two thirds of the Swedish milk pool.[42] Arla Food is headquartered in Denmark and now owned by 13.500 dairy farmers from seven European countries.[43]
- *Brdr.Lembcke.*The Lembcke Group, owned by TotalProduce based in Ireland, is one of Scandinavia's leading fruit, vegetable and flower import and export companies. The group supplies products to supermarket chains and wholesalers within and outside of Denmark.[44]
- *Carlsberg:* Carlsberg is the fourth largest brewery group. Carlsberg occupies the leading market position in Scandinavia, as well as many other countries in Europe and Asia.[45]
- *Coop Amba:* Coop Amba consists three branches, together operating of a number of grocery stores, as well as a bank and investment fund. Coop Amba represents a leading consumer goods retail company in Denmark.[46]
- *Danish Crown:* Danish Crown is an international food producer. The Group produces and markets pork and beef, as well as processed foods. It ranks among the world's largest meat slaughtering, processing and exporting companies.[47]
- *Dansk Supermarked:* Dansk Supermarked is the largest retail company in Denmark and also operates stores in four other countries. Dansk Supermarked is owned by F. Salling Gruppen (81%) and A.P. Møller-Mærsk (19%).[48]
- *DLG Group:* The DLG Group is one of the largest agricultural companies in Europe and is currently owned by 30,000 Danish farmers. In addition to growing and producing agricultural products the group also activities also include supplying vegetables to the catering and retail trades, electricity trading, telecom services and manufacturing agricultural equipment.[49]
- *Toms Group:* Toms Group is the largest chocolate and confectionary manufacture in Denmark.[50]

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[42] Danish Agriculture & Food Council, Danish Dairy industry, http://www.agricultureandfood.dk/Danish_Agriculture_and_Food/Danish_dairy_industry.aspx (accessed 16 January 2015).
[43] Arla, About Us, http://www.arla.com/about-us/ (accessed 16 January 2015).
[44] Lembcke Group, Welcome to the Lembcke Group, http://www.lembcke.dk/content/us, (accessed 16 January 2015).
[45] Carlsberg Group, Carlsberg Group (accessed 16 January 2015).
[46] Coop Amba, Coop Familien, (accessed 16 January 2015).
[47] Danish Crown, International Food Company, http://www.danishcrown.com/Danish-Crown/International-Food-Company.aspx (accessed 16 January 2015).
[48] Dansk Supermarked, The company, http://dansksupermarked.dk/en/about-us/the-company/ (accessed 16 January 2015).
[49] DLG Group, The DLG Group in brief, http://group.dlg.dk/en/about-us/ (accessed 16 January 2015).
[50] Toms Group, About Toms, http://www.tomsgroup.com/About%20Toms.aspx (accessed 16 January 2015).

- Controversial business practices in the food and beverage sector:
  - *Argentina:* A Danish ag-importing company reportedly imports much of its soy for animal feed from Argentina where Monsanto's RoundUp Ready pesticide is used on GM plants, and which some say causes health problems. Roundup is linked to health problems[51] including birth defects, cancers and fertility[52] problems for those using the pesticides[53] and in some cases for those living near crops where the RoundUp is used. The company also supplies soy-based animal feed to other Danish food and beverage companies.
  - *China:* A Danish food and beverage company was involved in the Chinese milk scandal (2008) due to its suppliers in China. The milk was found to have been spiked with melamine.
  - *Israel:* The foundation of a Danish food and beverage company reportedly funds cancer research to the Ariel University, which is on the Ariel settlement in the occupied West Bank.
  - *Italy:* Danish supermarkets are buying canned tomatoes from Italy, produced by illegal immigrant workers and take insufficient responsibility for the violation of labour rights in its supply chain.[54]
  - *Lithuania:* A Danish beverage company has been accused of violating trade union rights.
  - *Myanmar:* A Danish food and beverage company, along with various other companies, has recently moved into Myanmar. After years of diplomatic and economic isolation, Myanmar's business environment is still being defined. Many observers have noted that this process has involved little or no community consent and consultation[55] for projects. Myanmar authorities have also used intimidation and criminal prosecutions to stop peaceful protests against international companies.
  - *South America:* Danish companies lag behind other international peers (British, Belgians, Swedes and Dutch) in terms of buying sustainable produce from South America[56], including from Brazil and Argentina.
  - *Europe:* A Danish food and beverage company's subsidiaries recalled ready-made food products suspected of containing horsemeat sold as beef, since their main supplier for these products, Comigel, was at the heart of the 2013 horsemeat scandal in Europe.
  - *Rainforests:* Soy imported by Danish industry associations and companies is suggested to contribute to deforestation of primary rainforest in Brazil and Argentina.

