The Finnish OECD contact point and its discontents

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Abstract: This study seeks to find out how the multi-stakeholder Finnish National Contact Point, (NCP) operating under the OECD Guidelines for Multinational Enterprises, approaches and ensures corporate accountability, as well as to provide recommendations for how this could be improved. In order to reach these aims, a case study is conducted, which deals with a specific instance case involving the Finnish engineering and consultancy firm Pöyry Group. Pöyry’s Swiss subsidiary, Pöyry Energy AG, acted as consultant for the government of Lao PDR in a controversial hydropower dam project in the Mekong River, known as the Xayaburi dam project. Interviews with members of the Finnish NCP and the complainants in the specific instance case known as the Pöyry case are conducted. The ways in which the governance of the Finnish NCP is meant to ensure corporate accountability and the governance failures evident in the Pöyry case are identified. Subsequently, measures for addressing these governance failures are proposed. The study contributes to the understanding of the challenges that characterise corporate accountability initiatives and concludes that the specific instance mechanism’s ability to foster accountability among Finnish corporations is hampered by a lack of political support for the mechanism and corresponding resource deficiencies. In addition, the tick-box approach to the implementation and enforcement of the OECD Guidelines is found to weaken the effectiveness of an already lacking framework within the Finnish context.

Keywords: OECD Guidelines for Multinational Enterprises, National Contact Point, soft law, multi-stakeholder initiative, corporate accountability
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<th>Acronym</th>
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<tbody>
<tr>
<td>BIC</td>
<td>Business and Industry Advisory Committee to the OECD</td>
</tr>
<tr>
<td>CEDHA</td>
<td>Centre for Human Rights and Environment / Centro de Derechos Humanos y Medio Ambiente</td>
</tr>
<tr>
<td>CSCR</td>
<td>Committee on Corporate and Social Responsibility</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil society organisation</td>
</tr>
<tr>
<td>ICHR</td>
<td>International Council on Human Rights Policy</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>ISO 26000</td>
<td>ISO 26000 Guidance Standard on Social Responsibility</td>
</tr>
<tr>
<td>MEE</td>
<td>Ministry of Economic Affairs and Employment of Finland</td>
</tr>
<tr>
<td>Mekong Agreement</td>
<td>Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin</td>
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<tr>
<td>MNE</td>
<td>Multinational enterprise</td>
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<td>MRC</td>
<td>Mekong River Commission</td>
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<tr>
<td>MSI</td>
<td>Multi-stakeholder initiative</td>
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<tr>
<td>NCP</td>
<td>National Contact Point</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>OECD Guidelines</td>
<td>OECD Guidelines for Multinational Enterprises</td>
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<tr>
<td>PNPCA</td>
<td>Procedures for Notification, Prior Consultation and Agreement under the Mekong Agreement</td>
</tr>
<tr>
<td>TUAC</td>
<td>Trade Union Advisory Committee to the OECD</td>
</tr>
<tr>
<td>UN Guiding Principles</td>
<td>United Nations Guiding Principles on Business and Human Rights</td>
</tr>
<tr>
<td>UNRISD</td>
<td>United Nations Research Institute for Social Development</td>
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1 INTRODUCTION

As globalisation advances rapidly, multinational enterprises (MNEs) continue to expand their operations in search of new opportunities offered by the global marketplace. However, the legal framework is lagging behind (Ruggie, 2008). Governance gaps, a result of the inability of governments to keep up with and manage the adverse impacts of MNEs, have emerged (Ruggie, 2008). The potential adverse impacts of MNEs on the communities they operate in, particularly in developing countries, are well documented and discussed (e.g. Adeyeye, 2012; International Labour Organization (ILO), 2004; Kaplinsky, 2005; Ruggie, 2013). The question of how to mitigate and address these adverse impacts is an increasingly topical issue worldwide, as exemplified by the recent redefinitions of Corporate Social Responsibility (CSR) in terms of the responsibility of firms for their impacts on society. For example, the CSR definition adopted by the European Commission in 2001 framed CSR rather vaguely as going beyond legal compliance and highlighted the benefits the firms themselves can derive from investing in CSR (European Commission, 2001) and hence did not put a great deal of pressure on companies to rethink their way of operating. The European Commission’s renewed strategy for CSR (European Commission, 2011), on the other hand, stresses the importance of integrating ethical, social and environmental concerns into a company’s core strategy with the aim of maximising shared value among shareholders, stakeholders and society at large, while at the same time actively identifying, preventing and mitigating any possible adverse impacts their operations might have.

The European Commission’s strategy for CSR is built on the following guidelines and principles: United Nations (UN) Global Compact, UN Guiding Principles on Business and Human Rights, ISO 26000 Guidance Standard on Social Responsibility, ILO Tripartite Declaration of Principles concerning Multinational Enterprises on Social Policy and OECD Guidelines for Multinational Enterprises (European Commission, 2016). Thereby, the aforementioned guidelines and principles have the ability to influence EU-level CSR strategy. For the purposes of this thesis, the focus will be on the Organization for Economic Cooperation and Development (OECD), one organisation whose work directly deals with MNE activity. The OECD acts as a forum where governments come together and discuss problems related to economic and social well-being and receive support in areas of economic, social and environmental change (OECD, 2016). In 1976, the OECD adopted the OECD Guidelines for Multinational
Enterprises (OECD Guidelines) as a part of the Declaration on International Investment and Multinational Enterprises. The OECD Guidelines are “non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards” (OECD, 2011: 3). As a form of soft law, the principles and standards set forth in the OECD Guidelines are meant to contribute to the furtherance of responsible business practices and corporate accountability worldwide.

During the past half-century several multi-stakeholder initiatives (MSIs) have been developed with the intention of combating some of the social and environmental challenges resulting from recent global development. MSIs are a form of civil regulation that attempt to address global challenges by fostering collaboration between business and other actors such as governments, labour organisations and civil society (Utting, 2002). One multi-stakeholder arrangement similar to an MSI can be found in the governance system of the Finnish OECD National Contact Point (NCP), a national agency that functions as a contact point between the OECD and the OECD member country, in this case Finland. The Finnish NCP consists of the Ministry of Economic Affairs and Employment (MEE) and the Committee on Social and Corporate Responsibility (CSCR), where the CSCR functions as an advisory committee to the MEE. The multi-stakeholder arrangement in this instance is the CSCR, which includes representatives from government, business and labour organisations as well as civil society. The CSCR, together with the MEE form the Finnish NCP, which is charged with implementing and promoting the OECD Guidelines in the Finnish context. However, it should be noted that the CSCR cannot be considered as a MSI per se, but rather as a governance forum that involves stakeholders from various spheres of society, which to a certain extent makes it similar to an MSI and allows for some parallels to be drawn.

The OECD relies on NCPs for the implementation and promotion of the OECD Guidelines. Every OECD member country has its own NCP, most of which involve multiple stakeholders. All sectors of society can be represented in these NCPs, making them a forum for collaboration between government, business organisations, labour organisations and civil society organisations (CSOs). A key feature of NCPs is the specific instance mechanism, which is a dispute resolution mechanism that handles alleged corporate violations of the OECD Guidelines. Any stakeholder can submit a complaint to the NCP if a MNE operating in or from the country of the NCP is thought to have violated the OECD Guidelines. The complaint is then processed by the NCP, or
more specifically by the CSRC, which gives a statement regarding the complaint to the MEE. The MEE retains final decision-making power in specific instance cases.

1.1 Research problem

In 2012 a complaint was filed with the Finnish NCP against the Finnish engineering and consultancy firm Pöyry Group. The subject of the complaint was the controversial consultancy work provided by Pöyry Group’s Swiss subsidiary, Pöyry Energy AG on a hydropower dam project in the Mekong River area to the government of Lao PDR. The project, known as the Xayaburi dam project, attracted a great deal of attention from both local and international non-governmental organisations (NGOs), who challenged the recommendations made by Pöyry Energy AG in connection with their consultancy work for the Laotian Government, deeming these recommendations irresponsible and detrimental to the ecosystem of Southeast Asia’s Mekong River as well as being a violation of the human rights of the local people whose livelihoods depend on the Mekong River. The Finnish NCP accepted the complaint and the case was on-going for a year until the Finnish NCP ultimately concluded that Pöyry had not breached the OECD Guidelines. The decision of the NCP was heavily contested by some actors and garnered attention from the media, which in turn raised questions about the legitimacy of the Finnish NCP itself.

The Pöyry case illustrates problems related to the functioning of the Finnish NCP and suggests that there are issues that need to be addressed if the Finnish NCP is to be able to operate with legitimacy in the future, effectively promoting and implementing the OECD Guidelines and furthering the corporate accountability agenda. Thus, beyond the specific case of the Finnish NCP and how it dealt with the Pöyry case, the study is meant to illuminate the challenges that characterise initiatives aiming at greater corporate accountability.

1.2 Aim of the study

This study seeks to examine the functionality of the specific instance mechanism of the Finnish NCP as an effective soft law mechanism. The subject matter is reviewed through the lens of the Pöyry case (Siemenpuu et al. vs. Pöyry Group), a case handled by the Finnish NCP in 2012-2013. The focus is on how the specific instance mechanism could be improved within the Finnish context and how a higher level of corporate accountability could be attained through this soft law mechanism. Therefore, the aim of
this study is to find out how the multi-stakeholder Finnish NCP, operating under the OECD Guidelines for Multinational Enterprises, approaches and ensures corporate accountability, as well as to provide recommendations for how NCP practices could ensure a greater degree of corporate accountability in the future.

The research questions for this study are as follows:

1) How is the governance of the Finnish NCP meant to ensure corporate accountability?

2) What governance failures of the Finnish NCP can be identified in the specific instance mechanism case known as the Pöyry case?

3) How could these governance failures be addressed so as to ensure a higher level of corporate accountability in future specific instance cases?

1.3 Delimitations

This study deals with the specific instance mechanism of NCPs, which is examined through one, specific case handled by the Finnish NCP. The main focus is, therefore, explicitly on the specific instance mechanism and not on the entirety of NCP activities. The functioning of the Finnish NCP in relation to the specific instance case is examined and, consequently, issues related to multi-stakeholder governance are reviewed. The study revolves around how the Finnish NCP dealt with the specific instance case and the aftermath of their verdict. The governance failures of the specific instance mechanism are analysed from the perspective of the case and suggestions on how to remedy these failures are proposed. The actual content of the OECD Guidelines for Multinational Enterprises, however, is not subject to analysis. Rather, it is the specific instance mechanism of the OECD Guidelines that is examined within the Finnish context.

1.4 Keywords

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) were adopted by the OECD in 1976 as part of the Declaration on International Investment and Multinational Enterprises. The OECD Guidelines are a set of voluntary principles related to responsible business conduct for enterprises operating in a global context (OECD, 2011). The OECD Guidelines have been updated five times, with the most
recent update coming into effect in 2011. When the OECD Guidelines are henceforth mentioned, it is the most recent version from 2011 that is referred to, unless otherwise is explicitly stated. The OECD Guidelines are defined as follows:

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. (OECD, 2011: 3)

**National Contact Point** (NCP) is the term used to describe the entity in each OECD member country tasked with implementing and promoting the OECD Guidelines. They do this by assisting enterprises with the implementation of the OECD Guidelines and providing mediation between opposing parties when practical issues arise. Each NCP is established by the government of that particular OECD country. (OECD, 2011)

**Soft law** is defined as follows:

Economic soft law norms are legal or non-legal obligations which create the expectation that they will be used to avoid or resolve disputes. They are not subject to effective third party interpretation, and their subject matter and formation are international in nature. (Gruchalla-Wesierski, 1984: 44)

Gruchalla-Wesierski’s (1984) definition uses the wider definition of soft law, as it includes both legal and non-legal obligations. This definition is discussed further in the literature review.

**Multi-stakeholder initiatives** (MSIs) are private governance structures that foster collaboration between different actors from business, labour organisations, civil society and governments with the intention of combating some of the social and environmental challenges that are a result of recent global development (Utting, 2002).

There is no universally accepted definition of **corporate accountability**. The Oxford English Dictionary defines accountability as “the quality of being accountable”, and the word accountable, as “liable to be called to account or to answer for responsibilities and conduct”. Based on this, corporate accountability is understood to extend beyond the legal norms a corporation is subject to and implies that corporations are answerable for their actions to various stakeholders. The concept of corporate accountability is further discussed in the literature review.
1.5 Structure of the thesis

In the literature review I examine previous and current literature on soft law governance. In addition, multi-stakeholder initiatives’ use of soft law as a means of regulating international business activities and contributing to corporate accountability is also discussed.

Following the literature review, the context of the case study is clarified. Here I go into the OECD Guidelines as a soft law mechanism as well as the structure and composition of the Finnish NCP. An overview of the Pöyry case is also provided.

After the context, the methodology of this qualitative case study is presented. Research approach and research design, including sampling procedures, data collection, data analysis and data assessment are reflected upon. A critical discussion on the methodology and a section on research ethics are also included.

Following the methodology, the analysis of the interview data and results of the study are presented. Finally, the results are discussed in light of the literature review, the contribution of the study is presented and main conclusions are drawn.
2 LITERATURE REVIEW

The literature review encompasses previous literature on soft law governance and multi-stakeholder initiatives’ use of soft law as a means of regulating international business activities. The OECD Guidelines for Multinational Enterprises as a soft law mechanism is examined.

2.1 Soft law governance

A shift has taken place in the world of international institutions in recent times. According to Goldstein, Kahler, Keohane and Slaughter (2000), international institutions are becoming increasingly legalised. That is to say, institutions operating on the international arena are to an increasing extent relying on judicial means when dealing with global issues. As Goldstein et al. (2000: 386) remark: “[t]he discourse and institutions normally associated with domestic legal systems have become common in world politics”. This development in international politics can also be seen in the increasing reliance of international institutions on soft law governance. Goldstein et al. (2000: 387) describe international institutions as “enduring sets of rules, norms, and decision-making procedures that shape the expectations, interests, and behavior of actors”. These institutions typically rely on soft rather than hard law approaches, because soft law provides many of the same benefits as hard law while bypassing some of the drawbacks associated with it. Also, soft legislation is easier to pass than hard legislation and encourages cooperation and compromise between different actors. (Abbott and Snidal, 2000)

The ability of soft law to facilitate mutual understanding between actors with opposing interests has proved to be constructive in dealing with current global issues. It has been suggested that the hard law approach of the nineteenth-century has been largely ineffective in addressing the sustainability challenges of our age (Kirton and Trebilcock, 2004). The failure to act in accordance with the magnitude of the problems that are climate change, ecosystem degradation, declining biodiversity, global poverty, social exclusion and so on, continues to overwhelm our society. In recent years we have, therefore, seen an increase in the use of soft law as means of tackling global governance challenges related to sustainability (Kirton and Trebilcock, 2004). Soft law approaches offer an alternative path, one of collectively addressing issues by relying on cooperation and multi-stakeholder dialogue. Reaching a consensus on binding legal instruments
and passing international legislation of any kind is typically very challenging and time-consuming, which is why soft law can be seen as an attractive option.

Hard law refers to legally binding obligations that are precise in nature and clearly delegate responsibility for the interpretation and implementation of the rules to a specific entity (Abbott and Snidal, 2000). Soft law, on the other hand, can be described as follows:

The realm of “soft law” begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation. This softening can occur in varying degrees of along each dimension and in different combinations across dimensions. (Abbot and Snidal, 2000: 422)

Compared to hard law, soft law is, thereby, inherently more informal. As Abbott and Snidal (2000) contend, there is no explicit line that can be drawn between soft and hard law. Rather, the two concepts are on the opposing sides of a continuum, which includes many different forms and combinations of the two extremes.

2.1.1 Defining soft law

There is no universally accepted definition of soft law. Gruchalla-Wesierski (1984) supports the wider definition of soft law, which incorporates not only legal but also non-legal forms of economic soft law. Since the OECD Guidelines fall under the category of non-legal soft law, I have chosen to employ this definition for the purposes of this thesis. Furthermore, the wider interpretation of soft law is considered to be more appropriate in the context of states and their use of soft law, as both legal and non-legal soft law is commonly used by states to tackle economic problems that are a result of international trade or investment (Gruchalla-Wesierski, 1984). The definition of economic soft law proposed by Gruchalla-Wesierski (1984: 44) reads as follows:

Economic soft law norms are legal or non-legal obligations which create the expectation that they will be used to avoid or resolve disputes. They are not subject to effective third party interpretation, and their subject matter and formation are international in nature.

Whether soft law is legal or non-legal affects the type of sanctions that can be applied as a result of its enforcement. Legal soft law has the advantage of involving legal sanctions, should the law be broken (Gruchalla-Wesierski, 1984). However, it is no minor feat for a large number and diverse set of states to collectively agree on any sort of common rules, which can make it difficult to get it approved (Gruchalla-Wesierski, 1984). Non-legal soft law, on the other hand, is easier to put into effect (Bothe, 1980 cited in Gruchalla-Wesierski, 1984).
A key word in Gruchalla-Wesierski’s (1984) definition is ‘expectation’. Soft law gives rise to expectations of abidance (Gold, 1983 cited in Gruchalla-Wesierski, 1984). This is where the primary effect of soft law is derived from. As a result of this, the semantics of soft law are crucial: the more explicit the wording of a norm is, the more substantial expectations it creates (Gruchalla-Wesierski, 1984). The definition also states that soft law norms are used to avoid and resolve disputes, which is one significant objective of soft law. By defining the reach of the norm and providing a blueprint for dealing with disputes, soft law norms can help parties avoid complicity and assist in the effective settlement of disputes (Gruchalla-Wesierski, 1984). Furthermore, third party interpretation is a central concept in the above-mentioned definition of soft law, where a third party is “[a]nyone other than the party which is bound” by the norm (Gruchalla-Wesierski, 1984: 49). Soft law norms are not subject to effective third party interpretation, because soft law norms are defined by those who they will apply to (Gruchalla-Wesierski, 1984).

### 2.1.2 Effects of soft law

Gruchalla-Wesierski (1984) discusses the effects of soft law in terms of four main types of effects: direct legal effects, qualifying effects, interpretive effects and political effects. I will now present each of these in turn.

Direct legal effects consist of three separate effects. Firstly, soft law has a binding effect on the international body that adopts it. Even though it may not be legally binding on the members of the organisation, soft law adoption will, however, undoubtedly have an effect on the institution that has adopted it. Secondly, soft law has value as opinio juris, i.e. it evokes the sense of a legal obligation by raising expectations. Thirdly, soft law has the potential of delegitimising an existing norm by altering the legal status or the binding nature of that norm. In other words, soft law can invalidate a previous norm if the new norm includes content that is irreconcilable with the older norm. (Gruchalla-Wesierski, 1984)

The qualifying effect can be described as “the meaning soft law gives to subsequent acts” and can be either direct or indirect (Gruchalla-Wesierski, 1984: 58). There are two primary qualifying effects: soft law has the ability to spread awareness of an issue, i.e. make it internationally know, and soft law has the potential of directly impacting any subsequent formulation of international law. Furthermore, soft law can have interpretative effects as it is sometimes used to interpret international law. Since soft
law can evolve into hard law, certain hard laws have been previously articulated in the form of soft law norms and can thereby aid in the explication of international law. (Gruchalla-Wesierski, 1984)

The political effects of soft law come in many forms, both legal and non-legal, which can be divided into four main categories. Firstly, soft law can be treated as hard law in a political context, in that it can be adhered to in the interest of acquiring political benefits. Secondly, soft law can act as a means of coercion, in that parties that are not subject to it may be pressured to conform for political reasons. Thirdly, there is a political aspect to the role soft law norms have in creating expectations. This political effect can lead to the qualifying effect, i.e. the legal effect of soft law. Fourthly, because of its objective and legitimate nature, soft law can be used to steer negotiations and promote orderly resolution of disputes. (Gruchalla-Wesierski, 1984)

2.1.3 Opportunities and limitations of soft law

According to Abbott and Snidal (2000: 422), “the choice between hard law and soft law is not a binary one”, but rather a continuum set between two extremes. The choice of which form is best suited depends heavily on the surrounding circumstances. While hard law has many benefits, it is ultimately highly rigid in its functioning. Soft law can have significant advantages over hard law in certain situations, as it is much more flexible in nature. Thus, with regard to complex international affairs, soft law can be more suited in this context. (Abbott and Snidal, 2000)

The power of soft law lies largely in the expectations it raises. As Gruchalla-Wesierski (1984: 54) contends: “…soft law is [...] composed of norms, which expressly or impliedly, are to be followed, and [...] this raises expectations”. However, states tend to only commit to legal obligations they anticipate themselves to be able to comply with (Bothe, 1980 cited in Gruchalla-Wesierski, 1984), which, according to Gruchalla-Wesierski (1984), shows considerable respect for international law on their part. Nevertheless, this tendency severely limits the effectiveness of soft law as a means of addressing global governance challenges.

According to Kirton and Trebilcock (2004), soft law approaches offer a way of taking action when governments are unable to do so due to a lack of consensus. By circumventing the rigid structures of international hard law, soft law can provide an effectual avenue for accomplishing change, since the process of agreeing on and
adopting soft law instruments is typically simpler and faster than that of their hard law counterparts. Soft law approaches also add legitimacy to their cause because of the bottom-up nature of soft law initiatives and, in addition, they provide a productive way for civil society to participate in global governance (Kirton and Trebilcock, 2004).

However, compliance, or lack thereof, is a major issue in soft law (Kirton and Trebilcock, 2004). According to Gruchalla-Wesierski (1984), soft law is extremely difficult to enforce owing to the fact that the parties it applies to decide amongst themselves what is to be included and on what grounds sanctions are to be imposed. The author refers to this as the subjective element of soft law, but stresses the point that this subjectivity is limited and there also exists an enforceable, objective element of soft law. However, due to its subjective element, soft law is often criticised in international contexts. As soft law is characterised by a lack of an independent enforcement authority, many feel it serves merely a perfunctory role in society (Abbott and Snidal, 2000). This lack of leverage severely limits the impact of most soft law mechanisms.

One interesting characteristic of soft law is its potential to develop into hard law over time. This can occur either by soft law having a direct effect on the actual practice of states and later being codified as a result of this, or by being written into international treaties and from there becoming a part of the arena of customary international law (Letnar Černič, 2008). However, this feature of soft law has in itself been criticised since it implies soft law is merely a means to an end and not adequate in itself (Abbott and Snidal, 2000). Despite this, the ability of soft law to develop into hard law can be considered an encouraging indication of the potential influence of soft law.

Soft law is in some cases viewed as simply a weakened form of hard law and thereby a failure, as it is perceived to have been unsuccessful in reaching the ideal that is hard law (Abbot and Snidal, 2000). However, soft law does offer some benefits which hard law cannot. Soft law instruments tend to encourage compromise and cooperation between different actors notably more than hard law instruments. In this way, soft law has an important place to fill in society and the ability to fill gaps in hard law. The flexibility of soft law makes reaching an agreement easier, but can at the same time weaken the effectiveness of the mechanism, as a compromise in one instance can set precedence for future negotiations. (Abbott and Snidal, 2000)
2.2 Multi-stakeholder governance

The potentially adverse impacts of MNE operations on the communities they are present in are well documented and discussed while the question of how to mitigate and address these adverse impacts remains a topical issue worldwide (e.g. Adeyeye, 2012; ILO, 2004; Kaplinsky, 2005; Ruggie, 2013). The inability of governments to manage the adverse impacts of MNE operations effectively, which is a result of the lacking legal framework of global governance, has led to governance gaps (Ruggie, 2008). These governance gaps provide opportunities for MNEs in terms of cost cutting, but also increase the risk of complicity in environmental and human rights abuses (Scherer and Palazzo, 2011), since they make it possible for MNEs to take advantage of the discrepancies between developed and developing countries. In recent years, multi-stakeholder governance has emerged as a means of addressing these governance gaps.