Textiles

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[51] Linda Presley, Are pesticides linked to health problems in Argentina, BBC, http://www.bbc.com/news/magazine-27373134 (accessed 5 January 2015).
[52] Corporate Crime Reporter, BBC reports on Argentina's Soy Boom, Monsanto and birth defects, http://www.corporatecrimereporter.com/news/200/bbc-reports-on-argentinas-soy-boom-monsanto-and-birth-defects/ (accessed 5 January 2015).
[53] Ibid.
[54] Business & Human rights resource center, DanWatch report raises concerns about labour exploitation behind canned tomatoes in Danish supermarkets, http://business-humanrights.org/en/danwatch-report-raises-concerns-about-labour-exploitation-behind-canned-tomatoes-in-danish-supermarkets (accessed 5 January 2015).
[55] Lisa Misol, Myanmar, invest at your own risk, http://globalpublicsquare.blogs.cnn.com/2013/07/10/myanmar-invest-at-your-own-risk/?iref=allsearch (accessed 5 January 2015).
[56] BT, WWF skælder ud på danske sojaselskaber, http://www.bt.dk/danmark/wwf-skaelder-ud-paa-danske-sojaselskaber (accessed 5 January 2015).

As was documented by the French National Contact Point,[57] the textile sector poses grave risks to labour rights, including freedom of association and the right to safe working conditions. Risks associated with the garment and textile sector include water and soil shortage and contamination in the cotton and textile production, unhealthy and unsafe working conditions during cotton as well as textile production, low wages, excessive working hours, violation of trade union rights, gender inequality, child labour and impairing animal welfare, bribery and corruption when (illegitimately) obtaining factory licenses and forged documents of labour conditions.

- Major companies operating in the textiles sector include:
  - *BESTSELLER*: BESTSELLER is an international garment company active in 70 markets across most of Europe, the Middle East, Canada and India. The company aims to provide affordable fashion for consumers and markets a number of well-known brands. The company works mainly with suppliers in China, India, Bangladesh, Turkey and Italy.[58]
  - *Ecco Sko:* Ecco is a vertically integrated shoe company that controls the entire shoemaking process, from designing, producing and retail sales.[59]
  - *IC Group A/S: IC Group is one of the largest apparel companies in the Nordic region and currently runs and develops five clothing brands.*[60]
  - *JYSK:* JYSK is an international retail chain that started out selling bed linen, and currently sells consumer products for the home in 37 countries.[61]

- Controversial business practices in the textiles sector:
  - *India:* At least one Danish garment company sources garments from various Eastmen Exports production sites in Tamil Nadu, South India. A report by SOMO[62] implicated Eastmen Exports in breaches of labour rights and human rights, primarily of young female factory workers.
  - *India:* Reports claimed that suppliers of a Danish company's suppliers in India were employing child labour.
  - *Asia:* A 2012 report claimed that a Danish garment company pays low (1.06kr) hourly wages to its employees in Asia, which has generated criticism of the Danish clothing company.
  - *Europe:* A Danish garment company has sold clothing with a high content of azo dyes. These dyes are on the EU list of banned chemicals because they can cause bladder cancer.
  - *Global:* In a 2014 report, the Clean Clothes Campaign claimed that a Danish garment company has a "long way to go" before workers at the factory of its suppliers will earn a living wage. The Clean Clothes campaign has also called on the same company to stop the dangerous practice of sandblasting jeans.

Electronics

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[57] NCP, NCP report on implementation of the OECD guidelines in the textile and clothing sector, http://www.tresor.economie.gouv.fr/File/398811 (accessed 5 January 2015).
[58] BESTSELLER, Our Company, http://about.bestseller.com/en/AboutContent/OurCompany.aspx (accessed 16 January 2015).
[59] Ecco, Who we are, http://global.ecco.com/en/company/our-business (accessed 16 January 2015).
[60] http://www.icgroup.net/about/ (accessed 16 January 2015).
[61] JYSK, Det Betyder JYSK, http://jysk.dk/om-jysk (accessed 16 January 2015).
[62] SOMO, Maid in India, http://www.somo.nl/publications-en/Publication_3783 (accessed 5 January 2015).