Utting (2002) divides the past 50 years of development in business regulation into three periods: state-led regulation (“command and control”) in the 1960s and 1970s, self-regulation in the 1980s and 1990s, and co-regulation in the 2000s. When state-led regulation was prevalent states where perceived as having the authority to dictate corporate behaviour. However, as the ideology of economic liberalism began to dominate the political landscape in the 1980s, state-led regulation was subverted by the idea of self-regulation, which contended business was capable of addressing social and environmental issues by voluntarily regulating its own behaviour. (Utting, 2002)

Self-regulation has been the subject of much criticism. For one thing, when corporations set the standards themselves, there is a tendency of making the regulations vague or easy to comply with. Thereby, self-regulation can lead to greenwashing, i.e. a form of public relations or marketing where the company merely gives the appearance of addressing environmental and social problems in order to attain a more favourable reputation, without the company actually doing anything meaningful in terms of tackling these issues (Utting, 2002). Another problem with self-regulation relates to the monitoring of self-set standards. When there is no independent entity monitoring and verifying a standard, the reliability of the standard comes into question (United Nations Research Institute for Social Development (UNRISD), 2001). Moreover, the implementation of codes of conduct or standards can put a disproportionate economic burden on firms in developing countries compared to firms in developed countries, since it can be very costly to put a code or standard into
effect. For this reason, resistance to self-regulation in developing countries has been known to occur. (Utting, 2002)

As issues with self-regulation have proved to be pervasive, business regulation development has more recently gone in the direction of co-regulation (Utting, 2002). Rather than solely relying on corporations to regulate themselves, co-regulation entails involving two or more actors in the formulation and implementation of environmental and social business standards:

In the field of corporate social responsibility (CSR), co-regulation arises when two or more actors or “stakeholders” are involved in the design and implementation of norms and instruments that attempt to improve the social and environmental performance of firms. This may involve government and/or multilateral organizations working with industry. (Utting, 2002: 4)

However, it is worth noting that co-regulation is still a form of self-regulation, albeit in a format that to some degree can be said to increase MNE accountability towards stakeholders, when compared to pure self-regulation.

Civil society plays a progressively more important role in co-regulation initiatives (Murphy and Bendell, 1999). By involving civil society in business regulation, civil regulation has emerged as a new way of addressing the governance gaps caused by globalisation. Civil regulation is the regulation of global business through civil society “pressure and influence” (Murphy and Bendell, 1999: VI). According to Utting (2002), the rise of civil regulation can be attributed to two main factors. Firstly, the insufficiency of unilaterally devised codes of conduct has become increasingly apparent on a societal level, and secondly, an increase in civil society’s ability to affect corporate behaviour along with willingness from both business and civil society to work together on these issues has led to the emergence of civil regulation as a viable alternative to other forms of regulation. Vogel (2010: 69) defines the concept of civil regulation as follows:

Civil regulations employ private, nonstate, or market-based regulatory frameworks to govern multinational firms and global supply networks. A defining feature of civil regulations is that their legitimacy, governance, and implementation is not rooted in public authority. Typically operating beside or around the state rather than through it, civil regulations are based on “soft law” or private law rather than legally enforceable standards: Violators typically face social or market penalties rather than legal sanctions (Abbott & Snidal, 2000; Kirton & Trebilock, 2004; Moth, 2004 [cited in Vogel, 2010]).

2.2.1 Multi-stakeholder initiatives

During the past half-century several MSIs have been developed with the intention of combating some of the challenges brought on by globalisation and the ever-evolving
global economic landscape. MSIs are private governance structures that foster collaboration between different actors from business, civil society, labour organisations and governments with the intention of combating some of the social and environmental challenges that are a result of recent global development (Utting, 2002). In MSIs:

[...] NGOs, multilateral and other organizations encourage companies to participate in schemes that set social and environmental standards, monitor compliance, promote social and environmental reporting and auditing, certify good practice, and encourage stakeholder dialogue and "social learning". (Utting, 2002: 2)

Moog, Spicer and Böhm (2015: 469) describe MSIs as “new forms of multi-stakeholder engagement [which] bring diverse sets of corporate and non-corporate stakeholders together as formally defined coequals [emphasis added] in sustained forms of interaction”. The word ‘coequal’ is central in this context, as it demonstrates the notion of egalitarianism MSIs are built upon. This is also what has helped popularise MSIs and bring non-corporate actors to the table, as the idea of being on equal terms with corporate representatives holds a substantial amount of appeal for many CSOs and other non-corporate stakeholders. MSIs promote the responsible behaviour of business by relying on cooperation and consensus building between different stakeholders. However, MSIs are not only forums for discussion. As a form of civil regulation, MSIs can be involved in the development, implementation and monitoring of social and environmental standards (Moog et al., 2015; Utting, 2002).

The German philosopher Jürgen Habermas has written extensively on the notion of the diminishing role of the nation state, a result of our globalised society (e.g. Habermas, 2001). Scherer and Palazzo (2011) use Habermas’ theorisations to discuss the politicisation of corporations and the emerging role of CSR in this new world order. As business activities expand past national borders, the regulatory power of nation states becomes severely limited, meaning their ability to enforce and monitor business activities is rendered inadequate in terms of the social and environmental impact business has on local societies. In the context of international trade, unclear mandates and insufficient accountability mechanisms have resulted in MNEs being able to operate in a so-called “legal vacuum” (Scherer and Palazzo, 2011: 911). By widening the scope of CSR and utilising it as a form of civil regulation, Scherer and Palazzo (2011) believe CSR can be a useful political instrument for combating social and environmental externalities in our globalised society.

Scherer and Palazzo’s (2011) political CSR is largely built around the MSI governance model, where states, civil society and corporations together engage in self-regulation
with soft law instruments governing corporate conduct. This decentralised form of governance relies on the notion of deliberative democracy, which differs significantly from our current democratic system (liberal democracy), a key issue with which is that:

[...] those who are democratically elected (governments) to regulate, have less power to do so, while those who start to get engaged in self-regulation (private corporations) have no democratic mandate for this engagement and cannot be held accountable by a civic polity. (Scherer and Palazzo, 2011: 907)

The aim of deliberative democracy, as discussed by Habermas (1996, 1998 cited in Scherer and Palazzo, 2011), is to directly include the citizens of nation states in the political process by linking collective opinion- and will-formation to the regulatory activities of the authorities. In a political system that relies on deliberation “…politics does not exclusively take place in the official governmental institutions but starts already at the level of deliberating civil society associations (Scherer and Palazzo, 2011: 918).

2.2.1.1 Conflicts of interest in multi-stakeholder initiatives

A central impediment to the effective functioning of MSIs is often the conflicting interests between different actors. The Global Reporting Initiative (GRI), a well-established environmental and social reporting framework, is representative of this problem. In their analysis of the GRI, Levy, Szejnwald Brown and de Jong (2010) discuss how the founders of the GRI aspired to create a nonfinancial reporting (NFR) framework that benefitted both business and civil society by reconciling two opposing rationales in the NFR field, namely that of civil regulation and corporate social performance. The civil regulation rationale regards social reporting as a “mechanism to empower civil society groups to play a more active and assertive role in corporate governance” (Levy et al., 2010: 90). The corporate social performance rationale, on the other hand, ties the value of social reporting to the benefits this can produce for management, investors, auditors and consultants. In other words, corporate social performance views social reporting as a means to an end while civil regulation views it as an accountability mechanism, i.e. an end in itself. (Levy et al., 2010)

Although the intention of the GRI was to develop an environmental and social reporting framework attractive to both business and civil society, there is evidence that suggests this goal has not been realised. Instead, the civil regulation rationale has been overshadowed by the corporate social performance rationale and as a result civil society participation in the initiative has decreased, thereby casting doubt on the GRI's
legitimacy and ability to reach its long-term goal of updating corporate governance in a manner that is consistent with the sustainability demands of the 21st century (Levy et al., 2010).

The departure of civil society groups from the GRI is not the only case of CSO defection from an MSI. In their case study of the Forest Stewardship Council (FSC), Moog et al. (2015) found that the initial decision of the FSC to focus on gaining dominance in the forest certification market resulted in severe organisational limitations. In an effort to overtake competing forest certification schemes, the FSC decided to set the bar for certification low enough to ensure retailers could acquire it with relative ease and, thus, the FSC was able to grow rapidly. The idea behind this decision was that standards could always be raised in the future but market dominance needed to be acquired promptly if the organisation was to be successful. (Moog et al., 2015)

However, by focusing on market dominance rather than industry standard-setting, the FSC ended up being impaired from the outset. As competing forestry labels continue to grow, it is becoming all the more difficult for the FSC to keep its customers. Market pressure has led the organisation to make some highly contested decisions, such as begin certifying monoculture tree plantations, which are widely regarded as not being eco-friendly. As a result, environmental NGOs have defected or at least begun to have serious doubts regarding the labelling scheme, which is eroding the legitimacy of the FSC itself. (Moog et al., 2015)

Although CSOs maintain a two-thirds majority in the FSC governing bodies, a discrepancy still exists between corporate interest groups and social and environmental interest groups (Moog et al., 2015). The fact that the original purpose of the FSC was never realised along with the lack of ability to monitor and enforce the FSC labels has left CSOs feeling disappointed with the initiative (Moog et al., 2015). As was the case with the GRI, the root causes of the FSC’s problems can be traced back to the conflicting interest between corporate and non-corporate (social and environmental) actors. Another common denominator in these two MSIs is the fact that the initiatives never managed to live up to the potential the CSOs involved were lead to expect.

2.2.1.2 Corporate accountability through multi-stakeholder governance

The literature on CSR offers few definitions of the concept of corporate accountability (Valor, 2005). It seems to be one of those concepts that is frequently discussed, but
rarely defined precisely. Valor (2005: 196) contends that corporate accountability can be viewed through the notion of “corporate control; that is, the establishment of clear means for sanctioning failure”. Consequently, Valor (2005: 197) perceives corporate accountability as something that provides “society with the means for choosing their companies and sanctioning corporate failure”. Based on the Oxford English Dictionary definitions of the concept of accountability, which is defined as “the quality of being accountable”, and the word accountable, defined as “liable to be called to account or to answer for responsibilities and conduct; required or expected to justify one’s actions, decisions, etc.; answerable, responsible”, Bernaz (2013: 494) differentiates between corporate accountability and corporate liability as follows:

The phrase ‘corporate accountability’ must be distinguished from ‘corporate liability’, which implies a legal obligation or a legal duty. As such, when a given obligation is breached, the injured party can initiate legal proceedings against the company before a court of law. Accountability is a wider and looser concept, not limited to the consequences of the breach of a necessarily circumscribed legal obligation. It encompasses the idea that those accountable should be answerable for the consequences of their actions and refers to ‘non-legal risks of loss of reputation, denial of access to foreign markets, and shareholder dissent (not to mention plunging stock values)’ [Scheffer and Kaebe, 2011, cited in Bernaz, 2013].

Corporate accountability thus extends beyond the legal norms a corporation is subject to and implies that corporations are answerable for their actions to various stakeholders.

Corporate accountability is increasingly being ensured through civil regulation and soft law (Jackson, 2010). Jackson (2010) argues that the emergence of global soft law governance has resulted in corporations becoming increasingly susceptible to reputational risks and, therefore, reputational accountability mechanisms have become an important way of ensuring corporate compliance with international guidelines regulating corporate behaviour. As the general definition of accountability suggests that noncompliance to standards of some sort may result in sanctions, reputational accountability implies that those sanctions will be directed towards the corporation’s reputation, which can be considered to be the corporation’s “most valuable, albeit intangible, asset” (Jackson, 2010: 91). According to Jackson (2010: 106), reputational accountability fills the gap between national regulations and global soft law:

A set of self-regulating norms and mechanisms, along with multi-stakeholder initiatives and co-regulation, guide CSR. The global corporate governance paradigm continues to be shaped by ethical standards and the pursuit of greater accountability for business. As corporate social responsibility adjusts to meet expectations for transnational business conduct, it will coalesce within the space of reputational capital theory. Thus, reputational accountability will continue to fill the ever-expanding gap between national regulations and the burgeoning multitude of “soft law” civil regulations.
MSIs have the ability to facilitate societal control of corporations through their impact on the reputational accountability of corporations. By involving stakeholders in business regulation formulation and implementation, MSIs can contribute to raising corporate accountability. This is also from where MSIs derive their legitimacy: the dialogue-based, democratic structure that is the foundation of this form of soft law. This legitimacy can be compromised if certain stakeholder groups are left out of the proceedings (Kirton and Trebilcock, 2004) or if different groups are given an unequal amount of representation and/or influence. The legitimacy of an MSI can be compromised in equal measure if certain stakeholders opt-out of that MSI, as has been the case in MSIs such as the GRI and the FSC, where civil society partners left due to dissatisfaction with the functioning of the initiative. In this way, CSO defection has a direct impact on the MSIs ability to hold corporations accountable, as it erodes the credibility and democratic structure of a MSI.
3 CONTEXT OF THE CASE STUDY

Since this case study utilises a single significant case, an in-depth exploration of the case is warranted (Patton, 2015). In order to facilitate the understanding of the circumstances surrounding the Pöyry case for the reader, the context of the case study is presented here in a separate chapter. The objective of the context chapter is to give the reader an opportunity to familiarise him- or herself with the background of the study before considering the methodology. The context is divided into two parts; a review of the OECD Guidelines is first presented (sub-chapter 3.1), after which the Finnish NCP as well as the Pöyry case are examined (sub-chapter 3.2).

3.1 OECD Guidelines

The Organisation for Economic Co-operation and Development (OECD) was established in 1961 (OECD, 2016). In 1976, the OECD adopted the OECD Guidelines for Multinational Enterprises (OECD Guidelines) as part of the Declaration on International Investment and Multinational Enterprises (Declaration). The current 35 member countries of the OECD are Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States (OECD, 2017b).

The governing bodies of the OECD consist of the Council, the Secretariat and various committees (Figure 1). The Council is the primary decision-making organ of the OECD. One representative from each OECD country as well as one from the European Commission meet regularly to discuss important issues and set the OECD agenda. The Secretariat is located in Paris, which is the headquarters of the OECD, and has a staff of around 2,500 people. Angel Gurría is the current Secretary-General and also chairs the Council. In this way the Council, i.e. the national delegations, and the Secretariat, which executes the agenda set forth by the Council, are linked. The OECD also contains around 250 different committees, working groups and expert groups that are made up of representatives from the member countries. An estimated 40,000 people from national administrations take part in these committees each year. The committees are centred on specific policy areas, such as trade, employment, education and so forth. (OECD, 2016d)
The governments of these 35 OECD countries, as well as those of Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Kazakhstan, Lithuania, Morocco, Peru, Romania, Tunisia and Ukraine, have all endorsed the Declaration (OECD, 2017a), making 48 the total number of governments currently adhering to the Declaration. The Declaration is:

[...] a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. (OECD 2017a)

The intention behind the Declaration was to improve the global investment climate for MNEs and facilitate the beneficial aspects of MNE operations whilst reducing the adversities created by them (OECD, 2012). The Declaration is composed of four elements the adhering governments are expected to abide by. These pertain to the concept of national treatment, conflicting requirements, international investment incentives and disincentives as well as the OECD Guidelines, all of which are reviewed periodically (OECD, 2017a). National treatment requires adhering governments to treat MNEs operating in their country as they would any domestic corporations, i.e. not discriminate against foreign MNEs in any way. Conflicting requirements refers to the idea that adhering governments should avoid or minimise placing any requirements on
MNEs that would subject these corporations to a conflict of interest, while the section on *international investment incentives and disincentives* is about recognising the need for cohesive international investment practices and providing appropriate incentives and disincentives for investment activities. (OECD, 2012)

The OECD Guidelines are a set of voluntary principles related to responsible business conduct for enterprises operating in a global context (OECD, 2011). As “recommendations addressed by governments to multinational enterprises” the OECD Guidelines are applicable to MNEs based or operating in adhering countries (OECD, 2011: 13). They do not apply to MNEs operating from and in non-adhering nations. However, as MNEs are private entities and cannot be subject to binding legal instruments (Franciose, 2007), the OECD Guidelines are voluntary in nature. Nevertheless, the commitment governments make to adhere to the OECD Guidelines is binding (OECD, 2011).

**Table 1  OECD Guidelines chapters**

<table>
<thead>
<tr>
<th>Chapters in the 2011 Edition of the OECD Guidelines for Multinational Enterprises</th>
<th>General Policies</th>
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<tbody>
<tr>
<td></td>
<td>Disclosure</td>
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<td></td>
<td>Human Rights</td>
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<tr>
<td></td>
<td>Employment and Industrial Relations</td>
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<td></td>
<td>Environment</td>
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<td></td>
<td>Combating Bribery, Bribe Solicitation and Extortion</td>
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<tr>
<td></td>
<td>Consumer Interests</td>
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<tr>
<td></td>
<td>Science and Technology</td>
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<tr>
<td></td>
<td>Competition</td>
</tr>
<tr>
<td></td>
<td>Taxation</td>
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</table>

*Source: OECD, 2011*

The OECD Guidelines text is divided into two parts, where part I contains the recommendations and commentary to the recommendations, while part II deals with the implementation procedures. The recommendations cover a wide range of areas applicable to MNE operations and contain chapters related to general policies, disclosure of information, human rights, employment and industrial relations, environment, bribery and extortion, consumer interests, science and technology,
competition and taxation (Table 1). The implementation procedures contain procedural guidance and commentary to the implementation procedures. (OECD, 2011)

In the most recent update of the OECD Guidelines in 2011 a new chapter dealing with human rights was added. The human rights chapter is consistent with the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) (OECD, 2011), which were developed by John Ruggie during his time as the Special Representative of the Secretary-General for the UN (Ruggie, 2011). The Ruggie framework consists of three main principles: the State duty to protect human rights, the corporate responsibility to respect human rights and the need for effective access to remedy when human rights abuses occur (Ruggie, 2011). In the same way as the UN Guiding Principles places the main responsibility for upholding human rights on states, so does the OECD Guidelines.

A key principle of the OECD system in general, and the OECD Guidelines specifically, relates to enterprises with operations in countries with weak governance zones, a matter that is dealt with in the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones (OECD, 2006). A weak governance zone is described as “an investment environment in which governments are unable or unwilling to assume their responsibilities” (OECD, 2006: 9). Enterprises operating in such countries are expected to maintain the highest ethical standards and not take advantage of these weak governance conditions to further their own interests. On the contrary, the responsibilities of enterprises operating in these countries mimic those of governments, as enterprises are expected to, in some ways, take on the role of the state in upholding ethical governance. (OECD, 2006)

### 3.1.1 Implementation procedures of the OECD Guidelines

It is the task of the adhering governments to promote and implement the OECD Guidelines in their territories (OECD, 2011). The implementation procedures of the Guidelines consist of three parts: National Contact Points (NCPs), the Investment Committee and various advisory committees (Figure 2).
The objective of NCPs is to facilitate the effectiveness of the OECD Guidelines. This is done by actively promoting the OECD Guidelines, dealing with enquiries related to them and through the specific instance mechanism, a feature that is unique to the NCP structure. The specific instance mechanism of the NCPs is a way of resolving issues between stakeholders and MNEs from adhering countries. NCPs should meet regularly and if necessary, cooperate with NCPs from other countries. It is also the task of the NCPs to make the services they provide available to stakeholders in the business community, labour organisations, NGOs and any other parties that may have an interest in matters pertaining to the OECD Guidelines. Furthermore, it is the task of the adhering countries and governments to provide the NCP with the “human and financial resources” needed for the NCP to be able to sufficiently fulfil its duties. (OECD, 2011: 68)

NCPs report on their activities directly to the Investment Committee. In their reports to the Investment Committee, NCPs should include information on specific instances they have handled (OECD, 2011). The Investment Committee is to facilitate the continuous development of the OECD Guidelines by periodically organising exchanges of views between adhering countries. The Investment Committee should also engage with and promote responsible business conduct to non-adhering countries. The Investment Committee reports to the OECD Council on matters related to the OECD Guidelines and shall in these reports consider the views of the NCPs, OECD advisory committees, OECD Watch, other international partners as well as non-adhering countries. (OECD, 2011)
It is also the Investment Committee that is responsible for providing clarification on the content of the OECD Guidelines. If a specific instance requires clarification of the OECD Guidelines, apart from providing the actual clarification, the Investment Committee should also give the parties involved in the specific instance the opportunity to express their views on the matter. The Investment Committee does not have mandate to decide on whether or not a specific enterprise has breached the OECD Guidelines. Instead, that is a matter for the NCP in which the enterprise is based to decide. (OECD, 2011)

The Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) are the main OECD advisory committees involved in the implementation of the OECD Guidelines. BIAC is an international business organisation advocating for open markets and private sector-led growth and represents the interests of business in OECD contexts (BIAC, 2016). TUAC, as an international trade union organisation, represents the interests of trade unions in industrialised countries (TUAC, 2016). Both BIAC and TUAC contribute to the policy-making work of the OECD through their roles as advisory committees.

It is the task of the Investment Committee to regularly invite these aforementioned advisory committees, along with OECD Watch and other significant partners to contribute to the development of the OECD Guidelines (OECD, 2011). OECD Watch is:

[...] an international network of civil society organisations promoting corporate accountability. The purpose of OECD Watch is to inform the wider NGO community about policies and activities of the OECD’s Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. (OECD Watch, 2016)

OECD Watch thereby functions as a watchdog to the OECD in matters related to the OECD Guidelines. OECD Watch is also involved in the specific instance mechanism of the NCPs, as it maintains a database of cases handled by NCPs from all different OECD member countries (OECD Watch, 2016c).

3.1.1.1 National Contact Points

The purpose of NCPs is to promote and advance the effectiveness of the OECD Guidelines (OECD, 2011). NCPs should “assist enterprises and their stakeholders to take appropriate measures to further the implementation of the [OECD] Guidelines” (italics removed, OECD, 2011: 3). The functioning of NCPs is based on four core criteria, which NCPs are to observe in all their activities:
The concept of functional equivalence refers to the notion that all NCPs should be equal in the sense that they should be able to operate on a consistent standard level. In the 2011 revision, the OECD Guidelines’ procedural guidance was ameliorated in order to bolster the role of NCPs, enhance their functioning and promote functional equivalence (OECD, 2011). The core criteria of visibility, accessibility, transparency and accountability are meant to ensure the functional equivalence of NCPs. Visibility refers to adhering countries’ duty to promote the OECD Guidelines and inform interested parties (e.g. industry and business organisations, labour organisations and civil society) about NCPs, the work they do and the services they provide. Accessibility relates to the idea that it should be easy for any interested party, whether this be a formal organisation or a member of the public, to access NCPs when needed. NCPs are expected to respond to “legitimate requests for information” and “undertake to deal with specific issues raised by parties concerned” promptly and without any undue delay. (OECD, 2011: 79)

The criterion of transparency is closely related to that of accountability. Transparency refers to the fact that NCPs should operate in a transparent manner, which in turn fosters trust in NCPs and makes it possible for them to be held accountable for their actions. However, when dealing with specific instances, NCPs are encouraged to “take appropriate steps to establish confidentiality of the proceedings”, although the outcome of the proceedings should be transparent, unless not making the outcome known “is in the best interests of effective implementation of the [OECD] Guidelines” (italics removed). The commentary on the criterion of accountability mentions NCPs having an active role in the promotion of the OECD Guidelines and in mediation between parties of a specific instance case, and how this will make NCPs the focus of public interest. NCPs are also encouraged to “share experiences” and learn from each other. (OECD, 2011: 79)

The governments of adhering countries set up the NCPs. There is a certain measure of flexibility associated with the composition of a NCP, as the members can include both governmental representatives from ministries and social partners, such as members of the business community, workers organisations, non-governmental organisations and other relevant parties (OECD, 2011). This flexibility means that some NCPs are under a single ministry or government agency, while others can be under multiple ministries or agencies (OECD Watch, 2016a). Governments can also “establish multi-stakeholder
advisory or oversight bodies to assist NCPs” (OECD, 2011: 80). NCPs should be set up in a way that enables them to effectively and impartially deal with issues and enables public confidence to be maintained in NCP activities. As NCPs are also tasked with making the OECD Guidelines available to the citizens of the country they represent, this includes making the OECD Guidelines available in the national language of the country in question. (OECD, 2011)

In order to ensure that the standard of functional equivalence is upheld and NCPs are able to function independently and impartially, OECD Watch (2016a) recommends for NCPs not to be placed under one single ministry or governmental agency, because of the conflicts of interest this could result in. The risk of certain interests being disproportionately emphasised is thought to be reduced by placing an NCP under multiple ministries or agencies. OECD Watch (2016a) also stresses the importance of NCPs having an oversight body of some sort that could give advice and ensure the independence of the NCP.

3.1.1.2 Specific instance mechanism of National Contact Points

The specific instance mechanism of NCPs is a unique tool for addressing corporate violations of responsible business practices. The specific instance mechanism is effectively a dispute resolution mechanism that handles alleged breaches of the OECD Guidelines made by MNEs. In most situations, cases are brought forward by “adversely-impacted stakeholders or civil society organizations” (OECD Watch, 2016a). NCPs can handle disputes related to both enterprises operating in their country and enterprises operating from their country (OECD Watch, 2016a). The procedural guidance on specific instances states the following:

The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the [OECD] Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the [OECD] Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. (OECD, 2011: 72)

The guiding principles for specific instances are, thereby, impartiality, predictability, equitability and compatibility with the OECD Guidelines. Impartiality refers to the need for unbiased handling of all cases brought forth. Predictability relates to the process of the proceedings and the fact that information regarding the progression of the case, including different stages and timeframes, should be publicly available for all
concerned parties. *Equitability* refers to the ability of different parties to engage in the specific instance mechanism on equal terms, including being able to access relevant information. *Compatibility with the OECD Guidelines* signifies the need for NCP activities and modes of operation to be in compliance with the OECD Guidelines. (OECD, 2011)

The OECD Guidelines procedural guidance and commentary text outlines how NCP should deal with disputes brought to them. When a case involving the alleged breach of the OECD Guidelines by an enterprise is brought to a NCP, the proceedings can be divided into three main phases (Figure 3).

**Figure 3  Specific instance process**

<table>
<thead>
<tr>
<th>PHASE 1</th>
<th>PHASE 2</th>
<th>PHASE 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INITIAL ASSESSMENT</strong></td>
<td><strong>GOOD OFFICES</strong></td>
<td><strong>CONCLUSION</strong></td>
</tr>
<tr>
<td>3 months*</td>
<td>6-12 months*</td>
<td>3 months*</td>
</tr>
<tr>
<td>Analyse if the issues raised merit further examination.</td>
<td>Consult with the parties.</td>
<td>Issue statement or report if:</td>
</tr>
<tr>
<td><strong>YES</strong></td>
<td><strong>To phase 2</strong></td>
<td>Agreement is reached. [Report]</td>
</tr>
<tr>
<td><strong>NO</strong></td>
<td><strong>To phase 3</strong></td>
<td>Party is unwilling to participate in the procedures. [Statement]</td>
</tr>
</tbody>
</table>

*Indicative timeframe

*Source: The figure has been adapted from the Chair of the OECD Working Party on Responsible Business Conduct, Prof. Dr Roel Nieuwenkamp’s presentation slides at the “OECD Guidelines for Multinational Enterprises – 40 years” event held in Helsinki 25.8.2016*

The first phase (phase 1, initial assessment) consists of the NCP making an initial assessment regarding whether or not the case warrants further examination. If it is decided that the case does not warrant further examination, a statement detailing the issues brought forth and the grounds on which the NCP based its decision not to pursue the case further should be issued. If, on the other hand, it is decided that the case warrants action on the part of the NCP, the actual case proceedings will begin (phase 2, good offices). The NCP will then act as a mediator between the party that brought the
case forward and the enterprise that has allegedly breached the OECD Guidelines. Here the NCP is encouraged to seek advice and guidance from relevant parties (e.g. the authorities, experts) if needed. If the alleged breach of the OECD Guidelines concerns violations made in other OECD member countries, the NCPs of those countries should also be called on. If the case entails uncertainty regarding how to interpret the OECD Guidelines, the Investment Committee should be contacted, who will then provide clarification. (OECD, 2011)

If the parties are not able reach an agreement or if one party refuses to participate in the proceedings, the NCP should issue a final statement (phase 3, conclusion) detailing 1) the issues brought forth, 2) the grounds on which the NCP based its decision to pursue the case further, 3) actions the NCP took in assisting the parties in resolving the matter, 4) recommendations regarding the implementation of the OECD Guidelines, and, if suitable, 5) the reasons for why an agreement was not reached. If the parties, on the other hand, are able to reach an agreement the NCP should issue a statement detailing the issues brought forth and actions the NCP took in assisting the parties in resolving the matter. The specifics of the agreement reached will only be included in this statement if both parties agree to it. (OECD, 2011)

The final statement is the only form of penalty a NCP can impose on an enterprise for breaching the OECD Guidelines. The final statement derives its value from influencing public opinion. If the NCP reaches the conclusion that an enterprise has breached the OECD Guidelines and makes this information publicly known, this may affect stakeholder perception of the enterprise and can in this way damage relations between the enterprise and its stakeholders, which will have negative consequences on the enterprise in question. However, no direct penalties can be imposed as a result of the specific instance mechanism of NCPs.

3.1.2 OECD Guidelines as soft law

The OECD corporate governance system is composed of three sets of principles that have together made a significant contribution to MNE governance custom (Catá Backer, 2011). The G20/OECD Principles of Corporate Governance (OECD, 2016b) and the OECD Guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2016c), together with the OECD Guidelines, create a comprehensive foundation for the global governance of enterprises. According to Catá Backer (2011) the impact of these sets of principles is evident in their popularity of their use.
The OECD Guidelines aim to fill the regulatory gaps of the international legal framework by linking governments and business, and by promoting cooperation and consensus building (OECD, 2011a). The OECD Guidelines are “the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting” (OECD, 2011: 3). As the OECD Guidelines have an international reach that extends far past national boarders, they are largely characterised by the supranational role they play (Santner, 2011).

The relevance of the OECD Guidelines as a soft law mechanism largely pertains to the extensive reach of the standards (Santner, 2011). Since the OECD Guidelines are applicable both to MNEs operating in and from adhering countries (OECD, 2011), they have a very broad sphere of influence. In addition, with the inclusion of the human rights chapter in the 2011-updated version of the OECD Guidelines, this is the first time an inter-governmental organisation has introduced human rights standards for corporations to act in accordance with (Santner, 2011).

Even though soft law instruments such as the OECD Guidelines are judicially non-binding, that does not mean that they are without effect. If a soft law instrument gains widespread acceptance it can start to be viewed by the larger community as something required rather than optional, and entities that chose not to abide by it may be pressured into doing so eventually. In this way, soft law can over time develop into hard law (Letnar Černič, 2008). According to Santner (2011), the OECD Guidelines’ potential to develop from soft law into hard law is significant considering the fact that the OECD Guidelines were composed in cooperation with a wide selection of governments and other stakeholders. In other words, the multi-stakeholder approach utilised in the formation of the OECD Guidelines increases the likelihood of the content of the standards being incorporated into national legislation, at least in some form, given the fact that these standards were agreed upon by such a diverse crowd.

However, setting aside the potential of the OECD Guidelines to develop into hard law, the ability of the OECD Guidelines to effectively contribute to the regulation of MNEs has been questioned (e.g. Davarnejad, 2011; the International Council of Human Rights Policy (ICHRP), 2002; Letnar Černič, 2008). As the OECD Guidelines are voluntary and non-binding, there are no legal sanctions that can be applied to non-compliant enterprises. As a consequence, the ICHRP describes the specific instance mechanism as weak in their analysis of the 2000 edition of the OECD Guidelines (ICHRP, 2002). Although the 2011 edition of the OECD Guidelines strengthened the role of NCPs
(OECD, 2011), the effectiveness of the specific instance mechanism is still limited. If an enterprise is found to have breached the OECD Guideline, a final statement regarding the enterprise’s transgressions will be publicised. However, the specific instance mechanism is not to designed to punish non-compliant enterprises, but to foster cooperation and consensus-building between parties, and that objective cannot be achieved if the alleged offender is not willing to participate in mediation procedures together with the complainant. Nevertheless, the specific instance mechanism has the potential to “mimic hard law enforcement outside a state’s jurisdiction”, due to the fact that MNEs can be found to have breached the OECD Guidelines in operations outside their home country by the NCP of their home country (Santner, 2011: 387). This is significant for the reason that NCPs’ authority to convict an enterprise has a global reach, due to the global reach of the OECD Guidelines.

3.2 Finnish National Contact Point

The Finnish NCP was established in 2000 and is housed under the Ministry of Employment and the Economy (MEE), which together with the Committee on Social and Corporate Responsibility (CSCR) forms the NCP (OECD, 2016a). As a quadripartite NCP, the Finnish NCP is composed of four different parties: governmental ministries, civil society organisations, business and labour organisations, and non-governmental organisations (OECD Watch, 2016b). The members of the advisory committee – the CSCR – are nominated to their positions by the MEE and appointed for a period of three years. The CSCR consists of a chairperson, a vice-chairperson and a maximum of 14 other principal members. Every one of the maximum 16 members in total has a corresponding alternate. The number of MEE officials working on matters related to the NCP is not fixed, but in practice two or three MEE officials work with matters related to the NCP.

In Figure 4, the representation of the CSCR is presented as each main stakeholder group’s membership percentage of the committee as a whole, which is 15 members including the chairperson and vice-chairperson. The main groups are governmental ministries (33%), business and labour organisations (40%), and civil society organisations (27%). Non-governmental organisations are displayed as a part of civil society organisations, both in Figure 4 and Table 2.
Table 2 shows all the organisations involved under each main group. For the CSCR terms of 2011-2014 (term the Pöyry case took place) and 2014-2017 (current term), the composition was largely the same in terms of member organisations. The one exception is found under the category of civil society organisations. WWF Finland was a member of the CSCR when the Pöyry case was initiated, but resigned from the advisory committee in 2013. In the current composition of the CSCR, the Finnish Association for Nature Conservation has taken over WWF Finland’s spot.

*WWF Finland resigned from the CSCR at the time of the Pöyry case and was replaced by FANC in the 2014-2017 term*
The MEE has a webpage where they detail the general outlines of the specific instance mechanism (MEE, 2016a). This information is available in Finnish (MEE, 2016b), Swedish (MEE, 2016c) and English (MEE, 2016a). The webpage describes how a complaint can be submitted and the information it needs to include. It also gives a brief description of the specific instance process, from the initial assessment to the examination of the case to the final statement. The Finnish and English pages contain a template form that can be used when submitting the case (appendix 1).

If the case is deemed valid in the initial assessment phase, the mediation process begins. If the parties are not able to reach an agreement, the CSCR (described as the “CSR committee” on the webpage) will examine the case. They will include both the initial material submitted to the MEE, as well as any supplementary material that has been delivered after the complaint was filed in their examination of the case. Supplementary materials need to be delivered no less than three weeks before the CSCR meets to discuss the case. (MEE, 2016a)

The CSCR then delivers a verdict on whether or not the enterprise that is the subject of the complaint has breached the OECD Guidelines. However, it is the MEE that makes the final decision on the verdict and they can, in theory, disagree with the CSCR and come to a different conclusion regarding a specific instance case.

### 3.2.1 Cases involving the Finnish National Contact Point

The Finnish NCP had been involved with four specific instance cases in total by 2017. Three of these were related to Oy Metsä-Botnia’s Orion pulp mill project in Uruguay and one to Pöyry Group’s consultancy in the Xayaburi Dam project in Lao PDR. An overview of the cases is presented in Table 3. Given the time span the Finnish NCP has been operational, not many cases have been brought before the advisory committee. The first case submitted to the Finnish NCP was filed in April of 2006, closely followed by the second and third case, both filed in June of the same year. The fourth, and most recent, case was filed in June of 2012.
Table 3  Cases involving the Finnish NCP

<table>
<thead>
<tr>
<th>Title</th>
<th>Issue</th>
<th>Date filed</th>
<th>Status</th>
<th>Relevant Guidelines Chapters</th>
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<tbody>
<tr>
<td>CEDHA vs Botnia S.A.</td>
<td>Oy Metsä-Botnia Ab’s Orion pulp mill project in Uruguay</td>
<td>18 April 2006</td>
<td>Concluded</td>
<td>- General Policies</td>
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<td>- Disclosure</td>
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<td>- Environment</td>
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<td>- Bribery</td>
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<tr>
<td>CEDHA vs Finnvera plc</td>
<td>Oy Metsä-Botnia Ab’s Orion pulp mill project in Uruguay</td>
<td>8 June 2006</td>
<td>Rejected</td>
<td>- General Policies</td>
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<td>- Bribery</td>
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<tr>
<td>CEDHA and Bellona vs Nordea</td>
<td>Oy Metsä-Botnia Ab’s Orion pulp mill project in Uruguay</td>
<td>28 June 2006</td>
<td>Concluded</td>
<td>- General Policies</td>
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<td>- Bribery</td>
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<tr>
<td>Siemenpuu et al. vs Pöyry Group</td>
<td>Pöyry Group’s controversial advice on Xayaburi Dam in Laos</td>
<td>11 June 2012</td>
<td>Concluded</td>
<td>- General Policies</td>
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<td></td>
<td>- Human Rights</td>
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<td></td>
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<td></td>
<td></td>
<td>- Environment</td>
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</tbody>
</table>

Source: OECD Watch 2016b

The Oy Metsä-Botnia Ab’s Orion pulp mill cases were all filed in 2006 and for this reason still applied the 2000 version of the OECD Guidelines, which did not contain a separate chapter on human rights, as the following 2011 version did. Instead, human rights were only briefly mentioned in the general policies section. It is worth noting that while the Botnia cases centred around the general policies section. It is worth noting that while the Botnia cases centred around the general policies section, disclosure, environment and bribery chapters of the OECD Guidelines, human rights concerns were also at the forefront. All Botnia cases were filed by the Centre for Human Rights and Environment (CEDHA), a non-profit organisation that originated in Argentina in 1999, but now resides in the US, and aims “to build a more harmonious relationship between the environment and people” (CEDHA, 2016).

The CEDHA vs. Botnia S.A. case dealt with the Finnish company Botnia S.A./Metsä-Botnia (today known as Metsä Fibre, a subsidiary of Metsä Group), which was in the process of building the Orion pulp mill on the Uruguay River, bordering Argentina. The project was associated with many environmental concerns as well as human rights concerns, as the project would impact local stakeholders in the area and their livelihoods. In addition, the project added to the straining political relationship
between the governments of Argentina and Uruguay, who were already disputing pulp mill construction on the Uruguay River. The Finnish NCP accepted the case for consideration after the initial assessment but later dismissed the case, stating that Metsä-Botnia had not violated the OECD Guidelines with their activities in Uruguay (NCP Finland, 2006).

The *CEDHA vs. Finnvera plc* case was rejected by the Finnish NCP after the initial assessment, meaning the case was never heard in full. The OECD Guidelines were found to not apply to Finnvera because the company could not be considered to be a MNE and the OECD Guidelines do not deal with state export guarantee activities (NCP Finland, 2006a). The decision to reject the complaint was controversial as it was made in October of 2006, and the Finnish NCP had invited CEDHA to come and discuss the Botnia, Finnvera and Nordea cases in August of 2006. This meeting gave an indication of the cases already having been accepted, which is why the rejection of the Finnvera case a couple of months later was surprising for some.

The *CEDHA and Bellona vs. Nordea* case was handled by the Swedish NCP, which acted on behalf of both the Swedish and Norwegian NCP’s as they case was direct toward both NCP’s. The case also had ties to the Finnish NCP because of the two parallel Orion pulp mill cases the Finnish NCP was handling at the time. The Swedish NCP ultimately found that there was no “indications to support the complaints made about Nordea having violated the OECD Guidelines in its part-financing of Botnia’s pulp mill in Uruguay” (NCP Sweden, 2008), a verdict that was to a large extent based on the Finnish NCP’s dismissal of the *CEDHA vs. Botnia S.A.* case. (OECD Watch, 2016e)

As a result of the Botnia cases, several complaints regarding the Finnish NCP were filed with the Finnish Parliamentary Ombudsman. This did not have any effect on the situation, as the Finnish NCP refused to review its decisions in the matter.

### 3.2.2 Siemenpuu et al. vs. Pöyry Group

Siemenpuu Foundation (Siemenpuu) together with 14 other civil society organisations submitted a specific instance complaint to the Finnish NCP in June 2012 (Siemenpuu Foundation, 2012). Siemenpuu is a Finnish NGO that “provides support to environmental work by civil societies in developing countries” (Siemenpuu Foundation, 2016). The complaint concerned the Finland-based Pöyry Group, whose Switzerland-
based subsidiary Pöyry Energy AG had acted as consultant to Lao People’s Democratic Republic (Lao PDR) in a hydropower dam project near the town of Xayaburi. The hydropower dam was to be built in the lower Mekong River, the longest river in Southeast Asia spanning about 4,350 km. The Mekong is a trans-boundary river that runs through the countries of China, Myanmar, Lao PDR, Thailand, Cambodia and Viet Nam.

In 2011, Pöyry Energy AG was commissioned by the Laotian Government to conduct an assessment of whether Xayaburi Power Company Ltd.’s plans to build a dam in Lao PDR in the Lower Mekong River were in compliance with the Mekong River Commission’s (MRC) recommendations regarding the use of the Mekong River Basin, and whether the Laotian Government and Xayaburi Power Company Ltd. had adequately factored in the MRC member states’ comments regarding the proposed project.

The MRC is and “inter-governmental agency that works directly with the governments of Cambodia, Lao PDR, Thailand and Viet Nam ... [and that] aims to ensure that the Mekong water is developed in the most efficient manner that mutually benefits all Member Countries and minimises harmful effects on people and the environment in the Lower Mekong Basin” (MRC, 2016). The MRC was established in 1995 in connection with the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (Mekong Agreement). It is a framework for cooperation regarding the “sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources” (MRC, 1995).

A key element of the Mekong Agreement is detailed in the 1995 Mekong Agreement and Procedures document (MRC, 2011). This key element is the Procedures for Notification, Prior Consultation and Agreement (PNPCA), which give the Mekong Agreement member countries more specified guidance on cooperation regarding “proposed water utilisation and inter-basin diversions projects” (MRC, 2011). The PNPCA section states that all MRC member countries need to be consulted in the case of projects such as the Xayaburi dam project and lays out how this consultation is to be carried out (MRC, 2011). The prior consultation process is described as follows:

The prior consultation process under Procedures for Notification, Prior Consultation and Agreement (PNPCA) is a requirement of the 1995 Mekong Agreement for countries to jointly review any development project proposed for the mainstream with an aim to reach a consensus on whether or not it should proceed, and if so, under what conditions.
Mainstream hydropower projects can bring significant benefits in terms of renewable energy and budget revenues, but can also cause environmental and social impacts on the local and transboundary scale. In combination with other hydropower schemes, those impacts can have a cumulative character. (MRC, 2017)

The PNPCA also includes provisions on public participation, i.e. the involvement of the public in the process, as the development of the Mekong River Basin affects the local population based in the area and their futures. The aim of public participation is “to enable information on the full range of perspectives, concerns and expectations of relevant stakeholders, which will be presented to decision makers” (MRC, 2017).

In their complaint to the Finnish NCP, Siemenpuu alleged that Pöyry had acted irresponsibly as consultant to the Laotian Government, in the process neglecting the environmental impact of the Xayaburi dam project and failing to respect the human rights of the thousands of people who depend on the Mekong River for their livelihoods (Siemenpuu Foundation, 2012). The complaint also stated that Pöyry, through its consultancy services, had given the Laotian Government the wrongful impression that the PNPCA terms had been fulfilled and thereby aided the Laotian Government in advancing the project without the approval of all MRC member countries. The complaint also described how Pöyry had directly undermined the Finnish Government’s development policies in the Mekong region, as the Finnish Government is a supporter of the MRC and has contributed to the financing of, for example, the Strategic Environmental Assessment of Mainstream Dams. (Siemenpuu Foundation, 2012)

In August of 2012, Pöyry gave a reply to the complaint, deeming it to be completely unfounded (Pöyry PLC, 2012). However, in October of 2012, after making an initial assessment, the Finnish NCP decided to accept the case (NCP Finland, 2012). The Ministry of the Environment and the Ministry for Foreign Affairs were asked by the MEE to give statements on particular aspects of the case (MEE, 2013b; MEE, 2013c). These statements were given in January of 2013. Pöyry then responded to these statements in February of 2013, per request of the MEE (Pöyry PLC 2013; Pöyry PLC 2013a). In the beginning of April of 2013, a meeting between the complainants and the MEE was held (NCP Finland, 2013). This meeting took place before the CSCR met to give their verdict of the case. Later in the month of April the complainant’s responses to the statements of the ministries and Pöyry’s replies to said statements were published (Siemenpuu Foundation, 2013; Siemenpuu Foundation, 2013a).
An interesting feature of the Pöyry case was that it prompted the NGO WWF Finland to resign from the CSCR in 2013 due to dissatisfaction with the governance arrangement. The reason behind their departure was that members of the CSCR are first and foremost involved in the CSCR as private individuals, and not as representatives of their respective organisations. This means that separate members of the CSCR are prohibited from discussing specific instance cases and other confidential matters with others in their background organisation, as the arrangement of the CSCR does not allow for collective decision-making within the separate member organisations.

In June of 2013, the final statement of the Finnish NCP was issued. The complaint had been submitted one year prior to this. In the final statement it was declared that:

> The national contact point concludes that Pöyry cannot be considered to have violated the OECD's Guidelines, but the complaint and statements issued in response to it are justified in expecting Pöyry to be more aware of its overall role in the project. (MEE, 2013)

Thus, the Finnish NCP had come to the conclusion that Pöyry did not violate the OECD Guidelines, whilst at the same time contending that Pöyry should have been more conscious of its ability to impact the project. However, Finnwatch, one of the NGOs represented in the CSCR, issued a differing opinion, stating that:

> The information that has been made available to the members of the Committee on Corporate Social Responsibility does not support the view that Pöyry has acted in accordance with the OECD Guidelines for Multinational Enterprises in its collaboration with the Lao government on the Xayaburi dam project. (Finnwatch, 2013)

One interesting facet of the final statement is that although the Finnish NCP acquitted Pöyry, they did find that the OECD Guidelines are applicable to consulting companies such as Pöyry (MEE, 2013). This is significant for the reason that a large part of Pöyry’s counter-arguments throughout the process had centred around Pöyry’s role as consultant and that the company for this reason had no significant accountability in how their compliance report was used. Nevertheless, the acquittal was a disappointment to the 15 civil society organisations that had submitted the complaint. In addition, although the Finnish NCP found that Pöyry had simply not violated the OECD Guidelines, the MEE in their press release of the verdict stated that Pöyry had complied with the OECD Guidelines in the Xayaburi dam project (MEE, 2013a), a difference that was disconcerting to the opponents of the Xayaburi dam project.

For a full timeline of the case developments, please see appendix 2. The information provided in appendix 2 is taken directly from OECD Watch’s case database (OECD Watch, 2016d) and includes direct links to all case documents.
The Xayaburi dam was the first of its kind in the Mekong River, which partly explains why it was such a heavily contested case; it would set a precedent for all future dam developments in the region, which was clear to the parties involved in the project. As of 2016, a total of 11 dams are planned for the region, something that is generally expected to adversely impact some 60 million people as well as have grave consequences for the environment in the form of widespread ecological destruction (Fawthrop, 2016; Goichot, 2015).
4 METHODOLOGY

Case study research constitutes in-depth investigation of a contemporary real-world phenomenon (Yin, 2014). The aim of case studies is to understand the dynamics of a specific setting (Eisenhardt, 1989). The purpose of this study is to provide a holistic and detailed account of the Pöyry case and the Finnish NCP's handling of the case, which is why a case study approach is used.

The focus is on identifying how the Finnish NCP goes about ensuring corporate accountability, what the governance failures evident in the Pöyry case are and how the specific instance mechanism could be improved within the Finnish context so that a higher level of corporate accountability could be attained in the future use of this soft law mechanism. Therefore, the aim of this study is to find out how the multi-stakeholder Finnish NCP, operating under the OECD Guidelines for Multinational Enterprises, approaches and ensures corporate accountability, as well as to provide recommendations for how NCP practices could ensure a greater degree of corporate accountability in the future.