Risks associated with the electronics sector include unhealthy and unsafe working conditions, violation of trade union rights, low wages, excessive working hours, child labour and forced labour, gender inequality, land grab during the extraction of metals, depletion of natural resources, increased CO_2 emissions due to energy consumption during production, transportation and use of electronic products, exposure to hazardous substances, water shortage due to water use during the production stage, and the financing of conflicts as consequence of mining of minerals (in e.g. the Democratic Republic of Congo). In addition to conflicts with local communities over land and natural resource rights, civil society has documented forced labour, child labour, violations of freedom of association and collective bargaining in the electronics supply chain.[63]

- Major companies operating in the electronics sector include:
  - *Bang & Olufsen:* Bang & Olufsen produces high-end electronics products in the business-to-consumer and business-to-business market.[64]
  - *Foss:* Foss develops analytical solutions for the food, agricultural, chemical and pharmaceutical industries.[65]
  - *Schneider Electric Danmark:* Schneider Electric Danmark is a global specialist in developing and producing solutions for energy management.[66]
  - *Triax:* Triax is an international supplier of innovative, high-tech solutions for the reception and distribution of video, audio and data signals. The company is part of Nielsen & Nielsen Holding.[67]

- Controversial business practices in the electronics sector:
  - *DRC:* It very is likely that Danish electronics companies have conflict minerals (tin, tantalum, tungsten, gold) in its supply chain, linking the company to armed conflicts and human rights abuses in the DRC. A 2013 report by SOMO[68] indicated that the company does not have a public policy to demonstrate it does not source conflict minerals. The company has also been accused of failing to[69] apply due diligence in line with international standards, despite sourcing significant quantities from the DRC.

4. Suggestions for focussing the Institution's work in 2015-6

Based on the above analysis of trends in OECD Guidelines cases from around the world, high-risk sectors, the involvement (through direct activities or business relationships) of Danish companies, and a brief scan of existing controversies, OECD Watch sees a number of interesting potential areas of work or work-streams for the Institution in 2015 and 2016. Our suggestions for the Institution can be

[63] GoodElectronics, Reset, http://electronicswatch.org/reset-corporate-social-responsibility-in-the-global-electronics-sector-_6126.pdf (accessed 5 January 2015).
[64] Bang & Olufsen, Annual report 2013/14, http://az498215.vo.msecnd.net/static/files/annual_reports/BO_AR13-14_UK_FINAL.pdf (accessed 16 January 2015).
[65] Foss, Foss today, http://www.foss.dk/home/about%20foss/about/ (accessed 16 January 2015).
[66] Schneider Electric, Schneider Electric at a glance, http://www2.schneider-electric.com/sites/corporate/en/finance/new-investor/at-a-glance.page (accessed 16 January 2015).
[67] Traix, Triax A/S, http://www.triax.com/TriaxBasic.aspx (accessed 16 January 2015).
[68] SOMO, Conflict due diligence by European companies, http://www.somo.nl/publications-en/Publication_4003 (accessed 5 January 2015).
[69] Reprisk, Consumer electronics: the human toll behind the minerals, GoodElectronics, http://goodelectronics.org/news-en/consumer-electronics-the-human-toll-behind-the-minerals (accessed 5 January 2015).

broken down into three types: procedural suggestions, suggestions for sectoral focus areas, and suggestions for cross-sectoral focus areas.

Procedural suggestions

While the content of OECD Watch's suggestions for the Institution are elaborated below, it is appropriate to first briefly mention some suggestions for the procedures or form that the Institution's work to address OECD Guidelines-related issues could take. OECD Watch suggests that the Institution:

- *Make use of the Institution's mandate to initiate investigations.* OECD Watch continues to believe in the importance of the fact that the Institution has the authority to initiate and conduct investigations at its own discretion. This mandate is unique among NCPs, and has a significant potential to contribute to a more effective implementation of the OECD Guidelines. OECD Watch's scan of controversial business practices by Danish companies demonstrates that there are several industries, themes, rights, and potentially individual companies that would be suitable for further investigation by the Institution. Potential subjects that appear most appropriate to OECD Watch are outlined below. OECD Watch estimates that making effective use of the Institution's mandate to initiate investigations into OECD Guidelines-related issues would be the way/form with with the Institution could have the greatest impact on improving RBC and implemention of the Guidelines.