The research questions for this study are as follows:

1) How is the governance of the Finnish NCP meant to ensure corporate accountability?

2) What governance failures of the Finnish NCP can be identified in the specific instance mechanism case known as the Pöyry case?

3) How could these governance failures be addressed so as to ensure a higher level of corporate accountability in future specific instance cases?

The research design for this case study is, thereby, formulated based on the above-mentioned research questions. The objective is to be able to generate tangible improvement suggestions with regard to the functioning of the Finnish NCP based on the data collected and analysed. The aim of the study and the research questions were revisited and revised during the research process in order to achieve a more coherent study.
4.1 Research approach

This study emanates from the constructivist paradigm. Constructivist research investigates “the multiple realities constructed by people and the implications of those constructions for their lives and interactions with others” (Patton, 2002: 96). The constructivist paradigm is considered suitable given the context of this study, which is the multi-stakeholder Finnish NCP; a forum that involves a diverse collection of stakeholders from different spheres of society with presumably different perceptions of the Pöyry case. The ontological assumption of constructivism is that reality is something inherently relative to each individual. Reality is, thereby, not absolute, but rather something that each person constructs based on his or her own experiences. This perceived reality can be shared by a group of people and is strongly affected by culture. (Guba and Lincoln, 1994)

Because human beings have evolved the capacity to interpret and construct reality – indeed, they cannot do otherwise – the world of human perception is not real in an absolute sense, as the sun is real, but it is “made up” and shaped by cultural and linguistic constructs. To say that the socially constructed world of humans is not physically real like the sun doesn’t mean that it isn’t perceived and experienced as real by real people. (Patton, 2002: 96)

From an epistemological standpoint, constructivism views knowledge as a subjective concept, i.e. knowledge is created by man and, therefore, biased to the person it originates from. In research situations, the assumption is that the investigator and the person being investigated have a reciprocal relationship, which means that the knowledge being produced by the study is influenced both by the researcher and the object of the study (Guba and Lincoln, 1994). Guba and Lincoln (1994: 115) explain the role of the constructivist researcher as that of a “passionate participant” who is “actively engaged in facilitating the “multivoice” reconstruction of his or her own construction as well as those of all other participants”. The researcher is, thereby, not a passive bystander, but an active participant who is deeply involved in the research process. It should be noted that the results produced by a study such as this one are, therefore, essentially affected by the researcher’s own perceived reality as well as the researcher’s interaction with the participants.

Lincoln and Guba (1994) describe the research methodology used within the constructivist paradigm as hermeneutical and dialectical. Hermeneutics underscores the importance of context when making interpretations about the meaning of narrative data and text (Patton, 2015). As with constructivism in general, the hermeneutical approach does not subscribe to the idea of an universal truth, but instead recognizes that the meaning we ascribe to data is only ever our interpretation of that data (Patton,
In constructivist research “[...] varying constructions are interpreted using conventional hermeneutical techniques, and are compared and contrasted through a dialectical interchange” (Lincoln and Guba, 1994: 111). The dialectical interchange the authors write about refers to rational discussion of opposing ideas and worldviews. Through the use of a dialectical interchange the objective is to reach a more knowledgeable end result, which as the outcome of a dialogue between several, opposing voices is thought to better represent a more just and complete account of the “truth” (Lincoln and Guba, 1994).

4.2 Research design

Qualitative research is the appropriate starting point when little pervious research has been conducted on the subject (Patton, 2002). Since little work has been done on the functioning of the Finnish NCP, I chose to conduct a qualitative study in the form of an exploratory case study. Yin (2014: 238) defines an exploratory case study as:

[...] a case study whose purpose is to identify the research questions or procedures to be used in a subsequent research study, which might or might not be a case study.

Even though an exploratory case study is experimental in its nature, this does not mean that it is haphazard in design. As Yin (2014: 30) puts it: “[a] certain level of rationale and direction should underlie even an exploratory case study”. The primary purpose of the exploratory study was to determine how the Finnish NCP approaches and ensures corporate accountability, as well as to determine changes is the NCP’s practices that could ensure a greater degree of corporate accountability in the future. By employing an exploratory research design, the study was able to proceed in a flexible manner as new evidence emerged.

This study consists of a single-case study. Multiple-case studies tend to provide a stronger foundation for any consequent analytic conclusions, because arriving at the same conclusions based on several independent cases is much more believable than the conclusions reached based on one single case (Yin, 2014). Multiple-case studies are, therefore, generally considered to be more robust than single-case studies (Herriott and Firestone, 1983 cited in Yin, 2014). As a result, a single-case study requires strong justification (Yin, 2014).

I chose to conduct a single-case study of the Pöyry specific instance case, a case that was handled by the Finnish NCP, because I consider it to be a critical case in the
Finnish context. The Finnish NCP constitutes the unit of analysis (Patton, 2015), since the research focuses on the NCP in its entirety. The Finnish NCP has the opportunity to be a part of the corporate accountability dialogue and promote responsible behaviour in Finnish companies. If these objectives are to be realised, the Finnish NCP needs to be a well-functioning entity and be able to manage cases such as the Pöyry case in a manner that is acceptable to all involved parties. Since there has been controversy surrounding the Pöyry case, I feel that this warrants further investigation into the case and the perceived governance failures connected to it. Since similar issues are apparent in other NCPs as well (Franciose, 2007; Letnar Černič, 2008), it would be useful to conduct a case study that involves several NCPs. However, it would be challenging to gain access to NCPs in other countries and not feasible given the scope of this study.

4.2.1 Sampling

The population of the study consists of people with insight into the case, primarily members of the Finnish NCP that were active during the period that the Pöyry case was tried, but also people outside the NCP who were involved in the proceedings and are able to provide a different perspective on the proceedings. Therefore, this comprised the starting point for the sampling procedures.

Members of the Finnish NCP were contacted via email and asked to participate in an interview on the topic of the Pöyry case. Preferably, the whole population – the whole NCP – would have been interviewed, meaning all 15 members of the CSCR as well as the MEE officials working on the case (two to three people). One member of the CSCR was excluded from the start due to being retired. The remaining 14 were contacted via email and asked to participate in an interview. Ultimately, six people agreed to participate, while the rest did not reply (three CSCR members) or declined (three CSCR members). Furthermore, for two CSCR members no active email addresses could be found, meaning these people did not receive the request to participate. As for the MEE officials working on the case, only one person was contacted. The name of this person was initially mentioned during an interview with one of the CSCR members who believed this person would be able to provide useful information about the case proceedings. The MEE official then agreed to be interviewed and the information provided by this person, together with that of the participants belonging to the CSCR, was deemed sufficient for the purposes of this study. Therefore, no attempt was made
to contact any other MEE official. This brought the total of NCP interview participants to seven people.

Of the CSCR members who declined to participate, one person maintained that they did not have enough knowledge of the case to be useful for the purpose of the study. This person falls under the civil society category. They particularly brought up the issue of resource deficiencies, which lead to them not being able to fully engage with all the work of the NCP and consequently having to prioritise those matters that were most relevant for their background organisation. Another representative who declined simply felt that the aim of the study was not worth pursuing as the Pöyry case is finished. This person represents the business and labour organisations category. The third to decline, a representative of a civil society organisation, cited personal reasons.

Of the three people who did not respond to the request for an interview, one was a ministry representative while the other two represented business and labour organisations. In light of this, the nature of some of the responses of those who declined coupled with what might be construed as unwillingness to engage in the topic for those who did not respond, may suggest that some of the NCP members have reservations about the topic of the study itself. The reasons given by the population for not participating in the study is also used to inform the study and further discussed in the results sub-chapter 5.3.1.

Of the seven NCP participants, two fall under the category of civil society organisations, two fall under the business and labour organisations category and three fall under the ministries category (Table 4), constituting an apt mix of participants from each category. Of the participants in the ministries category, two where members of the CSCR, while one (participant M-F) was active in the NCP in the capacity of an MEE official supporting the proceedings. Even though the MEE officials were not per se part of the multi-stakeholder forum that is the CSCR, they played a vital role in the proceedings by being involved in every step of the process and thereby having an overarching picture of the proceedings and the activities of the NCP, which is why it was determined useful to include their perspective in the study.

In addition to the NCP members, representatives of the complainant side in Pöyry case were also contacted and a group interview with four people was conducted, which provided as useful complement to the interviews with the NCP members. The four participants from the complainant side all belong to the civil society organisations category (Table 4). Initially, only three people from the complainant side were
contacted. However, one of these then suggested the inclusion of one more person due to this person’s extensive knowledge of the case, which led to four people from the complainant side being interviewed in the end.

Table 4  Interview participants

<table>
<thead>
<tr>
<th>Civil society organisations</th>
<th>Business and labour organisations</th>
<th>Ministries</th>
<th>Civil society organisations</th>
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</thead>
<tbody>
<tr>
<td>Participant CS-A</td>
<td>Participant BL-B</td>
<td>Participant M-C</td>
<td>Participant CS-H</td>
</tr>
<tr>
<td>Participant CS-G</td>
<td>Participant BL-D</td>
<td>Participant M-E</td>
<td>Participant CS-I</td>
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<tr>
<td></td>
<td></td>
<td>Participant M-F</td>
<td>Participant CS-J</td>
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<td></td>
<td></td>
<td></td>
<td>Participant CS-K</td>
</tr>
</tbody>
</table>

Note: The participants are coded both according to the institution that they represent (CS stands for civil society organisations, BL for business and labour organisations and M for ministries) as well as a letter from A to K that is individual to each participant.

The gender and age of each participant is not disclosed due to the small population size, as the disclosure of this information could compromise confidentiality. However, the gender distribution among the interview participants is presented collectively in Figure 5. The gender distribution was quite even with 56% of the participants being male and 44% being female.

Figure 5  Gender distribution among interview participants
4.2.2 Data collection

The interview data accounts for the majority of the data of this study and is, thereby, the primary data. Documentary data in the form of case files, annual reports of the OECD and external reports on the matters relating to the case also inform the case study and were used as secondary data sources. The case files and other documentary data were obtained through Internet searches.

The interview data was acquired through semi-structured interviews. The interviews lasted on average for 45 minutes. An interview guide (appendix 3) guided the interviews, however, the questions evolved throughout the process as new information emerged. Although the interview guide was used as a starting point, this does not mean that the interviews were restricted to the questions listed in it. Instead, the semi-structured design of the interviews allowed for all critical topics to be covered during the interview whilst making it possible to adapt the interview according to needs and opportunities that arose spontaneously (Patton, 2015). This meant that the participants were able to talk about each topic in a manner that felt most natural to them. Open-ended questions were predominantly used during the interviews, so as to not limit the response of the participants and thereby compromise the data (Patton, 2015). The interview participants were all offered confidentiality, as this allows the participant to speak freely without having to worry about censoring themselves since their responses will not be directly associated with them. In addition, at the beginning of each interview, the participants were informed of their right to decline to answer any questions should they wish to do so.

The interview guide was first composed in English and later translated into Finnish. The interviews were conducted in Finnish, since this is the native language of the participants. The interviews were conducted in the participants’ native language in order to create an environment were the participants felt comfortable and were able to disclose information more easily.

4.2.3 Data analysis

A fundamental question in terms of data analysis centres around the notion of inductive versus deductive. Patton (2002: 453) describes the concepts of inductive and deductive analysis in the following way:
Inductive analysis involves discovering patterns, themes, and categories in one's data. Findings emerge out of the data, through the analyst’s interactions with the data, in contrast to deductive analysis where the data are analysed according to an existing framework.

The data analysis was approached in an inductive manner, since no existing framework was used to guide the study. Instead, the objective was to uncover categories in data, which could then be used to draw broader inferences about the studied phenomenon.

The interview transcripts were not translated from Finnish into English in their entirety, as it would have taken an inordinate amount of time to conduct a thorough translation, so as not to risk losing nuances of meaning. It was deemed that this time would be better used on the actual analysis of the data. After all, because the single-case method is used, the critical analysis of the data is all the more important. Therefore, only quotes used to illustrate issues discussed during the interviews are presented in English.

The data analysis began with coding of the interview transcripts. The coding was done manually. Coding can be described as a way of assigning tags or labels to bits of data of varying size (Miles and Huberman, 1994). As the data analysis was done inductively with no set conceptual framework guiding the study, the codes were not determined beforehand and instead were allowed to emerge from the data. In this way, holistic coding was used to a certain extent, as the aim was “to grasp basic themes or issues in the data by absorbing them as a whole rather than by analysing them line by line” (Dey, 1993: 104 cited in Saldaña, 2013). There is no set code length in holistic coding and the method works with many forms of data, such as interview transcripts, field notes, documents and journals (Saldaña, 2013).

The coded data units were organised into broader categories and analysed as a whole. The interview transcripts were examined several times to see if any new findings emerged or if some of the existing findings needed to be modified or specified further. In some cases, the audio recordings of the interviews were listened to several times in order to get a better overview of the issues discussed during the interviews. In this way, iteration took place. Iteration is the process of going back and forth with your data, reviewing it several times over, and making adjustments as you go along (Spiggle, 1994). By reviewing the data several times, the findings can be considered more robust. However, the iteration did not occur consistently across all interviews and all sections of an interview, but instead only the sections of interviews that were deemed to contain key information were examined multiple times.
4.2.4 Data assessment

The data is assessed based on the notion of trustworthiness. Attempts were made to continuously improve the quality of the data throughout the research process.

Guba (1981) presents a model for assessing the trustworthiness of qualitative data, based on the work of Guba and Lincoln (1981 cited in Guba, 1981), which is based on four aspects of trustworthiness: truth value, applicability, consistency and neutrality. According to the authors, within qualitative research truth value is represented by the criterion of credibility, applicability by the criterion of transferability, consistency by the criterion of dependability and neutrality by the criterion of confirmability. Each of these is discussed in turn below.

4.2.4.1 Credibility

Truth value, which is represented by the criterion of credibility, refers to how the researcher can establish confidence in the truth of the findings for the participants of the study and the context in which the study was conducted (Guba, 1981). This entails accurately representing the human experiences of the participants, even when the participants do not share a common understanding of the phenomenon in question (Krefting, 1991). According to Guba (1981), credibility can be achieved by the researcher spending an extended period of time with the participants of the study. This may allow the participants to feel more at ease with the situation and, thus, enable them to volunteer more sensitive information (Krefting, 1991). In this study, the time spent with each participant was limited by their availability and willingness to engage with the subject, which meant that lengthy interviews or multiple interviews with the same participant was not possible. However, if the schedule of the participant allowed and the participant was willing to prolong the interview, they were encouraged to do so. In addition, the number of participants interviewed (11) contributed to enhancing the credibility of the findings.

Guba (1981) further suggests triangulation and member checks (also known as respondent validation) as ways of ensuring credibility. Triangulation is a way of increasing the robustness of a study by combining various kinds of data or methods of data collection (Patton, 2002). In data triangulation, the data is gathered from several

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1 In contrast, within quantitative research truth value corresponds to internal validity, applicability to external validity, consistency to reliability and neutrality to objectivity.
different sources. In this study, data triangulation is used by combining interview data with documentary data. Respondent validation is the practice of getting the findings verified by the people you study (Silverman, 2011). It is a way of getting feedback on your research and finding out if the findings correspond with the participants’ views on the matter (Silverman, 2011). This study only contains a very limited aspect of respondent validation, as the participants were given the opportunity to corroborate their own quotes used to illustrate the findings with the objective of verifying that no nuances in meaning had been lost in connection with the translation from Finnish to English. However, as this step was conducted some time after the actual interviews had taken place, one participant could not be reached due to the email address no longer being active and, thereby, the translations of this person’s quotes could not be verified.

In the end, only one specific term used in the analysis and results chapter (chapter 5) was changed to reflect a more appropriate translation of the original Finnish term as a result of this step.

Furthermore, Krefting (1991) emphasises the role of the researcher in ensuring credibility of the findings. In qualitative research the researcher is perceived to be a part of the research rather than something that can be separated from it, making the process reflexive (Aamodt, 1982 cited in Krefting, 1991). Due to this, the researcher should be conscious of his or her own role in the process (Krefting, 1991). The presence of the researcher will undoubtedly affect the data, simply because people have a tendency to behave differently when they know they are being studied. Also, researchers have their own values through which they filter the data, which consequently impacts the findings. A conscious effort was made to be mindful of this throughout the study and especially when reviewing the findings.

4.2.4.2 Transferability

Applicability, which is represented by the criterion of transferability, refers to how the researcher can establish the extent to which the findings of the study can be applicable to other contexts (Guba, 1981). In order to assess whether findings from one context would also be applicable in another, one needs to have sufficient information about these two contexts so as to be able to determine if the two are similar enough for the findings to be transferable (Guba, 1981). According to Lincoln and Guba (1985 cited in Krefting, 1991), as long as the original study is well documented enough to allow for comparison, the criterion of transferability is fulfilled. In this study, attempts were
made to thoroughly document each step of the research process, which would allow for future comparisons in this regard. However, as Krefting (1991) argues, being able to apply the findings of one study to another context is not always relevant in qualitative research, as the objective is to gain understanding of a unique phenomenon in a specific context. The intent of this study is not to be able make generalisations across different NCPs, but to solely consider the Finnish NCP and how the Finnish NCP could ensure corporate accountability to a higher degree, and in this way, contribute to the understanding of the functioning of the Finnish NCP. For this reason, the transferability of the study is not considered to be central.

4.2.4.3 Dependability

Consistency, which is represented by the criterion of dependability, refers to how the researcher can establish if the findings of the study would be the same should the study be repeated with the same or very similar participants and context (Guba, 1981). Due to qualitative research dealing with human experiences, a certain amount of variability is expected no matter how rigorously a study is conducted; what is important is whether or not this variability can be traced to a distinct source (Guba, 1981), such as “increasing insight on the part of the researcher, informant fatigue, or changes in the informant's life situation” (Krefting, 1991: 216). Therefore, while quantitative research emphasises the importance of the reliability of a study, qualitative research instead evaluates consistency in terms of dependability, which implies both the findings being reliable along with any occurring variability being trackable (Guba, 1981). This can be achieved by triangulation of research methods, stepwise replication, setting up an “audit trail” and having an external auditor review it (Guba, 1981). In this study, triangulation is used to a limited extent – by combining interview data with documentary data. Stepwise replication involves dividing the research team as well as the data sources in half to see if both groups reach the same conclusions (Guba, 1981). This could not feasibly be done for the purposes of this study, as only one person conducted the research. Likewise, the use of an external auditor, described by Krefting (1991) as peer examination, could also not be carried out in this study.

Dependability, referred to as reliability by Silverman (2011), can also be achieved by demonstrating transparency throughout the research process and being candid when it comes to the theoretical stance the researcher grounds their research in (Moisander and Valtonen 2006 cited in Silverman, 2011). The dependability of interview data can
be verified by recording the interviews, being meticulous in the transcription process and displaying lengthy extracts of the transcribed interview text in the research report (Silverman, 2011). In this study, transparency is demonstrated by giving a detailed account of the research process. Each interview was recorded using two separate recording devices in case one would malfunction and a significant amount of time was devoted to the transcription process. The interviews were transcribed word for word, however, pauses, emphases and non-verbal communication clues were not acknowledged, as this was not deemed crucial given the nature and aim of the study. Quotes from the participants are used to illustrate the analysis of the data in chapter 5.

4.2.4.4 Confirmability

Neutrality, which is represented by the criterion of confirmability, refers to how the researcher can establish the extent to which the findings are representative of the participants and the context of the study, and not a result of bias, personal interest or the perspective of the individual researcher (Guba, 1981). While quantitative researchers try to achieve neutrality by distancing themselves from the subject of the study, qualitative researchers attempt to minimise this distance in order to reach more reliable results (Krefting, 1991). Instead of emphasising the neutrality of the researcher, Guba (1981) maintains the importance of the neutrality of the data, which is to be evaluated with the criterion of confirmability. This can be achieved through methods such as triangulation and external auditing (discussed sub-chapters 4.2.4.1 and 4.2.4.3). According to Krefting (1991: 217), confirmability is fulfilled “when truth value and applicability are established”, meaning that confirmability is established as a result of the criteria of credibility and transferability having been fulfilled.

4.3 Critical discussion of the methodology

Trustworthiness of the study is assessed using Guba’s (1981) model based on the criteria of credibility, transferability, dependability and confirmability. Some of the limitations in relation to each of the criteria are discussed above in sub-chapters 4.2.4.1-4.2.4.4. However, there are some additional concerns related to credibility, dependability and confirmability that should be mentioned.

The study is limited by the fact that it does not include all the different perspectives of the members of the NCP and other persons of interest, simply because it was not possible to interview all relevant persons. The representativeness in terms of business
organisations was especially lacking, as these could not be persuaded to take part in the interviews. Being able to include a broader array of voices would have made the study more robust and added to the credibility of the study. A further limitation of the study consists of it being conducted so long after the Pöyry case was originally processed within the Finnish NCP, as this led to the interview participants to some extent not being able to recall all the details of the process. Had the study been conducted shortly after the conclusion of the specific instance case, this might have given a different picture of the case proceedings and allowed the interview participants to highlight more specific issues.

Due to the importance of transparency in ensuring the dependability of a qualitative study, transparency in terms of the research process was demonstrated namely by giving a detailed description of the process and the different steps. However, due to the small population size, certain information about the participants was not disclosed, for example, the gender and age of each individual participant was not presented, as this could compromise confidentiality. Another issue in terms of the dependability of the findings is the fact that the interview questions evolved over the course of the interviews, as the interviewer acquired more information about the Finnish NCP and the Pöyry case. This lead to some inconsistencies in terms of the questions that the interview participants were asked and consequent discussions that were had. If all participants had been asked the same questions, this could have generated a clearer understanding of the different perspectives of different members and contributed to more trustworthy results. However, due to the exploratory and, above all, qualitative nature of the study, it is natural that the interview questions will evolve over time as the researcher gains a deeper understanding of the topic. In fact, this allowed for deeper insights to be reached and was, thereby, conducive to improving the dependability of the findings as well.

In addition, as with all qualitative research, the study is influenced by the researcher's own background and perceptions. The choice of topic is in itself based on my own interests as a researcher. By choosing this specific topic and approaching it from this particular perspective, that is in itself a reflection of my own views. I strived to be mindful of this throughout the research process so as to not present a biased picture of such a multifaceted case. For this reason, I did my best to ensure the confirmability of the findings by approaching the topic with an open mind and making sure that all the different stakeholder voices were not only heard but represented fairly, for example, by
clarifying the context for each of the quotes used to illustrate the analysis. In addition, I gave myself sufficient time to reflect on the data so as to make sure that I felt confident in the conclusions drawn based on it. Despite this, a different researcher having examined the same material might have yielded different results. Furthermore, a different researcher might have asked all together different questions during the interviews, leading to the possibility of even greater differences as to the results of the study. However, as the study is rooted in a constructivist research approach, which recognises the role of the researcher as an active part of the research process, these possibilities are acknowledged and accepted.

4.4 Research ethics

Informed consent and confidentiality are two fundamental principles of ethical research. Simply put, it means that research subjects should be made aware of the nature and aim of the study they are participating in (Silverman, 2011). An important part of this is that the research subjects should be informed about their right to withdraw from the study at any stage of the research process (Ryen, 2004). Informed consent can be reinforced by asking for consent both at the beginning of the interview and at the end, in order to make sure the research subject still feels comfortable with participating in the study after having answered the researcher’s questions, or by allowing the research subject to view the finished piece of text that was the result of the interview (C. Riessman, personal correspondence cited in Silverman, 2011). This allows the subject to make sure that their identity has been concealed adequately and their views presented fairly. Allowing subjects to give feedback on the results of the study is also known as respondent validation (Silverman, 2011), as discussed in sub-chapter 4.2.4.