- *Organise multi-stakeholder conferences on specific thematic or sectoral issues related to the OECD Guidelines.* Research by OECD Watch among civil society is corraborated by research in the business sector and among trade unions in indicating that awareness of the OECD Guidelines and the complaints mechanism is woefully limited among all stakeholder groups. Raising awareness through dedicated (thematic) conferences organized in collaboration/consultation with key stakeholder groups can provide effective opportunities for targeted outreach. A practically-oriented stakeholder meeting in which the NCP provides guidance for a specific sector or regarding specific OECD Guidelines provisions can contribute to making the relevance of the OECD Guidelines more tangible for companies and will hopefully further the practical application of the Guidelines on the ground. Depending on the ambition of the NCP the aim of such stakeholder meetings can range from informational to agenda setting. For example, to promote knowledge about and application of the OECD Guidelines by companies, the Dutch NCP has successfully organized stakeholder conferences targeting (progressive) companies from relevant sectors, umbrella organisations, works councils, civil society organisations, academics and consultancy firms. NCPs such as the Dutch, Norwegian and UK have organised such conferences on issues such as the responsible business conduct (RBC) in the extractives sector, RBC in the finance sector, and due diligence and respecting rights in global supply chains. OECD Watch has participated in many of these conferences and would be willing to assist the Institution in organising its own. In 2015, the Dutch NCP is planning to organise two large stakeholder meetings that contribute to providing insights into the implementing the OECD Guidelines in companies' value chains and with regard to living wage.

- *Participate in 'peer reviews' of other NCPs*. The Institution's structure, procedures, and mandate are among the most advanced and most prescient of all of the NCPs. Other countries' NCPs could likely benefit from recommendations by the Institution / Danish NCP as to how to restructure their own NCP. OECD Watch thus encourages the Danish NCP to partcipate actively and frequently in the NCP peer review system being proposed by the OECD Working Party on RBC.

Suggestions for sectoral focus areas

- *Extractives sector.* Given the high risk associated with companies operating in the extractives sector and the significant fact that approximately half of all OECD Guidelines cases filed by CSOs are related to extractives, this sector deserves specific attention by the Institution, despite other initiatives already undertaken by other parties and the industry itself. Many of Denmark's flagship companies – such as Maersk, Dong, and Bang & Olufsen, as well as the financial institutions – have significant exposure to the extractive sector through their business relationships. The Institution (in its role as the Danish NCP) could actively participate in the upcoming round of broad consultations for the draft User Guide currently being developed as part of the OECD's proactive agenda project on due diligence and stakeholder engagement in the extractive sector. The Institution could actively investigate whether and how Danish companies with supply chains that expose them to the extractive sectors have conducted due diligence to identify risks and prevent, mitigate, and (where appropriate) remedy impacts. A unique focus for the Institution, and one where it may be able to have added value over other existing initiatives, would be to focus on implementation of the OECD Guidelines in the timber extraction sector. This would be particularly relevant for the Institution given the important role of Danish companies in timber extraction.

- *(Renewable) energy sector*. Another sector in which work by the Institution would be particularly relevant and have high added value over other ongoing initiatives is furthering OECD Guidelines implementation in the renewable energy sector. As mentioned above, risks of violations of the OECD Guidelines are partiularly prevalent in the downstream wind energy value chain as windparks are increasingly being located on lands inhabited or traditionally used by Indigenous Peoples. With companies at the peak of the global wind energy industry, Denmark would be well placed to have a large impact on the industry by ensuring that Danish companies are global leaders in preventing and mitigating impacts caused by their windpark-building business partners in the utilities sector. Upstream wind energy issues (such as the sourcing of the raw materials for turbine production and component manufacture) would also be a relevant and unique focus.

- *Financial sector.* Despite ongoing work at the OECD level, it could be interesting for the Institution to focus a work stream on the Danish financial sector. The financial sector can be a key driver of both sustainable development RBC, as well as gross violations of the OECD Guidelines and the range of human rights. High-level and media-grabbing cases such as the Norwegian NBIM / Dutch APB investment in Posco indicate that it is crucial for banks and pension funds (including state-owned financial institutions) to have a clear policy to respect human rights throughout the financial products and services they provide and to have well-developed due diligence procedures in place to ensure that policy is implemented. As indicated above, an initial screening of the investment portfolios of Danish banks and pension funds reveals significant investment in projects and companies that are associated with rainforest destruction and involuntary relocations of local communities.

- *Textile and garment sector.* Given the size and significance of the garment company Bestseller in addition to other Danish companies, participation and close follow up by the Institution in the OECD proactive agenda project on Responsible Supply Chains in the Textile and Garment Sector would be merited. OECD Watch encourages the Institution to follow up on commitments of Danish textile and garment companies to improve the labour rights situation in countries they source from, and more specifically follow up on commitments by companies that have signed the Bangladesh Accord on Fire and Building Safety.

- *Shipping and logistics sector.* With Denmark having one of the world's largest shipping industries and shipping being one of the key sectors for the Danish economy (primarily through world-renowned industry leader A.P.Møller-Mærsk, it makes sense for the Institute to focus on this sector. The shipping and logistics sector is also a sector that has not received much attention in the corporate accountabilty / CSR world, which means that work by the Institution could be ground-breaking and have high added value. The key issues/risks to focus on would be labour rights (in particular freedom of association and health and safety) of the seafarers as well as environmental impact.

- *Dairy sector.* Similar to the shipping sector, dairy is a sector in which Denmark plays a leading role internationally and which has received relatively little attention in the corporate accountability world. The recent announcement by Danish industry leader Arla[70] to implement the OECD Guidelines and UN Guiding Principles in its operations in Africa means that Denmark already has momentum in this sector. The Institution could build upon this momentum to assist Arla in its ambition, ensure that other Danish companies in the sector follow Arla's leasd, and develop something that could be applied to dairy companies/sectors in other countries.

Suggestions for cross-sectoral focus areas

- *Prioritise adherence to the OECD Guidelines by companies receiving direct government support.* The UN Guiding Principles reiterate that States must take additional precautions to protect against human rights abuses caused by business that are supported by state agencies, such as export credit agencies.[71] It would be appropriate for the Institution to prioritize those sectors that receive state support either through IFU, EKF or other programs designed to support the private sector.[72] A review of the 2014 portfolios of these programs reveals many investments in the wind industry, including Vestas.[73] Similarly, IFU has supported several of the companies referenced in the previous section, including A.P Møller-Mærsk, Arla, Bestseller, Carlsberg, DLG, and Vestas.[74] Although, IFU and EFK have corporate social responsible policies, neither have established a grievance mechanism that would allow affected workers or communities to submit a complaint if they had been harmed by an activated supported by them, thus enabling a better understanding of the extent to which the CSR policies are implemented. An investigation by the Institution would serve to inform state agencies about the human rights risks of their investments and the measures that are needed to prevent abuses from occurring. In addition to companies receiving state support, the Institution could include companies benefitting from public procurement contracts and orders in this awareness-raising focus area.

- *Focus on the issue of tax avoidance and tax planning that is not in line with "the spirit" of tax laws and regulations*. Responsible tax planning is an area of RBC that is new but developing rapidly. Guidelines and frameworks to assist in developing principles and policies to underpin responsible practices are still largely absent. The 2011 update of the OECD Guidelines for MNEs

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[70] Arla, "Arla foods to ensure responsible approach to African markets", http://www.arla.com/about-us/news-and-press/2015/pressrelease/arla-foods-to-ensure-responsible-approach-to-african-markets-1104299/

[71] United Nations Guiding Principles for Business and Human Rights, Guiding Principle 4.

[72] See http://um.dk/en/danida-en/activities/business/partnerships/supported-b2b-partnerships/ (accessed 1 January 2015).

[73] See http://www.ekf.dk/Docs/%C3%85benhed_Nyudstedelse_UK_2014.pdf (accessed 1 January 2015).

[74] See http://www.ifu.dk/en/investments/portfolio-as-at-30-september-2014-unaudited (accessed 1 January 2015).

included a significant addition to the tax chapter (Chapter XI) of the Guidelines[75], but the provision is poorly understood and remains underutilized. That taxation is a topic being covered by the Danish council on corporate responsibility gives testimony to the complexity of the issue and the need for more authoritative guidance on the topic.[76] The Dutch Minister for Foreign Trade and Development Cooperation, Lianne Ploumen, told the Dutch Parliament that she would welcome guidance from the OECD and NCPs in particular on how to improve RBC with regard to taxation. There thus exists a key opportunity for the Institution to take a special interest and perform dedicated research on how well the OECD Guidelines are implemented in the area of taxation, and the resulting implications for human rights.