In this study, informed consent was achieved by explaining the aim and nature of the study to the interview participants when they were contacted via email, as well as at the beginning of the interview. In addition, the participants were informed of their right to decline to answer any question should they wish to do so. The participants were then given the opportunity to ask further questions about the study and their role in it before we proceeded to the actual interview. After the analysis of the information acquired from the interviews was complied, participants were able to approve the translation of quotes from Finnish to English used in the analysis. The participants were encouraged to voice any concerns they might have had.
As a researcher, being able to guarantee confidentiality of the research subjects is essential in terms of the quality of your research. Anonymity allows interview subjects to be able to speak freely on a topic without having to worry about censoring themselves, since their views of a topic will not be directly associated with them. As Silverman (2011) notes, confidentiality is not only about making research subjects’ comments confidential, but also their behaviour. This is more of a concern in research situations where behaviour is explicitly studied, but should not be forgotten in other contexts as well.

In this study, the importance of confidentiality is further highlighted by the fact that the case study centres around one case that involves a limited amount of people. Moreover, the research participant’s institutional context, i.e. which societal entity they represent (government, business and labour organisations or civil society), was assumed to have an affect on how they view the case and the consequent actions of the Finnish NCP, which further made it easier to possibly identify the people involved. For this reason, the gender and age of each participant is not disclosed separately.
5 ANALYSIS AND RESULTS

The analysis and results of the interview data is divided into two groups. The first group consists of members of the Finnish NCP at the time of the Pöyry case, while the second group consist of the people involved in bringing the case to the attention of the NCP, the complainants. The participants’ quotes presented in this section have been freely translated from Finnish to English. In order to facilitate the reading of this chapter the participants are coded both according to the institution that they represent (CS stands for civil society organisations, BL for business and labour organisations and M for ministries) as well as a letter from A to K that is individual to each participant (Table 5).

Table 5 Interview participants

<table>
<thead>
<tr>
<th>NCP representatives</th>
<th>Complainants</th>
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<tbody>
<tr>
<td>Civil society organisations</td>
<td>Business and labour organisations</td>
</tr>
<tr>
<td>Participant CS-A</td>
<td>Participant BL-B</td>
</tr>
<tr>
<td>Participant CS-G</td>
<td>Participant BL-D</td>
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5.1 Interviews with members of the National Contact Point

In total, seven members of the NCP were interviewed. The allocation of the participants across the three major sub-groups of the NCP (civil society organisations, business and labour organisations and ministries) is presented in Table 6. Two members from the sub-group of civil society organisations, two members from business and labour organisations and three members from different ministries were interviewed.

Table 6 Interview participants: NCP members

<table>
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<tr>
<th>NCP representatives</th>
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<tbody>
<tr>
<td>Civil society organisations</td>
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<tr>
<td>Participant CS-A</td>
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<tr>
<td>Participant CS-G</td>
</tr>
</tbody>
</table>
The Pöyry case was the first, substantial case to be handled by the Finnish NCP. Of the three Botnia cases from 2006, the first one made it past the initial assessment stage but was later dismissed, the second was rejected immediately and the third was handled by the Swedish NCP (and ultimately rejected). As these cases took place in 2006, and applied the 2000 version of the OECD Guidelines, they are affiliated with a somewhat different starting point than the Pöyry case. As mentioned earlier, in the 2011 edition of the OECD Guidelines the role of NCP’s was strengthened and measures were taken to improve their functionality (OECD, 2011). Furthermore, the NCP members were not the same in 2006 as in 2012. The Pöyry case complaint was submitted in June 2012 and the new composition of the CSCR was set in November 2011 for the period of 24.11.2011–23.11.2014 (MEE, 2011).

As the Pöyry case was the first of its kind for the Finnish NCP, it ended up being a sort of practice case, according to participant CS-A. The participant adds that there simply was no routine for how to handle it, as the specific instance process had not yet been properly tested in the Finnish context at that time. Similarly, participant M-E feels that the case process had not yet had a chance to become properly established at the time of the Pöyry case. The participant adds that even though there were some things that could have been done differently, all in all the process went relatively well and the case was tried appropriately and thoroughly.

[...] since there has been so few of these, naturally the processes have not perhaps become so well-established. In some ways we could also here [in the Pöyry case] notice several things that it would be good to do a bit better in the future [...] but in itself, I feel that the case was tried completely appropriately and thoroughly in every way, so in that sense [the specific instance mechanism] worked as it was supposed to. (Participant M-E)

5.1.1 Resources

The resources made available to the NCP were discussed during the interviews. While some of the participants feel that the NCP could strongly benefit from having more resources at its disposal, others feel that there is simply no need for further resources. A few participants feel that it is difficult to determine whether or not the resources available at the time of the Pöyry case were sufficient and cannot take a position either way.

Participant BL-B feels that the verdict was just and does not see that the case proceedings could have resulted in a different verdict, given the hearings that were conducted and the resources that were available to the NCP. However, the participant
does feel that some of the critique that has later on been brought up regarding the case proceedings is valid, and that one can question whether the CSCR is able to process these kinds of complicated cases thoroughly enough, given the resources at its disposal.

There were quite long periods of time between the [CSCR] meetings, because the preparations for the next stage took time. After all, the Ministry had quite modest resources at its disposal for the processing of these cases. (Participant BL-B)

One of the reasons participant BL-B considers the resources provided to be quite modest, is that the statements provided by the Ministry for Foreign Affairs and the Ministry of the Environment were not in the participant’s opinion particularly comprehensive. Participant BL-D also feels that the resources available were modest, and notes that some countries’ NCPs have much greater resources at their disposal compared to the Finnish NCP. The limited resources are due to the Finnish Government’s austerity measures, according to the participant. Because specific instance cases have been so few and far in between, the participant understands that this does not warrant maintaining the whole structure continuously. However, according to participant BL-D, if the NCP had more resources and was able and permitted to take on specific instance cases on its own accord, i.e. not wait for cases to be submitted by external actors, the NCP could have a much greater impact on the moral climate of Finnish companies.

Participant M-F feels that the NCP had the resources needed to handle the Pöyry case properly. The participant does not feel there is a need for further resources, as there was no need to investigate the case on site in Lao PDR, for example. According to participant M-F, in accordance with the OECD Guidelines, the NCP was in contact with the local government through the embassy in Lao PDR. However, it remains unclear what this resulted in or what the purpose of this contact was. Participant M-F adds that traveling to Lao PDR to conduct an investigation there would be beyond the scope of the OECD Guidelines and the NCP’s activity. Correspondingly, participant M-E points out that it is not the task of the NCP to evaluate whether or not a dam should be built in Lao PDR, as the NCP is not a court of law. Therefore, the NCP can only assess whether Pöyry acted in accordance with the OECD Guidelines and for this reason did not have a need for resources that would have allowed it to conduct its own extensive investigatory work in Lao PDR. However, according to participant M-E, even though the NCP is not strictly in need of more resources, one way to strengthen the general role of it would be to allocate more resources to it. In this way the NCP could be a way for Finland to profile itself as a country that invests significantly in corporate accountability.
Participant BL-B feels that if the MEE would be able to prepare the case for the CSCR, as in lay the groundwork prior to the CSCR’s meetings, this would greatly aid the CSCR in their ability to try a case, as the amount of information and material to sort through can be vast. After all, none of the CSCR members are able to be at the disposal of the NCP full-time, nor are they able to make any independent investigations into the matter being deliberated. For example, participant M-C found it somewhat challenging to understand the specifics of the environmental issues of the case and feels that more condensed information on the matter would have been helpful. Participant M-C adds that there was a lot of information available, but not enough time to familiarise oneself thoroughly with all of it, and expert opinions on, for example, some of the more complex environmental aspects would have been welcome. Participant CS-G echoes these thoughts, commenting that there simply was not enough time to thoroughly read all the material and deliberate on all aspects of the case, which was frustrating. Participant CS-G quickly came to the realisation that it would be very difficult to take a position either way on whether or not Pöyry had breached the OECD Guidelines, as there was so much case material to sort through and consider. Participant CS-G also highlights the efforts put in by the NCP to try to handle the case in a professional and thorough manner.

[...] we strongly sought to handle the case in a matter-of-fact manner. This was highlighted for example in the fact that those materials that contained sensitive business information and such, they were sent here in black envelopes and it was very carefully made sure that this formality, the formal side [was upheld], which does not mean that only the formal side [was considered important] [...] Another thing that became clear was that you quite quickly realised that this is about matters that it is very difficult to take a stand on either way [...]. (Participant CS-G)

[...] if you had nothing else to do in life then one would have of course probably spent several nights reading and comparing and pondering, but since you did not have that possibility it did give you a bit of a frustrated feeling [...]. (Participant CS-G)

5.1.2 Confidentiality of documents

The MEE agreed very early on in the specific instance process to keep Pöyry’s reply to the complaint confidential, which made it impossible for the complainants to have a dialogue with and react to Pöyry’s claims. This was discussed with the participants, many of whom feel that it is problematic. For example, participant M-C notes that the OECD Guidelines are contradictory on this matter; transparency should be promoted, but sensitive business information, such as companies’ trade secrets, should still be protected.
According to participant M-F, the NCP is forced to strictly abide by Finnish legislation and regulations concerning administrative procedures, which includes the Act on the Openness of Government Activities (621/1999), and as such the NCP was forced to accept Pöyry’s request of keeping the documents confidential. However, the participant also states that the Pöyry’s views were still closely quoted in the final statement, even if their reply was not made available in its entirety.

Here we can see the fact that we as government officials have to adhere to legislation on publicity of documents, which states that if there is sensitive business information then this is not allowed to be made public without the permission of the concerned party and this we then had to follow, but we still quoted Pöyry’s views very precisely in the final decision so in that way we did publicised Pöyry’s views. (Participant M-F)

As participant BL-D points out, it later turned out that the decision to classify the documents was not fully justified, as the Supreme Administrative Court made a ruling on the issue in 2015 (21.4.2015/1042). The issue was brought to the Supreme Administrative Court by the journalist Katri Pietarinen who asked to get access to Pöyry’s reply and other case documents after the case had been closed, and was denied access by the MEE. Pietarinen then brought the case to the Supreme Administrative Court, which overturned the MEE’s decision and ruled that the MEE was to give Pietarinen access to Pöyry’s reply in its entirety. According to participant BL-D, the CSCR tried to do everything in accordance with the rules and regulations, and the area where they were perhaps a bit too strict was the issue of not releasing Pöyry’s reply because of the claim Pöyry made regarding them containing sensitive business information. Nonetheless, the participant feels that the court decision on the matter was a good thing, because now the NCP knows for future purposes how it can proceed if similar issues ever arise. According to the participant, the MEE’s lawyers had looked into the matter of confidentiality and the CSCR had then acted based on the lawyers’ conclusion, even though not all the members of the CSCR felt that confidentiality was completely justified.

When asked about the communication between the NCP and the complainants, and whether the complainants were able to participate in the process on equal terms, participant M-F asserted that that the complainants were without a doubt able to participate on equal terms and emphasised that the NCP arranged “extraordinary” hearings for the benefit of the complainants.

Yes, without a doubt, because we even had to organise an extra hearing because the civil society organisations wanted it, and they got to present more and more of their views throughout and the preparation of the case even got delayed a bit for this reason, but we still managed to have the statement ready within the timeframe set by the OECD Guidelines. (Patricipant M-F)
The issue with the transparency of the documents in the Pöyry case gave rise to ideas for improvement regarding how to handle similar situations in the future. According to participant BL-B, it should be assessed how the process can be made as transparent as possible from the very onset, and keeping documents confidential should be avoided as much as possible, unless there is an explicit reason for this, since it makes it difficult for both parties to participate on equal measure. According to participant M-E, with regard to future specific instance cases, the company should state explicitly which parts of the reply contain sensitive business information and should not be able to insist that a reply in its entirety is confidential.

### 5.1.3 Mediation

A central part of the specific instance mechanism is mediation, which was not present in the Pöyry case, as Pöyry refused to take part in this. Since the intention of the mechanism is to improve corporate accountability and help companies do better in the future, the fact that this aspect was lacking completely in the case is problematic. According to participant BL-D, the expectations of the complainants might have been too high in the Pöyry case and if all parties knew and understood what could be expected from the mechanism, mediation would be possible. In this case, Pöyry reacted very defensively towards the complaint and refused to participate in mediation, according to the participant.

> [...] then mediation also becomes possible, in the sense that the target of the complaint doesn’t feel that they are being put in front of a jury, not knowing whether they are going to be hanged or fined, and then again the party that has made the complaint doesn’t seek to just humiliate or punish, but instead we should strive for mediation and ways to improve the corporation’s activity and get the corporation to engage in those correctional measures. (Participant BL-D)

However, how to commit all parties to the mechanism and its process is a big issue in terms of the specific instance mechanism in general, according to participant BL-D. Since the role of the NCP is to be a more analytical and advice-giving organ, rather than a court passing judgement, this can naturally result in some parties feeling that a stronger judicial approach is needed. However, in today’s world, reputational risks are very significant, and were surely felt at Pöyry in this case, according to the participant. Participant BL-D feels that because the mechanism relies heavily on reputational risks, it can in some ways be more effective than traditional judicial measures. Participant BL-D also notes that in order for mediation to be possible, what can be achieved through the mechanism needs to be clear for all parties, as the intent of the mechanism is not to punish corporations but to help them do better. This also requires that the
NCP is extremely clear and consistent in their operations and decision-making. The Pöyry case seems to have inspired some changes in the way the NCP operates as, for example, participant M-E notes that it was agreed that more information regarding the process and the purpose of the process should be provided already at the stage when a complainant first contacts the Ministry regarding a complaint. According to the participant, in this way, expectations regarding the specific instance mechanism can be better managed.

5.1.4 Final statement

Most of the NCP members interviewed feel that the NCP had attempted to balance two distinct perspectives in their final statement given on the case. While they feel that there simply was not evidence available that would justify a verdict finding the company guilty of breaching the OECD Guidelines, neither do they consider there was no room for improvement regarding the company’s behaviour. For future purposes, they wanted to make it known that companies should consider the effects of projects like the Xayaburi dam project more carefully. This resulted in the wording of the final statement being carefully considered so as to incorporate both views, according to members of the NCP.

I can’t exactly remember how it was phrased in the CSCR’s statement, but we tried to find a balance between two different perspectives; we couldn’t see that Pöyry had unambiguously broken the OECD Guidelines, but on the other hand, we still wanted to send the message that the effects of a project should be evaluated more thoroughly from an accountability perspective [...] I remember that it was something we particularly considered, how to best incorporate both those elements in the statement. (Participant BL-B)

Participant CS-A took exception to this view and felt a damning verdict would have been appropriate. According to the participant, at the time of the final meeting, some members of the CSCR still lacked a thorough knowledge on the particularities of the case. This, coupled with a strong desire to bring the case to a close after an already lengthy process, resulted in a somewhat hasty decision being made.

Even in the final session it felt clear to me that not everybody was aware of the facts [of the case] and there were several things that remained unclear, and still they wanted to make a decision, so obviously we should have taken a timeout at that point when it became clear that we did not have enough information. (Participant CS-A)

Participant M-C feels that there was a sense of the MEE being very careful and hesitant to go down the route of a guilty verdict, and speculated that this might be due to the juridical aspects of the OECD Guidelines, i.e. there was some uncertainty regarding what the juridical parameters surrounding such a decisions were and whether it could
be legally justified to give a guilty verdict. Nevertheless, most participants were quick to point out that specific instance mechanism is not a court of law and that any verdict given by the CSCR, and consequently the NCP, lacks any sort of legal impetus. For example, according to participant BL-D, since the NCP is not a court, and the OECD Guidelines are not laws, it cannot be used to either prove guilt or innocence, and this is something all involved parties need to understand. Instead, the mechanism is a tool for improving corporate activity within the sphere of corporate responsibility. Participant BL-D adds that even though the verdict is not legally binding, it is still binding because of the due diligence aspect.

The final statement of the CSCR did not address all the issues brought up in the original complaint, because some aspects were deemed to be beyond the scope of the mechanism. For example, the complaint stated that Pöyry should be required to set up a performance bond for those harmed by the dam project and repay the Finnish Government for the money they invested in supporting the MRC, which is something the NCP simply has no authority to decide on. Participant M-C comments that the complaint may have been a bit excessive, but in some ways the mechanism requires that and adds that, all in all, the concerns brought up in the complaint were valid. Participant M-C also notes that the mechanism requires a lot of work and knowledge from the side of the complainants and that as CSO’s funding has been cut in recent times it might be difficult for them to find the resources for these kinds of cases in the future.

I think that this mechanism perhaps requires quite a conspicuous [complaint] and that you really include a bit more than you even think will go through. So perhaps it necessitates that in a way. Less would have been sufficient in this [case], but it did indeed contain the gist of the matter. But from the side of the civil society organisations this requires […] know-how, a lot of work and now that they have even scarcer resources, I don’t know how they will organise their financing in the future […]. (Participant M-C)

Participant M-E notes that the complainants probably had greater expectations on the process than what it could reasonably fulfil and that since there had been so few cases at that time, the case process itself was not firmly established, which meant it was not generally known exactly what one could expect from such a process and mechanism. When asked if the NCP was the appropriate forum to try a case such as the Pöyry case, all except one participant agrees that it was; one ministry representative feels that they cannot take a position either way on this question.

One matter that caused some public controversy in the aftermath of the case proceedings concerned the manner in which the decision of the CSCR was
communicated to the press in the MEE’s press release. While some of the participants feel that the press release regarding the CSCR’s final statement distorted the CSCR’s judgement of the situation, others feel that the phrasing of the press release was not an issue. Participant CS-A and BL-B feel that the press release significantly differed from the actual conclusion the advisory committee came to. Participant BL-B adds that the phrasing of the final statement had been carefully considered and according to the participant, there was a bit of confusion among the members of the CSCR when the press release was published because of the way in which their decision on the case was presented. Participant M-C also acknowledges that there were problems not only with the press release, but with communication in general. Participant M-F, on the other hand, does not feel that the wording of the press release mattered. According to the participant, the press people prepared the statement and they have their own way of presenting things. The participant guesses that they were trying to make it more understandable to the public and that this is the reason for the wording being what it is. Participant M-E feels that the purpose of the press release was to communicate the decision of the CSCR, which was that Pöyry had not breached the OECD Guidelines, and as such did not feel the wording of the press release was an issue.

5.1.5 Structural and political considerations

In 2013, during the time of the Pöyry case, one CSO decided to resign from the CSCR. The reason for the decision was that the members are involved in the CSCR in the capacity of private persons and not primarily as representatives of their respective organisations. According to participant M-E, even though the members of the CSCR represent different organisations, they are not allowed to divulge case material to others in their background organisation. Participant BL-D adds that the reason for one member organisation leaving was that some organisations have a policy of taking decisions collectively, which is not possible in a specific instance case.

Participant CS-G brings up the point that some members of the CSCR are perhaps predisposed to take certain positions, which can make it difficult to reach a solution between the opposing parties of a specific instance case. While the participant feels that one could question whether someone like them (participant CS-G), who does not have in-depth knowledge of certain CSR issues, should be included in the CSCR, they also feel that one could at the same time question the impartiality of certain NGO
representatives and the difficulties this creates in terms of resolving specific instance cases.

[...] you could ask if [...] a generalist such as myself, am I the right person to think about these issues, but at the same time you might just as well ask if all those representatives of NGOs are sufficiently impartial [...], if I am missing this kind of detailed information then I feel that correspondingly a grasp of the big picture was missing from some people, because it felt like there was on one side a lot of people who only know about one thing, which is good, we need those too, but when we are trying to achieve a solution it might not be the best possible composition. (Participant CS-G)

Participant CS-A feels the size of the CSCR is an issue, and that smaller, more carefully selected group that tries the cases would be more effective and result in more thorough investigations. Some participants feel that if a smaller group were to handle the cases, this could allow for the group to better acquaint themselves with the cases and the issues involved. Participant CS-A mentions the example of the Norwegian NCP, which only has four members, all with specific expertise relevant to the area of corporate accountability.

It [the Pöyry case] should probably have been handled in a smaller group, as we suggested after the case had been tried that the size of the CSCR should be slimmed down in the same way as has been done in Norway, where they have a few experts who know what the deal is and who have the opportunity to familiarize themselves with the issues and who will make an informed decision and not be swayed by the, in some ways, political pressure, because of course there is a high threshold for the CSCR to give a conviction, even if it really isn’t a conviction because it doesn’t have any legal validity. (Participant CS-A)

However, participant BL-B and CS-G, for example, feel that there is an intrinsic value in a diverse group of people providing different perspectives on such cases, and that a scaled down group would mean the loss of some of these valuable perspectives. In general, many of the participants feel that a smaller CSCR could have both positive and negative effects, and find it difficult to judge which option would be best.

Participant CS-A also brought up the political pressure the CSCR is subject to in the participant’s opinion (see previous quote). According to the participant, this political pressure results from the CSCR being under the MEE and as the mandate of the MEE is to promote business activity in Finland, this means that reprimanding a Finnish company could hamper that company’s business activity and in this way conflicts with the mandate of the MEE. Since it is theoretically possible for the MEE to disregard the decision of the CSCR, as the CSCR only gives a recommendation to the MEE which the MEE can then accept or dismiss, participant BL-B also feels that it is a somewhat problematic set-up, as the ministry whose job it is to promote Finnish business globally

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2 Translation of the Finnish concept “yhden asian ihminen”
also assesses these corporations and their alleged violations. At the same time, participant BL-B understands why the NCP falls under the MEE and feels that it is in a way justified. After all, the MEE is the ministry that is responsible for activities related to corporations. Participant BL-D feels that if one were to truly try to strengthen the role of the NCP, one would place the NCP under the Prime Minister’s Office. However, the participant adds that not everything can be under the Prime Minister’s Office and that the current structure is relatively well functioning, as other ministries are included in the arrangement as well.

Well if [...] we would want to really strengthen [the role of the NCP] then it should also be under the Prime Minister’s Office, but not everything can be put there either, so it is pretty good as it is, the MEE is a quite good place because we are talking about working life, and then the fact that there are these other ministries involved is important, there is the Ministry of the Environment and the Ministry for Foreign Affairs, for example [...]. (Participant BL-D)

While most participants feel it is valid to question whether there could be a conflict of interest in having the NCP under the MEE, participant M-F feels that the MEE is the ideal place for the NCP, since corporate accountability issues are issues directly related to corporations and the MEE is the ministry who specifically handles issues relating to corporations.

Participant CS-A feels that the Finnish NCP’s lack of political mandate severely limits the potential of the NCP. With little or no common ground between the member organisations of the CSCR and no political mandate, the ability of the Finnish NCP to accomplish anything of significance in the area of corporate accountability appears to be very restricted.

[There are so many organisations in the CSCR] that there isn’t any common ground on the basis of which the work could then be advanced or that it would have any political mandate to impact corporate accountability politics, it’s more like somewhere to gather every few months and discuss topical issues, because [...] it is not something that advances corporate accountability politics. (Participant CS-A)

Participant M-C contends that the CSCR should operate in a target-oriented manner, rather than as a discussion club, and this would require that the NCP has the backing of the Government Programme, which is currently not the case.

[... the CSCR nevertheless always has to operate in a sort of target-oriented manner, we will not be able to get people to join some kind of discussion club, so that would require for [the CSCR] to be supported by the Government Programme, that [the CSCR] would be tasked with following and creating those practical models [for advancing corporate accountability]. (Participant M-C)

When asked if the NCP is a good, well-functioning way of advancing corporate accountability politics in Finland, participant M-E replies that the CSCR is a necessary
According to participant BL-D, the NCP is the only means available in the Finnish context in terms of promoting and fostering corporate accountability. The participant adds that the situation with Finnish companies is quite good, as can be seen in the fact that the CSCR has not had many cases.

According to participant M-C, soft law mechanisms such as the OECD’s specific instance mechanism complement existing legislation, but they also exist in area where it is difficult to set up legislation that works, i.e. addresses the challenges in the area of corporate accountability on an international level. However, according to the participant, one issue with the specific instance mechanism is that it does not include a follow-up procedure. According to the participant, it would be interesting to see what the situation with the Xayaburi dam is at the moment, and what effects the dam development has had in the region.

5.2 Interviews with the complainants

Four people involved in the case from the complainant side were interviewed together as a group (Table 7). The participants interviewed all consider there to be several issues associated with the manner in which the Pöyry case was handled. These issues are subsequently discussed.