While standard corporate accounting and tax planning practices put practically all Danish multinationals at risk of breaching the OECD Guidelines provisions on taxation, it is expected that those operating or with subsidiaries in fiscally fragile countries and secrecy jurisdictions are at elevated risk. These firms will have less ability to engage with local tax authorities with capacity and resources to give advice and guidance on interpreting the letter and spirit of the law. Just a brief scan of controversies indicated above reveals that Danish multinationals are not immune to the risks of breaching the letter and/or the spirit of tax laws. The example of a Danish company's 2014 attempt to sell off a stake to an investment company, which would have managed its stake from tax havens, indicates that the Danish public sees relevance and added value a focus on this area by the Institution. OECD Watch has identified several Danish companies with Dutch registered holdings that exhibit red flags for tax avoidance that would be worth exploring.

- *Focus on implementing the OECD Guidelines in public procurement:* Danish public authorities purchase goods and services for nearly 300 billion Danish kroner per year, making public procurement an important driver for respect for human rights and sustainability by Danish companies. A unique part of the mandate of the Institution is the possibility to file cases against public authorities in Denmark. As the Danish government has put forward a legislative proposal to transpose the new EU-Directive on public procurement[77] into Danish law, this is a good opportunity to for the Institution to emphasise the importance of Danish public authories also require human rights due diligence, as well as fair trade and environmental certification when they purchase goods and services from (Danish) companies. Corporate accountability in public procurement is extremely important for policy coherence and is at the nexus of implementation of the "state duty to protect human rights" and the "corporate responsibility to respect human rights" (as outlined in the UN Guiding Principles on Business and Human Rights).

- *Focus on making progress in the implementing the OECD Guidelines in Danish companies' value chains*. As was clearly revealed in section 3 above, the highest risk of violations of human rights and the OECD Guidelines occur among Danish companies' business relations in their value chains. Conducting due diligence to identify, avoid and remediate impacts throughout the value chain is a particular challenge for companies (Danish included), that the Institution could focus on. Rights that are at particular risk in Danish companies' value chains include fundamental labour rights such as child labour, forced labour/slavery, freedom of association, right to collective

[75] Namely, that businesses should respect both the letter and "the spirit" of tax laws.
[76] Danish CSR Council, http://csrcouncil.dk/ (accessed 1 January 2015).
[77] Directive 2014/24/EU of the European Parliament and of the council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024 (accessed 16 January 2015).

bargaining and discrimination of ethnic minorities. Other labour rights risks in the supply chain include occupational health and safety, wages below minimum / living wage, corporal punishment, physical and verbal abuse, forced overtime, exploitation of and discriminatory practices directed against migrant workers.

Beyond labour rights, OECD Watch has identified the right to health, the right to life, the right to housing, the right to food, the right to movement and the right to an adequate standard of living as particularly at risk in global supply chains. Supply chain transparency is also a key issue related to supply chain responsibility and the implementation of due diligence in Danish companies' supply chains. The Dutch NCP has made this issue one of its focus areas for its 2014-5 work plan, and it organised a multi-stakeholder conference on "Transparency and impact in the value chain" on 28 November 2014[78].

- *Focus on Danish companies with operatations and/or business relationships in fragile states*. Just the brief media scan of controversies involving Danish companies conducted above reveals numerous instances of Danish companies with operations or business relationships in fragile states, including Angola, Colombia, the DRC, Iran, Liberia, Myanmar, the Occupied Palistinian Territories and Sudan. Doing business in fragile states such as these is exceptionally risky and requires an elevelated level and rigorousness of due diligence to identify risks and avoid impacts. The Institution could narrow down its supply chain focus to a focus on investigating and developing guidance for Danish businesses with supply chains that originate or cross through fragile states.

OECD Watch looks forward to discussing this proposal in greater detail with the Institution on February 25th in Copenhagen.

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[78] See http://www.oesorichtlijnen.nl/evenementen/ncp-brede-stakeholderbijeenkomst-inzicht-en-impact-de-waardeketen for the agenda and description (accessed 19 December 2014).