Table 7  Interview participants: Complainants

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<thead>
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<th>Complainants</th>
<th>Civil society organisations</th>
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<td>Participant CS-H</td>
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<td>Participant CS-I</td>
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<td>Participant CS-J</td>
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<td>Participant CS-K</td>
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According to participant CS-J, the local NGOs, as in local to the Mekong River area, contacted the Finnish organisations when they found out about the rather central role of Pöyry in the dam development project and contends that in practice, it would have been nearly impossible for the local NGOs to proceed with the case without the support of the Finnish NGOs.

According to participant CS-I, after the initial six-month PNPCA consultation period ended, there was still disagreement in terms of how to proceed with the Xayaburi project. This was when the Laotian Government hired Pöyry to conduct the consultation, which the Government then used to justify them proceeding with the project, as Pöyry’s consultation report stated that the dam’s environmental effects would be more or less insignificant. Participant K adds that around the time that the controversy around the Xayaburi dam project arose, there was quite a general consensus among the scientific community that it would not be beneficial to hurry the project along and that there was no reason for why the project could not progress at a more moderate pace. According to participant CS-J, the Xayaburi dam project had particular significance, as it was the first time the prior consultation process of the MRC’s PNPCA was tested and, thereby, it established precedence for standards on how similar dam developments will be approached in the future. For this reason, it was particularly problematic that things turned out as they did. Participants CS-I and CS-H further add that the Finnish Government has previously been involved in the funding of the MRC and point out the paradoxicality of the Finnish Government being involved in these kinds of development projects, only to have a Finnish company hamper this with its activities in the region.

5.1.1 Understanding of the case

As the Xayaburi dam had not yet been built at the point of the case proceedings, the long-term environmental and human rights effects of the project were not fully observable when the Finnish NCP was processing the case. However, the participants point out that especially human rights violations had already taken place at that time, as villages had been moved and other preparatory work for the project had been initiated, even though the prior consultation process was still underway. Since actions had already been taken by the Laotian Government to advance the project, which was done as a direct result of the services provided by Pöyry, this had already resulted in some harmful effects being realised. One central point emphasised by the participants
is that the local population, which depend on the Mekong River for their livelihoods, had not been consulted in connection to the Xayaburi dam project, even though the project directly impacted their entire way of life.

One participant feels the case was quite straightforward in itself, compared to how complex corporate accountability cases can be. As the project was well documented, the general information regarding the project was easily accessible, which meant that the CSCR could mostly focus on assessing whether the measures taken by Pöyry were adequate, rather than having to spend time investigating what actually happened.

[…] the documentation of the case is after all relatively clear, we know who has been consulted and how much and then we can argue about whether it is inadequate in terms of in proportion to the project and kind of say that all those who the project affects have not been consulted, however, in a case where you would have to go to the spot and find out what actually happened, it is very unclear how such things would be paid for or... (Participant CS-K)

The participant also brings up questions of what would happen if a case was brought to the NCP which would require actual investigation on site, if and how this would be financed and what resources would be made available for this, in general. Evidently, there are many questions regarding the reach of the specific instance mechanism of the Finnish NCP that remain unanswered. In comparison, while some members of the NCP feel that actual investigative work is beyond the scope of the NCP, others seem to welcome the idea.

The participants feel that the members of the NCP were not particularly well-informed of the case and that this could be seen in the questions that were asked during the case sessions and ultimately, also in the verdict that was given. Notably, one NCP member was of the same opinion. Participant CS-J, for example, does not feel that the MEE officials were particularly knowledgeable about the case in general and would have expected more from them. Participant CS-K contends that the people who deal with these kinds of cases should be well versed in areas such as human rights, something that was perceived as especially lacking in this case by the participant. Participant CS-K adds that it was disappointing how vaguely the final statement referenced the human rights impacts of the Xayaburi dam project. Regarding the CSCR members perceived superficial understanding of the case, participant CS-J feels that the members of the CSCR are not solely to blame for this, as it is a question of a larger problem of under-resourcing of the NCP. Related to this is the issue of how little additional information was sought during the case proceedings; two statements from different ministries and
Pöyry’s replies. According to the participant, if the investigation was conducted by an independent body this could have elevated the entire process significantly.

"... the investigation of some independent body or such would have probably taken the process to a completely different level and made it possible for some sort of accurate judgement, that was also something that was clearly lacking in the whole thing. But it also demonstrates the under-resourcing, how badly they were in touch with the complainants and kept us up to date, it felt like it was completely ad hoc and the fact that if no one from our side had been active then we would have been kind of dropped [out of the proceedings]. (Participant CS-J)"

According to participant CS-K, the original intent of the complaint seemed to have gotten lost along the way and in this way, the process became disconnected from the complainants.

"You cannot really say that [the NCP] showed any initiative or like, from their point of view it was probably as if we had submitted a document that then Pöyry and the Ministry officials were to comment on, but that which was the original intention of the complaint or the remarks that it included, they did not seem to be really all that significant, instead the process in some ways detached from the complainant, which is not the intent of those guidelines in my opinion, but that was how the Ministry began the proceedings and carried them out. (Participant CS-K)"

Similarly, participant CS-I feels that the content of the complaint became severely distorted during the case process. This became evident when the complainants received a document from the NCP where the entire complaint was summarised, in preparation for the final meeting of the CSCR, where the CSCR was to compose the final statement, i.e. give their verdict on the case. Even at this point, near the end of the process, the complainants received new information about Pöyry’s original reply to the complaint and had to yet again correct claims made in the document prepared by the NCP, claims that had been formed based on how Pöyry had responded to the complainants’ statements and not on the actual statements made by the complainants.

"Well, one good example of it in the Pöyry instance is that Pöyry does not have the responsibility to consult stakeholders, referring to the local communities and other entities, also that was said in response to that we said about Pöyry hindering the fulfilment and continuation of the consultation process, so there was a sort of clear distortion of what [the complaint] was actually about and what the actual damage was. (Participant CS-I)"

5.1.2 Equitability of the process

The access to information seems to have been the main factor that contributed to the perceived inequality of the case proceedings on the part of the complainants. The participants all highlight the problems caused by the fact that they were not allowed access to Pöyry’s replies, as these were declared classified.

Participant CS-I talks about how the NCP asked for statements from the Ministry for Foreign Affairs and the Ministry of the Environment, as the expertise required for the
case was not available within the MEE; the Ministry for Foreign Affairs was asked for a statement regarding the MRC’s PNPCA and the regulations associated with that, while the Ministry of the Environment was asked to comment on the environmental effects of dam developments and whether or not the environmental effects of the Xayaburi dam project had been sufficiently evaluated. According to participant CS-I, these statements were handed over to Pöyry immediately, while the complainants did not receive them until later on when they specifically asked for them, at which point they then tried to inform all involved parties as quickly as possible about the content of the statements. Participant CS-I emphasises the responsibility the participants felt they had to respond to these statements swiftly, which was not possible on account of the initial lack of access to the statements. It was particularly important for the complainants to be able to respond quickly because of concerns that the core of the complaint had not been accurately understood by the NCP and, thus, needed to be corrected. This lack of understanding related to the complaint was partly due to Pöyry's objections to the complaint having distorted the original message behind the complaint, which consequently led to the discussions among the NCP becoming centred around Pöyry's replies to the complaint rather than the complaint itself.

Mediation was not possible in the Pöyry case, as Pöyry refused to participate in this. Participant CS-K feels that it would have been difficult to have any kind of proper mediation unless the local organisations from the Mekong area were involved in this. According to participant CS-I, it was made clear to the complainants that it would not be possible to fly in local NGO representatives for the case proceedings and the fact that all the documentation was in Finnish further made it difficult to involve the local actors, which were ultimately the central actors in this case. Participant CS-J adds that the translation of the case documents required a significant amount of resources from their part. The complainants originally asked for the case to be processed in English, but this request was not directly addressed by the NCP. Participant CS-I adds that they did receive the English translations much later, but as they had a responsibility to inform the other involved actors of the developments and discuss with them regarding how to proceed with the complaint, this required that everybody was aware of the current situation and thus required for the complainants to act fast with the translations.

Regarding the wording of the press release, which to a certain extent differed from the CSCR's final statement, the participants feel that this was a significant issue, as it
distorted the CSCR’s message and allowed Pöyry to turn the proceedings into a media victory for themselves.

Well, it is quite irresponsible for the MEE to publish a thing like that, because since they could not say that Pöyry had completely abided by [the OECD Guidelines], not even the MEE and the CSCR came to that conclusion without any criticism [...] [the wording of the press release] is a central aspect in why it actually became such a media victory, like Pöyry even says themselves in the interview with Voima³ […] (Participant CS-I)

According to participant CS-J, the issue with the press release, among other things, raises some questions about the equitability of the entire process. Participant CS-K adds that the lack of equitability can best be seen in the fact that the complainants were denied access to documents central to the case proceedings, while participant CS-J adds that the Supreme Administrative Court’s decision (21.4.2015/1042) further exemplifies how the decision to declare the documents classified was not justified. According to the complainants, they were not kept up to speed on how the case was progressing, exemplified by, for instance, the fact that they received certain pertinent case documents only when they specifically asked the MEE for them. Thus, the case required the complainant to take a very proactive approach and in this way placed excessive demands on the complainants.

### 5.1.3 Structure and resources of the Finnish National Contact Point

When asked about the potential conflict of interest with the NCP being under the MEE, participant CS-K contends that there is not a direct conflict of interest, in theory, in the NCP being under the MEE, since it is not the task of the MEE to promote business activity at the expense of all else, without any consideration of surrounding factors. In addition, sustainable business practices do also fall under the MEE’s domain. The participant feels that corporate accountability and sustainable business practices should be viewed as the foundation for any successful company and in this way it also makes sense for the MEE to actively promote these things. However, the participant also feels that the handling of the Pöyry case suggests that sustainable business practices are currently not at the core of the MEE’s agenda.

The participants feel that many of the issues previously discussed are symptomatic of larger problems of under-resourcing of the Finnish NCP, and that under-resourcing could in turn indicate a lack of political support for the NCP and its activities. The participants contend that if the Finnish NCP and the specific instance mechanism

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³ A Finnish monthly paper
would have had greater political support and been devoted more resources, this would have also impacted the handling of the case and perhaps resulted in a different verdict.

A more general point of course is that the process is so multidimensional, so of course we hope that this was not particularly intentional, that they were not knowingly keeping us in the dark, but at least there it becomes apparent that perhaps not enough resources have been devoted to such a multidimensional and complicated case, then it easily drifts into a very one-dimensional interpretation [of the case] [...]. (Participant CS-J)

The question kind of comes back to the fact that yes, it is the political guidance that indicates that now we believe that this complaint process in significant in some way, and then you could get better political support for it than what we currently have. In some ways the back up was too limited [in the Pöyry case] and in some ways the MEE was tiptoeing around trying to avoid stepping on somebody else’s toes. (Participant CS-K)

Participant CS-J also mentions how the under-resourcing of the Finnish NCP and the specific instance mechanism implies a certain level of greenwashing, as it gives the impression that the mechanism is not taken all that seriously. If Finland has an NCP that is meant to implement the OECD Guidelines and effectively and impartially handle complaints regarding the global activity of MNE’s, this NCP will need a certain amount of funding and political support to be able to do its job properly. Otherwise, it can in the worst-case scenario be considered as nothing more than an attempt to greenwash. According to participant CS-K, these kinds of guidelines have a good potential to be effective in terms of enabling public authorities to deal with corporate accountability related issues – if they are taken seriously – and in countries such as the Netherlands and the UK, for example, it is acknowledged that multinational business is complicated and challenging and for this reason they take the OECD Guidelines seriously and use them as a tool for dealing with the challenges posed by multinational business activity. However, the participant feels that these kinds of signals are not evident in the Finnish context.

Participant CS-J contends that in some ways the NCP itself recognised that the process did not go exemplarily, as the Pöyry case did spark discussion and attempts to improve the functioning of the NCP. However, the participant expresses some scepticism regarding whether it will be possible to significantly improve the functioning of the NCP in the present-day development cooperation climate, where you are currently relying quite heavily on the power of the private sector to do good without any supervision and regulation mechanisms to provide oversight. Participant CS-I agrees that some aspects point towards the NCP trying to improve its functioning following the Pöyry case. However, participant CS-J expresses frustration over how difficult it is to bring issues like the Pöyry case forward and go through these types of complaint processes, and how active you yourself have to be in order to move the process along.
According to the participant, the inadequacy of the NCP’s attempts to keep the complainants up to date is something that further illustrates the under-resourcing of the NCP.

Participant CS-I adds that when the case came to a conclusion at the NCP, OECD Watch was conducting an evaluation of different NCPs, which the complainants participated in. The Finnish NCP was also asked to participate, but they declined. Nonetheless, the participant thinks that the pressure put on the NCP by the complainants and by the public discourse at the time did inspire some changes. However, the participant does question why a body such as the NCP is under the MEE and whether it is possible for the MEE to truly criticise corporations like Pöyry given its attachment to them. Participant CS-I also brings up the issue of the CSCR only functioning as a supportive body to the MEE, while the MEE’s officials are the ones that in practice handle the case and ask for statements from other entities if need be, and raises the question of whether the NCP could be comprised of something else rather than the MEE and the CSCR.

When asked if the complainants would engage in the specific instance process again should there be another case, the participants emphasise how much the process demands from complainants and how the process is only available to a limited number of NGOs, as many simply do not have the resources required to participate given the current situation in Finland. Participant CS-J contends that it is very important that even local NGOs, such as the ones involved in the Pöyry case, would be able to engage in the specific instance process, as it is not by any means given that a NGO with the required capacity will be found in Finland in these types of international cases. Given these circumstances, the participants feel that it would require a company committing a very serious breach of the OECD Guidelines for them to engage in this challenging process once more.

5.3 Results

The aim of this study is to find out how the multi-stakeholder Finnish NCP, operating under the OECD Guidelines, approaches and ensures corporate accountability, as well as to provide recommendations for how NCP practices could ensure a greater degree of corporate accountability in the future. This is done by examining the functionality of the specific instance mechanism of the Finnish NCP as an effective soft law mechanism and considering how the specific instance mechanism could be improved in the Finnish
context so as to ensure a higher level of corporate accountability in future specific instance cases. Thereby, the research questions the study seeks to answer are:

1) How is the governance of the Finnish NCP meant to ensure corporate accountability?

2) What governance failures of the Finnish NCP can be identified in the specific instance mechanism case known as the Pöyry case?

3) How could these governance failures be addressed so as to ensure a higher level of corporate accountability in future specific instance cases?

In light of this, the results are presented in three sections, corresponding to the original aim and research questions of the study (Figure 6). Firstly, the main ways in which the Finnish NCP goes about ensuring corporate accountability are described (sub-chapter 5.3.1), secondly, the governance failures identified in the Pöyry case are discussed (sub-chapter 5.3.2) and thirdly, measures regarding how they could be addressed are proposed (sub-chapter 5.3.3).

**Figure 6  Relation between aim, research questions and results**

Find out how the multi-stakeholder Finnish NCP, operating under the OECD Guidelines, approaches and ensures corporate accountability, as well as to provide recommendations for how NCP practices could ensure a greater degree of corporate accountability in the future

How is the governance of the Finnish NCP meant to ensure corporate accountability?

Ensuring corporate accountability

What governance failures of the Finnish NCP can be identified in the specific instance mechanism case known as the Pöyry case?

Governance failures

How could these governance failures be addressed so as to ensure a higher level of corporate accountability in future specific instance cases?

Measures to address governance failures
5.3.1 Ensuring corporate accountability

As a multi-stakeholder forum, the Finnish NCP is meant to give different stakeholder groups the opportunity to make their voices heard in issues related to corporate accountability and facilitate cooperation between the groups. This represents a unique opportunity for social learning to take place. However, during the interviews it was suggested that even though the discussions had during the CSCR’s meetings were always civil and matter-of-fact, there is no way for the NCP to drive the issues discussed during the meetings forward. In addition, the CSCR meets very sporadically and does not currently operate in a very target-oriented manner.

The specific instance mechanism is the NCP’s most substantial way of having a positive impact on corporate conduct as it puts the NCP in direct contact with companies alleged to have violated the OECD Guidelines. Within the framework of the specific instance mechanism, mediation and issuing a final statement, which includes a case verdict as well as recommendations for future actions the company should take, are the main ways through which the NCP can ensure corporate accountability. However, the governance system of the NCP does not appear to be contributing particularly effectively to this. On one hand, this is due to the CSCR including such a wide group of stakeholders with very different interests, many with limited knowledge of corporate accountability related issues, who are only able to devote a very limited amount of time to the work of the NCP and participate in meetings held very infrequently. Apart from the interviews, some of these issues were also mentioned in the responses given by those who declined to participate in the interviews (previously mentioned in sub-chapter 4.2.1). For example, one person cited not having enough knowledge of the case itself as the reason for not participating in this study and explained that this was due to resource constraints which forced them to prioritise the NCP matters that were most relevant for the work of their background organisation. In addition, another person did not feel the topic of the study was worth pursuing in itself and three people did not respond to the request for an interview at all. Taken together, this raises questions regarding whether the level of engagement of the individual CSCR members in NCP matters is adequate. On the other hand, another issue with the governance system of the NCP in terms of ensuring corporate accountability can be found in the fact that the MEE retains ultimate decision-making power and is responsible for the preparation and oversight of specific instance cases, which raises questions about the independence of the NCP itself.
The Pöyry case particularly illustrated the limitations associated with mediation, as there are no ways for the NCP to compel a company to participate in this. For this reason, it is particularly important that the NCP itself undertakes a proactive approach in this regard and makes a significant effort to persuade the company to engage in mediation. The final statement, on the other hand, is important in terms of the messages it sends to the public and other companies. As the NCP does not have the authority to impose any formal sanctions, the final statement and the reputational effect this can have on the company in question is all they have available to them regarding setting standards for responsible business behaviour. In the Pöyry case, the message of the final statement was in some ways contradictory as it found the company did not violate the OECD Guidelines but at the same time suggested that in future events, companies should be more conscious of their role in projects such as the Xayaburi dam project. This allowed Pöyry to frame it as a media victory for themselves, rather than as an opportunity to learn and develop their way of operating.

Based on the analysis of the interview data, it can be concluded that neither the current governance model of the Finnish NCP, nor the means it has at its disposal, are enough to adequately ensure corporate accountability. The inclusion of a wide group of stakeholders on such a sporadic basis is not particularly conducive in terms of driving issues forward, as it means the NCP is quite slow and rigid in its functioning. At the same time, the means the NCP has at its disposal in terms of ensuring corporate accountability, namely mediation and the issuing of a final statement, have significant limitations and are further weakened when not used to their full potential.

**5.3.2 Governance failures**

Certain aspects of the Pöyry case discussed during the interviews point to specific governance failures in relation to the NCP’s handling of the case. The governance failures are in this context failures in terms of the NCP’s mandate of ensuring corporate accountability. The identified governance failures are very much interconnected to each other and, therefore, difficult to fully distinguish from each other. These governance failures are presented in Table 8, where they have been organised under four broad categories (resources, impartiality, NCP structure and mediation).
The resources available to the NCP are assumed to be adequate in terms of fulfilling the minimal requirements of the specific instance mechanism, but they do not seem to suggest that the mechanism is taken particularly seriously, nor given much weight, by the Finnish Government. This can primarily be seen in the limited use of external experts, who could perhaps have shed some light on many of the complex issues concerning the Xayaburi dam case and Pöyry's involvement in this, and in this way enabled the members of the CSCR and the NCP in its entirety to better grasp the complexities of the case and ultimately enabled the NCP to issue a final statement based on comprehensive information. In addition, the case process lasted for a full year as the case progressed relatively slowly from one stage to the next, which illustrates the limited amount of time that was allocated to the NCP’s work. The apparent lack of serious probing into the specificities of the case indicates a tick-box approach to the enforcement of the specific instance mechanism. Furthermore, the burden of ensuring a complaint is properly understood by the people who process the case, and ultimately decide the outcome, should not fall on the complainants to the extent it appeared to do in the Pöyry case.

### Table 8  Governance failures

| Resources                                                                 | • Expert opinions were not sufficiently solicited  
|                                                                          | • Case process was drawn out and progressed slowly  
|                                                                          | • Complexities of the case were not fully explored  |
| Equitability                                                             | • Access to case information was restricted for the complainants  
|                                                                          | • All affected parties could not participate in the case proceedings  |
| NCP structure                                                            | • The way the NCP is organised, puts the specific instance mechanism at risk of being subjected to conflicting interests and disproportionately favouring certain interests over others  |
| Mediation                                                                | • Lack of mediation meant the specific instance process could not live up to its purpose  
|                                                                          | • Social learning was not promoted  |
Both the complainant and the object of complaint should be able to participate in a specific instance case on equal terms with equal access to information, which did not happen in the Pöyry case as the complainants were denied access to pertinent case information. Furthermore, any complainant should be able to participate in the specific instance mechanism, should they have a legitimate case that makes it past the initial assessment phase. Intuitively, the complainants who are central to the case should be included in the case proceedings, at least to the extent that they are kept informed at the same pace as the other party. As the local actors in the Pöyry case could not contribute to the process on equal terms, this lead to further inequalities in the case process.

The structure of the NCP, i.e. the way it is organised with the CSCR being under the MEE, means that the MEE retains ultimate decision-making power and oversight of specific instance cases, which makes the specific instance mechanism vulnerable to certain interests overriding others at the disadvantage of ensuring corporate accountability. At the same time, due to the lack of mediation, the intention of which is to help a company improve their way of operating so as to ensure a higher degree of accountability in the company’s future endeavours, one of the main objectives of initiatives involving multiple stakeholders – social learning – could not be promoted.

In many ways, particular features of the case did not appear to be in full compliance with the NCP core criteria of visibility, accessibility, transparency and accountability, laid out in the OECD Guidelines with the aim of fostering functional equivalence. Particularly issues related to accessibility, transparency and accountability emerged. In terms of accessibility, the Pöyry case largely excluded the local NGOs from participating in the case proceedings in the sense that the local NGOs were not brought in for the case proceedings and information was in large part supplied to them through the Finnish NGOs. In terms of transparency, the decision not to release Pöyry’s reply to the complainants significantly compromised the transparency of the process and resulted in an inequitable situation between the complainant and the object of the complaint. In terms of accountability, as mediation was not a part of the case proceedings, the NCP was not able to have an active role here.

In addition to inconsistencies with the NCP core criteria, elements of the guiding principles for specific instances – impartiality, predictability, equitability and compatibility with the OECD Guidelines – also appeared to be lacking to a certain extent. The lack of predictability of the process in the Pöyry case can partly be
attributed to the fact that the Pöyry case was among the first handled by the Finnish NCP, which can explain the lack of routine underlining the case proceedings and the unfamiliarity of the NCP with the specific instance mechanism. However, the issues with the lack of equitability, i.e. the decision not to release Pöyry’s reply due to them allegedly containing sensitive business information, is a more serious cause for concern, as the lack of this undermined the legitimacy of the specific instance proceedings. Due to limited resources, the many complexities of the case could not be investigated in-depth, resulting in some members of the NCP perceiving the case to be difficult to grasp and the complainants perceiving the NCP members to not be particularly knowledgeable about the case in its entirety.

For the reasons mentioned above, the specific instance mechanism was not able to operate in full accordance with the core criteria of NCP’s (visibility, accessibility, transparency and accountability) as well as the guiding principles for specific instances (impartiality, predictability, equitability and compatibility with the OECD Guidelines).

Based on the information gathered during the interviews and the subsequent analysis of this, it appears that the governance failures of the Finnish NCP that can be seen in the Pöyry case are to a large extent related to the under-resourcing of the NCP and the specific instance mechanism in the Finnish context (Figure 7). The fundamental under-resourcing of the Finnish NCP implies a lack of political support for the mechanism and a corresponding tick-box approach to the implementation of the OECD Guidelines, the result of which is a weak, ineffective specific instance mechanism. This severely affects and limits the functioning of the Finnish NCP’s specific instance mechanism and, as a consequence, impedes the NCP’s ability to contribute to a meaningful dialogue on corporate accountability.

Figure 7  Factors influencing the Finnish NCP’s specific instance mechanism

Lack of political support
- Governance failures identified in Pöyry case symptomatic of larger issues, namely a lack of political support for the NCP

Under-resourcing
- Due to the lack of political support, the NCP is under-resourced

Weak specific instance mechanism
- As a result, the specific instance mechanism lacks the ability to contribute to a meaningful corporate accountability dialogue
5.3.3 Measures to address governance failures

In terms of how the governance failures identified in the Pöyry case could be addressed so as to ensure a higher degree of corporate accountability in future specific instance cases, there are no straightforward solutions to this. Something that is certain, however, is that merely one single measure will not be sufficient to address these problems, but rather a comprehensive approach is required to effectively address the issue discussed above.

One important aspect to consider is the structure of the NCP and particularly the placement of the NCP under the MEE. According to recommendations made by OECD Watch (2016a), NCPs should not to be placed under one single ministry or governmental agency, because of the conflicts of interest this could result in. Placing an NCP under several ministries can reduce this risk. Even though representatives of different ministries are included in the CSCR (see Table 2 in chapter 3), the NCP is still heavily centred around the MEE, creating the opportunity for the interests of the MEE to be disproportionately emphasised. If the NCP were to be disengaged from the MEE, this would erase the perception and possibility of an obvious conflict of interest. Disengaging the NCP from the MEE, however, might also result in the NCP losing the weight provided to the mechanism by the MEE and the close connection to enterprises afforded by this proximity. In that way, there is a trade-off effect to be considered. In the end, however, given the level of activity of the NCP (which is currently quite low), the issue of how much added value the connection to the MEE affords the NCP is questionable at best.

OECD Watch (2016a) also emphasises the importance of the NCP having an oversight body for the purpose of providing advice and ensuring the independence of the NCP. As the oversight body is lacking in the Finnish context, this is something that could potentially make a significant difference for the handling of future specific instance cases. Even if the NCP continues to be attached to the MEE, the added presence and involvement of an independent oversight body could address some of the problems related to conflicting interests and the political pressures associated with this.

Increased resources is a solution that can easily be prescribed and would address many of the specific issues mentioned above, however, this is also something that will be highly difficult to achieve in practice given the current political climate. However, it is reasonable to assume that an increased involvement of external corporate
accountability experts would greatly aid the NCP in being able to effectively and comprehensively process specific instance cases. As the bigger question does not merely concern resources, but rather the lack of political will to tackle corporate accountability, this presents an added layer of challenge. For this reason, one could argue for having a smaller advisory committee in place to handle specific instances, as this is likely to make the proceedings more effective and compel the members of the committee to thoroughly acquaint themselves with the cases. However, it is unclear to what extent having a slimmed down CSCR would free up resources for external experts, etc. Currently, this possibility exists, as new regulations now allow the possibility of the CSCR appointing a smaller group of its members to handle specific instance cases. However, this has not yet been tested in practice. Nonetheless, by scaling down the advisory committee you will inevitably lose some stakeholder perspectives and in this way you also risk losing some of the benefits afforded by a multi-stakeholder structure. One option would be to completely abandon the multi-stakeholder initiative as such, and instead select a small group of corporate accountability experts, who have specific and in-depth knowledge in this field, to handle these cases, in accordance with Norway’s NCP structure. Although all the members of the Finnish NCP to some extent deal with these issues in their regular work, some aspects of the Pöyry case appeared to be beyond what one could reasonably expect to fall within their particular field of expertise and what they are professionally equipped to deal with.

The limited resources also directly relate to the issue of the limited abilities of the local NGOs to participate in case proceedings. As the OECD Guidelines explicitly deal with multinational enterprises, local actors should be able to be included if the robustness of the specific instance mechanism is to be guaranteed. Also, added resources may allow for a more thorough assessment of what information included in a company’s statement can be classified. If a statement is legitimately deemed to include sensitive business information, this could be bypassed by asking the company to provide a separate statement that will be made publicly available, as one participant suggested during an interview. However, this possibility should only be utilised if there is a truly valid reason for this and should in general be avoided. In addition, added resources would allow for the NCP being able to conduct more thorough investigatory work on their own, rather than just relying on subjective statements from each party. Although some of the participants feel that investigatory work is beyond the scope of the NCP, others welcome the idea; nonetheless, this is something that could significantly elevate the entire process.
A fundamental limitation of the specific instance mechanism is its inability to enforce mediation. As the OECD Guidelines do not offer any way of enforcing mediation, the responsibility of this largely falls on the individual NCP and the extent to which they chose to pursue this. The way mediation and the case proceedings are framed can be assumed to have a significant impact on the extent to which the company is willing to engage in mediation. If the company perceives the complaint as a threat, it is likely they will withdraw from any further contact with the complainant that could implicate them in the eyes of the NCP and the general public. As the issues brought forward in specific instance cases are likely to often be of a rather sensitive nature, this requires the NCP taking a proactive role as the mediator between the two parties. Based on the interviews with the participants, support for the notion that the NCP assumed a proactive role as a mediator in the Pöyry case could not be established. From the evidence available, it seems that an invitation for Pöyry to participate in mediation was extended to the company mostly as a formality. This exemplifies how the OECD Guidelines lack of being able to enforce mediation in a complaint process that heavily relies on mediation is a serious weakness of the framework. In addition, the specific instance mechanism’s lack of a follow-up procedure regarding whether or not the company in questions takes on board the recommendations provided in the final statement is a another major weakness of the framework. The NCP having the ability to revisit concluded specific instance cases could provide an incentive for companies to enact changes based on the NCP’s call for action, i.e. the final statement.
6 DISCUSSION AND CONCLUSIONS

The results of the study are discussed in light of the literature review presented in chapter 2 and the contribution of the study is explained. Subsequently, main conclusions are drawn and limitations of the study along with suggestions for future research in the field are presented.

6.1 Discussion

The results of the study are discussed with a starting point in the literature presented in the literature review on soft law, multi-stakeholder governance and corporate accountability, as well as the framework of the OECD Guidelines.

6.1.1 Soft law

Soft law norms such as the OECD Guidelines have the ability to guide corporations in highly complex international matters. By providing a blueprint for dispute resolution, they can help corporations avoid complicity in human rights and environmental abuses and be a tool for effective dispute settlement (Gruchalla-Wesierski, 1984). In the Finnish context, the inability of the specific instance mechanism to function as an effective dispute resolution mechanism in the Pöyry case was down to several factors. For one thing, the process in its entirety was relatively new to the NCP. This lack of experience with the specific instance mechanism meant the full potential of the mechanism could not be realised. In addition, as the structure of the specific instance process was to a certain extent unclear to the parties entering into it, this lead to uncertainties regarding what to expect. Furthermore, as mediation was not present in the process, the specific instance mechanism was not able to function as a dispute resolution tool. In essence, these issues taken together meant that no clear blueprint for dispute resolution was provided, which significantly hampered the effectiveness of the mechanism.

One of the direct legal effects of soft law is the binding effect it has on the body that adopts it (Gruchalla-Wesierski, 1984). Even though the OECD Guidelines do not legally bind Finnish corporations, they do bind the Finnish Government through the Finnish NCP. Another direct legal effect of soft law is its ability to raise expectations and thereby create a sense of legal obligation (Gruchalla-Wesierski, 1984). This ability to create expectations has also been termed as the primary effect of soft law (Gold, 1983
cited in Gruchalla-Wesierski, 1984). It remains unclear to what extent the Pöyry case has managed to raise expectations in terms of corporate accountability. Some interview participants did strongly believe that the specific instance case raised the bar for the future actions of the company in question, while others saw this as being highly unlikely due to the final statement issued by the NCP. However, the specific instance case did garner a certain amount of media attention, which could be expected to, at least to some extent, have made other companies with similar activities take note in the interest of them not being subjected to similar scrutiny as Pöyry was during the specific instance process. However, to what extent this is the case, if at all, is merely speculation.

The advantages soft law can have over hard law in situations involving complex international affairs due to its flexible nature (Abbott and Snidal, 2000) were not particularly evident in the context of the Pöyry case, as despite the insistence of most NCP members that the specific instance mechanism is not a legal, court-based mechanism, the case process displayed many of the rigid features associated with hard law approaches. An example of this can be seen in the issue with Pöyry’s statement, which was not released to the complainants due to Pöyry’s claim of the statement containing sensitive business information. Some of the NCP members cited the content of the OECD Guidelines here and how it states that sensitive business information should be protected. However, the other side of the issue according to the OECD Guideline – transparency – seemed to be disregarded to a certain extent. In fact, the OECD Guidelines highlight the need for striking a balance between transparency and confidentiality:

> Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public [...] However, paragraph C-4 of the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. [...] It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the [OECD] Guidelines procedures and to promote their effective implementation. Thus, while paragraph C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent. (emphasis added, OECD, 2011: 85-86)

Pöyry announced that their reply in its entirety contained sensitive business information and that for this reason it could not be shared with the complainants. However, the notion that the entire text should be classified does intuitively appear to be quite a unreasonable statement, which could have been challenged by the NCP to a much greater degree. Rather than investigating the issue further, it appears as if the NCP simply accepted Pöyry’s claims after briefly consulting their own lawyers, instead
of making a thorough assessment of the issue. Furthermore, despite being a soft law mechanism, some of the participants expressed support for the notion that the NCP seemed hesitant to pursue a condemning verdict because of uncertainties whether it could be legally justified. In essence, this non-judicial mechanism was hampered by judicial considerations.

The issue of a lack of compliance with soft law initiatives (Kirton and Trebilcock, 2004) can also be seen in the Pöyry case. As the OECD Guidelines are not binding for companies, but only for governments, there are no ways of enforcing mediation in a specific instance case. This meant that Pöyry could effectively simply chose not to participate in mediation, which ultimately hampered the functioning of the specific instance mechanism since it is to a large extent built around mediation between opposing parties. The NCP being unable to get both sides to engage in mediation was a main factor that severely limited the ability of the NCP to contribute to a meaningful corporate accountability dialogue.

The subjective element of soft law has been criticised in international contexts (Gruchalla-Wesierski, 1984) and was also evident in the Pöyry case. As the implementation of the OECD Guidelines is up to individual governments to a certain extent, this means the structure of NCPs vary significantly across different countries, as does the way in which the OECD Guidelines are applied. Although this allows for flexibility and gives the individual OECD countries some freedom as regards to how to best organise the NCP in their country, it can also lead to inconsistencies in the application of the OECD Guidelines between different countries. The fact that implementation of the OECD Guidelines is up to individual governments also relates to one of the major sources of criticism soft law norms often face, which is their lack of an independent enforcement authority, which is thought to lead to soft law having a largely perfunctory role in society (Abbott and Snidal, 2000). This issue is evident also within the Finnish NCP, where the placement of the NCP under the MEE can be questioned in terms of the independence of the MEE in issues concerning Finnish corporations.

On the other hand, despite all the disadvantages soft law has compared to hard law, because soft law mechanisms such as the specific instance mechanism deals with the corporate accountability of multinationals – an area where it is difficult to establish hard law – these types of mechanism can in some ways complement existing legislation, or at least introduce some form of regulations on issues notoriously difficult
to regulate internationally. However, the lack of a follow-up procedure is a major limitation of the mechanism. If the NCP had the ability to revisit cases and find out whether or not the company in question has made any improvements in their operations, this could provide an incentive for companies to take the recommendations made by the NCP in the final statement more seriously.

6.1.2 Multi-stakeholder governance and corporate accountability

The involvement of civil society in business regulation initiatives has been framed as a way of addressing the governance gaps apparent in the global economy. Civil society is believed to be able to “pressure and influence” (Murphy and Bendell, 1999: VI) global corporations into acting in accordance with global standards of corporate behaviour. The reason why civil regulation is believed to have become a viable alternative is due to the apparent insufficiency of unilaterally devised codes of conduct, along with the increasing ability of civil society to affect corporate behaviour and the willingness of business and civil society to work together on these issues (Utting, 2002). This willingness for cooperation could not be seen in the Pöyry case, where the two opposing sides (civil society and business) remained firmly on either side of the fence. Pöyry’s refusal to participate in mediation illustrates how little incentive there was for them as a corporation to engage with civil society in this context. In this case, civil society was not able to pressure and influence Pöyry to acknowledge there was any room for improvement in their activities, let alone put into effect any changes in said activities.

In the age of global business, the regulatory power of nation states in monitoring business and enforcing laws and standards has become severely limited. Scherer and Palazzo (2011) argue for widening the scope of CSR and utilising it as a form of civil regulation to address social and environmental externalities. By linking collective opinion- and will-formation to the regulatory activities of states, the MSI governance structure rests on the notion of deliberative democracy (Habermas, 1996, 1998 cited in Scherer and Palazzo, 2011). Through MSIs, politics extend beyond official governmental institutions and all the way to the civil society level. MSIs are meant to foster collaboration between different actors in society and enable the tackling of some of our times greatest social and environmental challenges (Utting, 2002). By bringing a diverse group of stakeholders together as “formally defined coequals” (Moog et al., 2015), MSIs are supposed to be able to achieve more by involving more stakeholders in the discussion. However, in the Pöyry case and with regard to the multi-stakeholder
governance forum – similar to an MSI – that is the CSCR of the Finnish NCP, it appears that by involving such a large and divergent group of stakeholders, this led to a somewhat superficial involvement of some of the members. An in-depth investigation of the case does not appear to have taken place and as many of the members of the CSCR lack expertise within the matter the case was dealing with, it is regretful that more external experts were not consulted.

Corporate accountability is increasingly being ensured through civil regulation and soft law, as corporations are becoming increasingly susceptible to reputational risks (Jackson, 2010). Mechanisms, such as the specific instance mechanism of the OECD Guidelines, have the ability to damage a corporation’s reputation and for this reason are thought to be able to motivate corporations to be more accountable for the role they play in global society. In this way, the NCP and the specific instance mechanism attached to it is a way of ensuring compliance with the OECD Guidelines and, thereby, promoting corporate accountability. By involving stakeholders in business regulation formulation and implementation, MSIs can contribute to raising corporate accountability. However, a central impediment to the effective functioning of MSIs is often the conflicting interests between different actors. As was the case with MSIs such as the GRI (Levy et al., 2010) and the FSC (Moog et al., 2015), civil society defection has also occurred in the Finnish NCP, when WWF resign from the CSCR in 2013 due to their dissatisfaction with the governance arrangement. In this way, similarly to the GRI and the FSC, the defection from the Finnish NCP was prompted by the initiative not managing to live up to the expectations civil society had for it. CSO defection has a direct impact on the MSIs ability to hold corporations accountable, as it erodes the credibility of the MSI.

As of today, not many cases have been brought forward to the Finnish NCP. Some participants speculated that this might be due to Finnish companies, generally speaking, performing quite well in terms of corporate accountability. However, the number of cases does not necessarily correlate with a specific country’s problems related to corporate accountability. The limited amount of cases could also be the result of altogether other issues. For example, the general public and civil society might not be aware of the availability of this dispute resolution mechanism, as the activities of the Finnish NCP are not particularly visible, nor has its level of activity been particularly high. In addition, as the Pöyry case illustrated, the mechanism requires a lot of resources from the complainant; it is possible that this has acted as a deterrent for
others to engage in the mechanism. As it would have been incredibly difficult, if not impossible, for the Pöyry case to have been brought forward without the assistance of the Finnish civil society actors, many local actors throughout the world might not have the connections required to pursue this type of process, or knowledge of its existence even. This illustrates a common problem in the context of international corporate accountability.

6.1.3 OECD Guidelines

The OECD Guidelines aim to fill the regulatory gaps of the international legal framework by linking governments and business, and by promoting cooperation and consensus building (OECD, 2011a). A strength of the OECD Guidelines is their status as “the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting” (OECD, 2011: 3). As Santner (2011) points out, the relevance of the OECD Guidelines as a soft law mechanism largely pertains to their extensive reach. Also, with the inclusion of the human rights chapter in the 2011 version of the OECD Guidelines, this is the first time an inter-governmental organisation has introduced human rights standards for corporations to act in accordance with (Santner, 2011). However, the ability of the OECD Guidelines to effectively contribute to the regulation of MNEs has been questioned (e.g. Davarnejad, 2011; ICHRP, 2002; Letnar Černič, 2008).

One of the main sources of criticism of the OECD Guidelines has been the lack of sanctions available to non-compliant companies. This issue was also evident in the Pöyry case, where there was no way for the NCP to commit Pöyry to the process in general and to participating in mediation in particular. As the specific instance mechanism is not designed to punish non-compliant companies, but to instead foster cooperation and consensus-building between parties, this cannot be achieved if the alleged offender is not willing to participate in mediation procedures together with the complainant. This inability to enforce mediation in a mechanism that explicitly relies on mediation is problematic. A bigger question is to what extent such a mechanism should rely on the good will and cooperation of corporate entities in the first place. In general, multi-stakeholder accountability initiatives are appealing in terms of the equitability they promise, but often problematic to effectuate in practice. Even though the CSCR provides fairly equal representation of different stakeholder groups, the fact that the NCP despite this is placed under one single ministry, which yields the ultimate
decision-making power and oversees the CSCR’s activities, could be seen as tipping the scales in favour of one particular stakeholder group, thereby undermining the impartiality of the NCP and the multi-stakeholder forum within it.

The limitations of the final statement as a tool for affecting public perception could also be seen in the Pöyry case, as the press release on the conclusion of the specific instance process was not fully in line with the final statement and no measures were taken to address this issue. Furthermore, the OECD Guidelines do not involve a follow-up procedure in relation to the specific instance mechanism, which means that no matter what the NCP decides, they have no possibility of revisit a case once it has been concluded, which is something the subject of the specific instance complaint would be aware of. This means that there is very little incentive for companies to address issues called attention to in the final statement.

The specific instance mechanism as outlined in the 2000 edition of the OECD Guidelines has been criticised for being inadequate and ineffectual (ICHRP, 2002). Even though the role of NCPs was strengthened in the 2011 edition, the ability of the specific instance mechanism to effectively promote and raise corporate accountability largely depends on the implementation, which to a significant part is up to the individual governments. This in turn leads to inconsistencies in the use of the mechanism. An impressive feature of the specific instance mechanism is its potential to “mimic hard law enforcement outside a state’s jurisdiction”, due to the fact that MNEs can be found to have breached the OECD Guidelines in operations outside their home country by the NCP of their home country (Santner, 2011: 387). This global reach of NCP authority creates potential for having a tangible effect on corporate accountability across the globe. However, it requires for each individual NCP to acknowledge the complexity of multinational business operations and proactively pursue a higher degree of corporate accountability for all companies and make the commitment to use the specific instance mechanism to its full capacity. Given the current global economic climate, it is doubtful governments will commit the required resources to such an endeavour, regardless of what ethical arguments they are confronted with. As a consequence, taking a tick-box approach to the implementation and enforcement of the OECD Guidelines further weakens the effectiveness of an already lacking framework.
6.1.4 Contribution

Previous research highlights both the advantages and disadvantages associated with soft law (Abbott and Snidal, 2000; Gruchalla-Wesierski, 1984; Kirton and Trebilcock, 2004). Soft law norms, such as the OECD Guidelines, are generally believed to be able to raise expectations of corporate conduct and provide a blueprint for dispute resolution (Gruchalla-Wesierski, 1984). Soft law norms are also perceived to be significantly more flexible than hard law norms (Abbott and Snidal, 2000). The findings of this study, however, illustrate that this is not always the case. Even though, the specific instance mechanism is intended to provide a blueprint for dispute resolution, in reality it was unable to successfully resolve the conflict in the Pöyry case. In addition, many of the rigidities associated with hard law were evident in the case. This exemplifies how soft law norms are not consistently able to reap the benefits often associated with. Furthermore, soft law norms are generally characterised by serious weaknesses in their own right. They are notoriously difficult to enforce due to the subjective element of soft law (Gruchalla-Wesierski, 1984) and the lack of an independent enforcement authority (Abbott and Snidal, 2000). For these reasons, the lack of compliance with soft law initiatives is a significant problem (Kirton and Trebilcock, 2004). These issues were also evident in the Pöyry case, which suggests that in the Finnish context, while the specific instance mechanism of the OECD Guidelines exhibits the typical disadvantages of soft law, the advantages associated with it were in some ways absent.

Involving civil society in business regulation initiatives has been seen as a way of addressing global governance gaps. Civil society is thought to be able to elicit more responsible business behaviour by pressuring and influencing corporations to act on accordance with global standards (Murphy and Bendell, 1999). As a form of civil regulation, MSIs are meant to promote collaboration between different actors in society and enable them to together address social and environmental challenges (Utting, 2002). MSIs are supposed to be able to achieve more by bringing together a diverse group of stakeholders as equals (Moog et al., 2015). However, in the Pöyry case, the inclusion of such a broad group of stakeholders in some ways restricted the specific instance mechanism. The structure of the NCP renders it vulnerable to certain interests overriding others at the disadvantage of ensuring corporate accountability. While the inclusion of a broad array of stakeholders is often framed as being ideal in terms of ensuring equitability, in the context of the Finnish NCP this comes across mostly as a formality symptomatic of a tick-box approach to corporate accountability.
This raises questions about whether corporate accountability initiatives, such as MSIs, truly are what they are made out to be, i.e. a sound way of ensuring corporate accountability. Previous analyses of MSIs such as the GRI (Levy et al., 2010) and the FSC (Moog et al., 2015) have highlighted the problems associated with trying to make corporate accountability initiatives appealing to both business and civil society, namely the fact that this often comes at the expense of ensuring corporate accountability and, therefore, eventually erodes civil society’s trust in the initiative. Through the lens of the Finnish NCP and the Pöyry case, this study further illustrates issues with ensuring corporate accountability through cooperation and consensus among a diverse group of stakeholders. Consequently, this study contributes to the understanding of the challenges that characterise corporate accountability initiatives with multi-stakeholder involvement.

6.2 Conclusions

The weakness of the specific instance mechanism and its implementation hampers its ability to foster corporate accountability within the Finnish context. This weakness results from a lack of resources, which in turn is believed to be due to a lack of political support for the NCP in its entirety. The CSCR, which is in some ways is similar to an MSI, is one of the few bodies in the Finnish context explicitly set up to promote and ensure corporate accountability. For this reason, it is an important tool for fostering stakeholder dialogue. However, stakeholder dialogue that does not lead to any real change is fundamentally a hollow imitation of its purpose. In general, a more target-oriented manner for the NCP’s way of operating is called for. In terms of the specific instance mechanism, adjustments should be made to the structure of the NCP if it is to be able to operate with legitimacy in the future.

In order to truly promote corporate accountability, civil society must be able to access the specific instance mechanism without facing unreasonable obstacles or being required to devote an inordinate amount of their own resources to the cause. At the same time, transparency and equitability must not only be strived for, but effectively enforced at every step of the process. Furthermore, accountability in the form of active participation from the side of the NCP in the mechanism is key. This does not only involve taking a proactive role in mediation between the parties, but also involves the members of the CSCR having the time and ability to thoroughly devote their attention
to specific instance cases, and being able to bring in knowledgeable outside experts when necessary.

In the Finnish context, the inability of the specific instance mechanism to function as an effective dispute resolution mechanism in the Pöyry case was down to several factors; failing to properly involve the local actors, lack of transparency, newness of the specific instance procedure to the NCP, lack of resources to conduct thorough investigations and so forth. As significant, if not more, than these aforementioned factors is, however, the weakness of the OECD Guidelines themselves. The toothlessness of the specific instance mechanism coupled with the lacklustre implementation in the Finnish NCP gives the mechanism the appearance of being merely a tick-box approach to corporate accountability. This perception, whether it is real or synthetic, runs the risk of undermining the effectiveness and legitimacy of the entire mechanism. In the end, less focus should be devoted to trying to manage the expectations of what the specific instance mechanism can achieve and more effort should be put towards strengthening the actual mechanism.

Although it is clear that some lessons were learned from the Pöyry case, the extent to which the specific instance mechanism can be strengthened within the Finnish context remains very limited, especially given the current political climate. As the overhaul of the specific instance mechanism and the Finnish NCPs operations would require political will and leadership on the issue of corporate accountability that simply cannot be seen in government at the moment, the chances of this materialising remain narrow.

### 6.3 Limitations of the study

A limitation of the study is that in originating in the civil society perspective, it does not include the company perspective on the issues discussed above. However, as the study deals with the multi-stakeholder Finnish NCP's ability to ensure corporate accountability, the company perspective within the framework of the specific instance mechanism was never intended to be the starting point, nor the focus of the analysis.

The main methodological limitations are the limited representativeness of all the different member organisations of the NCP (the absence of participants from business organisations) as well as the fact that the Pöyry case was handled relatively long ago, thereby impacting the ability of the interview participants to recall specific details about
the proceedings. The methodological limitations of the study are discussed in their entirety in sub-chapter 4.3.

6.4 Future research

Within the Finnish context, it would be interesting to look at future specific instance cases as they transpire and then compare those to the Pöyry case to see if the same issues emerge or whether the NCP is developing in one direction or the other. As the Pöyry case was the first of its kinds, it would be worth examining whether the governance failures identified in the Pöyry case would also be evident in future specific instance cases.

Within the international context, on the other hand, a comprehensive comparative study of NCPs from different countries aimed at establishing some sort of best practices would be an interesting avenue worth pursuing. As the NCPs currently differ significantly from each other in terms of structure, activities and how active they are in general, looking into these differences between NCPs with the explicit intention of discerning how the NCPs could better uphold and ensure worldwide corporate accountability is called for.
SVENSK SAMMANFATTNING

INTRODUKTION


Under det senaste halvseklet har flerpartsinitiativ (på engelska: multi-stakeholder initiatives) utvecklats med avsikten att bekämpa de social och miljömässiga utmaningar som uppstått i samband med globalisering. Flerpartsinitiativ är en typ av civil reglering som strävar efter att åtgärda globala problem genom att främja samarbete mellan aktörer från företag, myndigheter, arbetsmarknadsorganisationer och frivilligorganisationer (Utting, 2002). Den finländska nationella kontaktpunkten (på engelska: National Contact Point), som är en del av OECD strukturen, är på vissa sätt väldigt likt ett sådant flerpartsinitiativ.

Kontaktpunkten är en nationell byrå som fungerar som en länk mellan OECD och medlemslandet i fråga. Den finländska nationella kontaktpunktenens uppgift är att implementera och främja OECD:s riktlinjer och på detta sätt främja företags ansvarsskyldighet (på engelska: corporate accountability). Den finländska kontaktpunkten består av Arbets- och näringsministeriet samt delegationen för samhälls- och företagsansvar (på engelska: Committee on Social and Corporate Responsibility, hädanefter “delegationen”). Ministerier, näringslivsorganisationer,


MOTIVERING AV STUDIEN


SYFTE

Denna studie strävar efter att undersöka hur enskilda fall–förfarandet fungerar som en mjuk lagstiftningsmekanism inom den finländska nationella kontaktpunkten. Detta
görs genom en fallstudie av Pöyry fallet, ett enskilt fall som behandlades av den finländska nationella kontaktpunktens från 2012 till 2013. Fokusen ligger på hur det enskilda fall–förfarandet kan förbättras inom den finländska kontexten och hur en högre grad av företags ansvarsskyldighet kan uppnås genom denna mekanism. Därav är syftet med denna studie att fastställa hur den finländska nationella kontaktpunktens, som verkar i enlighet med OECD:s riktlinjer, förhåller sig till och går tillväga för att säkerställa företags ansvarsskyldighet, samt att ge rekommendationer angående hur kontaktpunkten kunde säkerställa en högre grad av företags ansvarsskyldighet i framtiden.

Forskningsfrågorna utgörs av:

1) På vilka sätt upprätthålls företags ansvarsskyldighet genom den finländska nationella kontaktpunktens förvaltning?

2) Vilka förvaltningsmisslyckanden kan man identifiera hos den finländska nationella kontaktpunkten i Pöyry fallet?

3) Hur kunde man åtgärda dessa förvaltningsmisslyckanden för att kunna säkerställa en högre nivå av företags ansvarsskyldighet i framtida enskilda fall?

TIDIGARE FORSKNING

Litteraturgenomgången för denna studie omfattar litteratur angående mjuk lagstiftning, flerpartsinitiativ och företags ansvarsskyldighet.

Mjuk lagstiftning


[...] juridiska eller icke-juridiska förpliktelser som skapar förväntningar kring att de kommer användas till att undgå eller lösa dispyter. De är inte underkastade faktisk tredjepartstolkning och de ämnar de behandlar samt hur dessa utformas är internationella till sin natur.
På detta sätt finns det mjuk lagstiftning som är både juridisk och icke-juridisk. Den största skillnaden mellan juridisk och icke-juridisk mjuk lagstiftning är i typen av påföljder som kan tillämpas; juridisk mjuk lagstiftning har fördelen av att omfatta juridiska påföljder, vilket kan fungera som ett större incentiv för företag än icke-juridiska påföljder, och på detta sätt fungera mer effektivt.


Flerpartsinitiativ


Civilsamhällets roll har blivit allt starkare inom samreglering (Murphy och Bendell, 1999). Genom att involvera frivilligorganisationer i företagsreglering, har civil reglering blivit ett nytt sätt att åtgärda förvaltningsklyftor som uppstått till följd av globalisering. Civil reglering är reglering av internationell företagsverksamhet genom ”påtryckning och inflytande” från civilsamhällets sida (Murphy och Bendell, 1999: VI, fritt översatt). Civil regleringens framväxt har kopplats till två huvudsakliga orsaker; unilateralt bestämda etiska koders och normverks otillräcklighet samt civilsamhällets ökade
förmåga att påverka företag och en växande samarbetsvilja emellan företag och civilsamhället (Utting, 2002).

Flerpartsinitiativ är privata förvaltningsstrukturer som främjar samarbete mellan olika aktörer från företag, myndigheter, arbetsmarknadsorganisationer och frivilligorganisationer med avsikten att åtgärda problem som hänför sig till global utveckling (Utting, 2002). Inom flerpartsinitiativ:

[...] utformas sociala och miljömässiga standarder, övervakas åtlydnad, främjas social och miljömässig rapportering och granskning, certifieras god praxis och uppmuntras dialogförande mellan intressenter samt ”socialt lärande”. (Utting, 2002: 2, fritt översatt)

Flerpartsinitiativ främjar ansvarsfull företagsverksamhet genom att förlita sig på samarbete och konsensusskapande mellan olika intressenter. De olika parterna som deltar i ett flerpartsinitiativ gör det i egenskap av ”formellt definierade jämlikar” (Moog, Spicer och Böhm, 2015: 469, fritt översatt).

**Företags ansvarsskyldighet**


**FALLSTUDIENS KONTEXT**


De nationella kontaktpunktternas uppgift är att främja användningen av OECD:s riktlinjer, något som huvudsakligen görs genom enskilda fall–förfarandet, dvs. kontaktpunkternas konfliktlösningsmekanism. Kontaktpunkternas verksamhet ska


METODIK

Denna studie utgår från ett kvalitativt perspektiv och utgörs av en fallstudie av Pöyry fallet, ett enskilt fall som behandlades under OECD:s riktlinjer och OECD:s finländska nationella kontaktpunkt. Pöyry fallet var det första av sitt slag inom den finländska kontexten och delegationens beslut ansågs vara kontroversiellt, vilket motiverar en fördjupad granskning av fallet.

Intervjudata utgjorde undersökningens huvudsakliga informationskälla, men falldokumentation samt diverse rapporter och publikationer användes i ett komplementärt syfte. Studiens population bestod av medlemmar i den finländska nationella kontaktpunkten vid tidpunkten då Pöyry fallet behandlades, samt personer utanför kontaktpunkten med direkt anknytning till fallet, främst medlemmar av de frivilligorganisationer som var delaktiga i fallet som klaganden. Potentiella deltagare kontaktades via epost. I slutändan intervjuades sju personer från kontaktpunkten enskilt och fyra person från en frivilligorganisation i grupp. Intervjuerna räckte i genomsnitt i 45 minuter. Intervjuerna var halvstrukturerade; en intervjuguide användes under intervjuerna för att se till att alla viktiga frågor togs upp, men samtidigt tillåts varje intervju löpa fritt i så stor utsträckning som möjligt. Intervjuerna genomfördes på finska och transkriberades. Transkriptionerna kodades och
informationen analyserades induktivt, dvs. med avsikt att upptäcka mönster och teman i data, snarare än att analysera data med utgångspunkt i ett redan existerande ramverk (Patton, 2002). Endast de citat som figurerar i avhandlingen översattes från finska till engelska, eftersom oproportionerligt mycket tid skulle ha gått åt att översätta intervjutranskriptionerna i deras helhet. Dessutom skulle detta ha ökat risken för misstolkning av intervjudeltagarnas åsikter och upplevelser.

ANALYS

Pöyry fallet visade sig vara något av ett övningsfall för den finländska kontaktpunkten, eftersom det var det första, ordentliga fallet som behandlades av kontaktpunkten och dess rådgivande delegation. Därmed hade fallprocessen inte ännu hunnit etablera sig, vilket ledde till en del oklarheter och fördröjningar. Därtill var fallet i sig väldigt omfattande och uppfattades som komplicerat av en del av intervjudeltagarna.

Även om en del av intervjudeltagarna från kontaktpunktens sida ansåg att kontaktpunkten hade tillräckligt med resurser för att behandla enskilda fall såsom Pöyry fallet på ett effektivt och tillräckligt sätt, var brist på resurser något som diskuterades mycket under intervjuerna. Mer resurser kunde ha gjort det möjligt för kontaktpunkten att göra en djupare utredning av fallet genom att t.ex. ge kontaktpunkten tillgång till mer omfattande expertutlåtanden. Dessutom var fallprocessen i sig något utdragen, vilket berodde på att ministeriet behövde tid att bearbeta fallet mellan delegationens möten. Överlag var fallet i sig väldigt omfattande, vilket medförde svårigheter för delegationens medlemmar att få ett ordentligt grepp om fallet. Även om delegationens medlemmar alla arbetar med något som på ett eller annat vis berör företags ansvarsskyldighet, är ingen av dem direkta experter inom ämnet. Enligt intervjudeltagarna från de klagandes sida framstod det som att delegationens medlemmar och den finländska kontaktpunkten i sin helhet inte var särskilt välinsatta i fallet, vilket ledde till att behandlingen av fallet framstod som väldigt ytlig.

En problematisk aspect med processen var faktumet att de klagande inte hade tillgång till all falldokumentation, eftersom Pöyry krävde att deras skriftliga svar på klagomålet inte fick göras offentligt på grund av affärs hemligheter svaret påstods innehålla. Kontaktpunkten accepterade Pöyrys krav i denna fråga, vilket ledde till att fallprocess uppfattades som ojämlik av de klagande. Därtill krävde fallprocessen mycket resurser av de klagande, något som ytterligare bidrog till de klagandes missnöje med processen i sin helhet.
En viktig del av enskilda fall–förfarandet i egenskap av konfliktlösningsmekanism är medling (på engelska: mediation) mellan parterna, dvs. mellan företaget och den klagande. Medling skedde dock inte i Pöyry fallet, eftersom Pöyry vägrade ta del av detta. Detta illustrerar ett av de vanligaste problemen med mekanismer såsom OECD:s enskilda fall–förfarande; eftersom OECD:s riktlinjer är frivilliga för företag, finns de inte mycket man kan göra om ett företag förhåller sig negativt till själva processen. De möjliga renommérisker var inte tillräckliga för att engagera företaget i medling i detta fall.

Till kontaktpunktens uppgifter hör att i slutet av fallprocessen utfärda ett slutligt uttalande, där kontaktpunkten officiellt tar ställning till frågan och utfärdar rekommendationer. Enligt intervju deltagare från kontaktpunktens sida försökte de i det slutliga uttalande uppnå balans mellan två skilda synpunkter; å ena sidan kunde de inte berättigat påstå att Pöyry hade direkt brutit mot OECD:s riktlinjer, men å andra sidan ville de ändå göra de klart för företag att dessa i framtiden bör beakta konsekvenserna av liknande projekt till en större grad. Trots att kontaktpunkten hade noggrant övervägt det slutliga uttalandets formulering, användes inte exakt samma formulering i pressmeddelandet som utfärdades om beslutet, vilket ledde till att kontaktpunktens beslut i ärendet något förvrängdes till Pöyrys fördel. Detta var i sig en besvikelse för de klagande.

RESULTATREDOVISNING

På basen av analysen av intervjudata kan man konstatera att den finländska nationella kontaktpunktens försök att upprätthålla företags ansvarsskyldighet är otillräckliga. Förvaltningsmisslyckandena i Pöyry fallet hänför sig till fyra områden: otillräckliga resurser, problem relaterat till fallprocessens jämlikhet, den finländska kontaktpunktens struktur och bristen på medling. Mer resurser bör tillägnas den finländska kontaktpunktens verksamhet så att den har möjlighet att grundligt och effektivt behandla enskilda fall. Samtidigt bör kontaktpunkten se till att fallets både parter har tillgång till samma information och behandlas allmänt rättvist. De potentiella intressekonflikterna relaterade till kontaktpunktens struktur bör dessutom hållas i eftertanke, eftersom det kan ifrågasättas ifall den nuvarande strukturen är ändamålsenlig när det kommer till att främja företags ansvarsskyldighet. En större vikt bör även placeras på medling i framtiden, på grund av att bristen på medling i Pöyry fallet innebar att enskilda fall–förfarandet inte kunde uppnå sin fulla potential.

KONKLUDERANDE AVSLUTNING

Enskilda fall–förfarandets otillräcklighet och dess implementation hindrar mekanismen från att bidra till effektiv konfliktlösning och främja företags ansvarsskyldighet inom den finländska kontexten. Den finländska nationella kontaktpunktens är ett av de få, om inte det enda, förvaltningsforum likt ett flerpartsinitiativ inom den finländska kontexten med avsikten att främja företags ansvarsskyldighet och social dialog mellan olika aktörer inom samhället. Av denna orsak är det ytterst viktigt att den fungerar väl och med legitimitet. Det finns ett tydligt behov för mer målinriktad verksamhet inom kontaktpunkten och särskilt med avseende på enskilda fall–förfarandet. För att åtgärda de existerade problemen krävs en större grad av politiskt stöd för verksamhet tillägnad att säkerställa och främja företags ansvarsskyldighet, något som delvis anses vara osannolikhet med tanke på det nuvarande politiska läget i Finland.
REFERENCES


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Form for submitting complaints

In accordance with the OECD Guidelines for Multinational Enterprises, the National Contact Points (NCPs) are to deal with specific instances. This means to assess complaints and contribute to resolving cases that arise regarding breaches of the Guidelines through dialogue or mediation. Where such dialogue or mediation is not feasible, the NCP is to publish a final statement regarding the specific instance/complaint.

Anyone can submit a complaint to the NCP if they believe that a company violates the OECD Guidelines. The Finnish NCP deals with complaints where Finnish companies are involved and relevant issues arise related to foreign companies with operations in Finland.

The NCP needs a written and as specific and precise documentation as possible in order to deal with the complaint. You can assist in this by filling in the complaint form below.

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4 Does not have to be an organisation. Can for instance be from a private person. For the sake of simplicity, we have used the term “your organisation”. Several organisations can also send in a joint complaint.
| complaint on behalf of others: How would you describe your organisational mandate to represent the allegedly aggrieved party in this case? |
| What does your organisation hope to achieve by filing this complaint? |
| **Co-complainant (if relevant)** |
| Contact person I |
| Name |
| Position |
| Telephone number |
| Email address |
| **About the company** |
| Name and Address of the main office of the company against which the complaint is being filed |
| If the complaint concerns a subsidiary or similar entity: Name and address of the entity and its affiliation with the parent company (if this information is available) |
| **About the complaint** |
| In your opinion, which provision or provisions in the OECD Guidelines have been breached by the company concerned? |
| Give a specific, detailed account of the controversial practice, including information about where the activity or activities have taken place. |
| Please provide/list documentation, reports, testimonies or other types of evidence that support the allegations of practices that are in breach of the Guidelines. |
| Is the complaint relevant for other countries’ National Contact Points, and if so, which countries? And why? |
| What should the company do to |
remedy the situation described in the complaint?

Other information of relevance for the Contact Point’s consideration of the complaint.

**Contact with the company**

Has your organisation been in contact with, or taken the initiative to establish contact with, the company named in the complaint as regards this matter? If so, give an account of how this was done and the outcome of the contact. Provide any documentation such as minutes of meetings, etc.

Have you taken up the situation described in the complaint, or taken the initiative for taking it up in other forums or other NCPs? If so, give an account of any measures that have been taken on the basis of this. Provide any documentation such as minutes of meetings, etc.

By submitting this complaint form, you confirm that you:
- Are aware that the information provided in this complaint and any accompanying documentation and other enclosures will be submitted to the company named in the complaint,
- Are aware that the National Contact Point has a policy of openness in its complaint procedures and that any information you supply on this form may be subject to public disclosure,
- Have marked any documents and other enclosures that may not be subject to public disclosure as confidential, and have stated grounds as to why such confidentiality is necessary. Notice that it is not permissible to mark all of the material as confidential; and
- Are aware that the National Contact Point’s consideration of the matter will involve your active participation and that you will, to the best of your ability, meet the deadlines set by the National Contact Point for dealing with the matter.

Please send the completed form/your complaint to:
Ministry of Employment and the Economy
P.O. Box 32
FI-00023 GOVERNMENT
and a copy by email to ncp-finland (at) tem.fi.

Please mark the envelope and e-mail with “Complaint to the Finnish OECD NCP”
## APPENDIX 2  TIMELINE OF CASE DEVELOPMENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Actor</th>
<th>Action</th>
<th>Description</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 June 2012</td>
<td>Siemenpuu Foundation</td>
<td>file</td>
<td>Complaint was filed at the Finnish NCP</td>
<td>download pdf</td>
</tr>
<tr>
<td>8 August 2012</td>
<td>Poyry PLC</td>
<td>letter</td>
<td>Pöyry Group submits a reaction to the invitation of the Business and Human Rights Resource Center to respond to Pöyry Group the allegations</td>
<td>download pdf</td>
</tr>
<tr>
<td>26 August 2012</td>
<td>International Rivers Network</td>
<td>Press coverage</td>
<td>International Rivers blog on Pöyry case</td>
<td>download pdf</td>
</tr>
<tr>
<td>16 October 2012</td>
<td>National Contact Point Finland</td>
<td>accept</td>
<td>The Finnish NCP accepts the complaint</td>
<td>download pdf</td>
</tr>
<tr>
<td>30 October 2012</td>
<td>Siemenpuu Foundation</td>
<td>press release</td>
<td>Complainants issue press release after complaint has been accepted</td>
<td>download pdf</td>
</tr>
<tr>
<td>25 November 2012</td>
<td>Mekong River Commission for Sustainable Development Secretariat</td>
<td>report</td>
<td>The Mekong River Commission for Sustainable Development Secretariat (MRCS) published a report reviewing the Pöyry report. MRCS disagrees with Pöyry's main finding that any studies on the Xayaburi Dam site can be conducted after construction is already underway.</td>
<td>download pdf</td>
</tr>
<tr>
<td>17 December 2012</td>
<td>Poyry PLC</td>
<td>meeting</td>
<td>Pöyry presents its review of the complaint</td>
<td>download pdf</td>
</tr>
<tr>
<td>10 January 2013</td>
<td>National Contact Point Finland</td>
<td>report</td>
<td>Ministry of the Environment publishes statement on the complaint</td>
<td>download pdf</td>
</tr>
<tr>
<td>28 January 2013</td>
<td>National Contact Point Finland</td>
<td>report</td>
<td>Ministry of Foreign Affairs publishes statement on the complaint</td>
<td>download pdf</td>
</tr>
<tr>
<td>15 February 2013</td>
<td>Poyry PLC</td>
<td>letter</td>
<td>Pöyry sends response to the report of the Ministry of Foreign Affairs.</td>
<td>download pdf</td>
</tr>
<tr>
<td>15 February 2013</td>
<td>Poyry PLC</td>
<td>letter</td>
<td>Pöyry sends response to the report of the Ministry of the Environment.</td>
<td>download pdf</td>
</tr>
<tr>
<td>3 April 2013</td>
<td>National Contact Point Finland</td>
<td>meeting</td>
<td>Complainants held a meeting with the Ministry of Employment and Economy and give responses to the Pöyry statements and the statements of the ministries.</td>
<td>download pdf</td>
</tr>
<tr>
<td>16 April 2013</td>
<td>Siemenpuu Foundation</td>
<td>letter</td>
<td>Complainants send response to the statements of the Ministry of the Environment.</td>
<td>download pdf</td>
</tr>
<tr>
<td>Date</td>
<td>Organization</td>
<td>Type</td>
<td>Description</td>
<td>Download</td>
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<tr>
<td>16 April 2013</td>
<td>Siemenpuu Foundation</td>
<td>letter</td>
<td>Complainants send response to the report of the Ministry of Foreign Affairs.</td>
<td>download pdf</td>
</tr>
<tr>
<td>3 June 2013</td>
<td>FinnWatch</td>
<td>letter</td>
<td>Opinion on the conclusions of the NCP</td>
<td>download pdf</td>
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<tr>
<td>18 June 2013</td>
<td>FinnWatch</td>
<td>press release</td>
<td>Pressrelease by Finnwatch</td>
<td>download pdf</td>
</tr>
<tr>
<td>18 June 2013</td>
<td>Siemenpuu Foundation</td>
<td>press release</td>
<td>NGOs issue press release in reaction to the NCPs final statement.</td>
<td>download pdf</td>
</tr>
<tr>
<td>18 June 2013</td>
<td>National Contact Point Finland</td>
<td>file</td>
<td>Finnish NCP issues final statement.</td>
<td>download pdf</td>
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</table>

*Source: OECD Watch, 2016d*
# APPENDIX 3  INTERVIEW GUIDE

<table>
<thead>
<tr>
<th>Theme</th>
<th>Questions</th>
<th>Aim</th>
</tr>
</thead>
</table>
| Introduction| - Explain the background of the project.  
- Explain the intentions behind the interview.  
- Let the participant know he/she is free to decline to answer any question he/she feels uncomfortable with.  
- Do you have any questions about the project at this point?                                                                 | Give the participant an overview of the project and explain the aim of the interview      |
| Background  | 1. Who are you, what do you do?  
2. If member of NCP, how did this come about?  
   How long have you been a member?                                                                 | Background information                                                                   |
| Pöyry case  | 3. In your own words, could you tell me about the Pöyry case?  
4. What was your role in the case?  
5. How did the case first come to your attention?  
6. What were the central issues of the case?  
7. What did the case handling process look like?  
   The timetable? How did the process progress?  
8. What was the result of the process?  
9. What is your opinion about this result?  
10. Should/could anything have been done differently throughout the process?  
11. Pöyry’s reply not made public, what is your opinion on this? Was the decision not to release it justified in your opinion?  
12. When MEE released press release about the results of the proceedings, this press release stated Pöyry had followed OECD Guidelines, although the NCP had concluded it had not violated them, do you think this difference was significant? | Understand the process of the Pöyry case and factors influencing the end result |
13. Central part of the specific instance process is mediation, which was not possibly in this case, why was that?
14. Was the case difficult to understand/grasp? Did this affect the result?

| Structure of NCP and CSCR | 15. How are the members and the leadership selected?
|                          | 16. What can you tell me about the composition of the CSCR (chairman, vice-chairman, principal members and alternates)? How do these work together?
|                          | 17. How often does the CSCR meet?
|                          | 18. Are all organizations able to contribute equally in the CSCR?
|                          | 19. NCP = MEE + CSCR, CSCR under MEE, does this work well? Is it a good structure? |

| Concluding remarks | - That concludes my questions, is there anything you would like to add?
|                    | - Thank you for your time. |
|                    | Give the participant the opportunity to give some final comments |

Get a sense of the NCP as an organisation