

NORDIC ENGAGEMENT COOPERATION

Annual Engagement
Report, 2019

A collaborative engagement
network between

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ABOUT THE NORDIC ENGAGEMENT COOPERATION

Launched in 2009, the Nordic Engagement Cooperation (NEC) consists of four Nordic institutional investors: The Folksam Group from Sweden, Ilmarinen Mutual Pension Insurance Company from Finland, KLP from Norway and PFA Pension from Denmark. To complement our own engagement, we have made the strategic decision to coordinate some of our engagement activities with companies on environmental, social and governance issues. Collectively we have approximately EUR 245 billion in assets under management as of the end of 2019.

OUR APPROACH

The NEC partnership is built on the belief in dialogue as the most efficient tool to achieve change. We engage with companies in collaboration with our service provider Sustainalytics¹. Nonetheless, other tools are also considered and available if the engagement goals are not achieved. The engagement process is based on a systematic screening of companies regarding their compliance with well-established international conventions and guidelines on environmental, social and governance (ESG) issues within the framework of the UN Global Compact and OECD Guidelines for Multinational Enterprises.

NEC is an integrated part of the members' regular engagement work. NEC engages with companies that are, or have been, involved in systematic incidents or an isolated incident that has severe consequences for the environment or humans. NEC can also initiate engagement to support the development of best practice within an industry such as the textile industry where a thematic engagement was completed in 2019, and with the meat and dairy industry to encourage TCFD disclosure. The collaboration strives to cover a broad range of issues focusing on non-Nordic companies in which all four NEC members have holdings. Companies that the NEC collaboration has agreed to engage with to achieve progress are put on **NEC Focus List**. Companies are selected based on:

- NEC's ability to influence;
- potential for NEC to gain in-depth understanding of an issue; and
- material issues where monitoring of developments, including company's response and progress, are essential to NEC.

A case can be kept on the NEC Focus list of engagement for a three-year period. If deemed relevant, the dialogue can be extended beyond that period. All members of NEC invest with a long-term horizon. Hence, we have the opportunity to have a long-term dialogue with companies.

The NEC structure includes quarterly meetings, a clear delegation of responsibilities and a secretariat that is responsible for the operational work. NEC is not a closed cooperation – it has from time to time collaborated with other investors. As determined on a case-by-case basis, the NEC members welcome the addition of other investors as regular members.

¹ GES became part of Sustainalytics in January 2019 www.sustainalytics.com/press-release/sustainalytics-acquires-ges-international/

ENGAGEMENT BRIEF










The Nordic Engagement Cooperation (NEC) has been engaging with companies regarding incidents that violate international norms since 2007. In 2019 one new norms-based case was added to the Focus List, namely Atlantia, relating to quality and safety violations when the Morandi bridge collapsed in Genoa, Italy.

In recent years a proactive engagement approach has been introduced as a complement to the incident-based approach. During the year, we concluded engagement with four companies in the textile sector (see page 6). A new engagement theme was introduced relating to climate-related disclosure in the meat and dairy sectors, so-called ‘TCFD disclosure’ with four companies (page 8).

There were in total 14 companies with 15 engagement cases on the NEC Focus List during 2019.

NEC FOCUS LIST 2019

Norm-Based Engagements – based on incidents

COMPANY	GLOBAL COMPACT PRINCIPLE	INCIDENT	ENGAGEMENT PERIOD
Atlantia		Quality and Safety Violations	2019-
Enbridge		Violations of indigenous peoples' rights	2017-
ENI		Corruption	2016-2019
Johnson & Johnson		Product-related injuries	2018-
Novartis		Corrupt practices	2017-2019
Royal Dutch Shell	 	Human rights violations and environmental damage	2013-2019
Royal Dutch Shell		Corruption	2016-2019
Volkswagen		Violations of emissions standards	2015-

Proactive Engagements

COMPANY	TOPIC	ENGAGEMENT PERIOD
Burberry	Textile sector – Focus on sustainable cotton	2018-2019
L-brands	Textile sector – Focus on sustainable cotton	2017-2019
Ralph Lauren	Textile sector – Focus on sustainable cotton	2018-2019
Primark	Textile sector – Focus on sustainable cotton	2018-2019
Danone	TCFD disclosure	2019-
Glanbia	TCFD disclosure	2019-
Kerry Foods	TCFD disclosure	2019-
Tyson Foods	TCFD disclosure	2019-

ENGAGEMENT PROGRESS AND RESPONSE

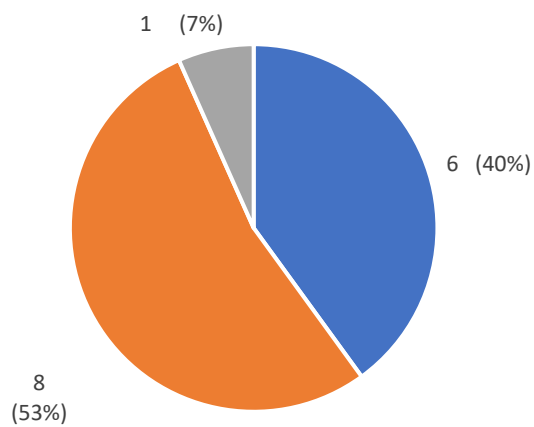
Multiple indicators are used to measure engagement activity and performance.

During 2019, 17 meetings and conference calls on ESG issues were held with companies on the NEC Focus List. In addition, meetings were held with two more companies in the textile sector to learn from other them.

Response and progress on the engagement cases are measured and combined to create a performance score. Of the 15 cases on NEC's Focus List during the year, eight had medium performance, six had high performance and one had low performance.

COMPANY PROGRESS AND RESPONSE

- High performance: good or excellent response and/or progress
- Medium performance: standard level of response and progress
- Low performance: poor or no response in combination with poor or no progress



PROACTIVE ENGAGEMENTS

TEXTILE SECTOR - SUSTAINABLE COTTON

In July 2019, the NEC textile engagement was concluded after 1.5 years. The engagement has focused on how companies ensure the use of sustainable cotton throughout its supply chain, closely linked to the UN's Agenda 2030 and particularly the Sustainable Development Goals (SDGs) 6 and 8 and the underlying targets.

The ultimate engagement goal has been that companies within the textile engagement shall ensure sustainable supply chain management, focussing on sustainable cotton and labour conditions in the supply chain. Apart from this overarching goal, the engagement has strived towards companies strengthening their policies, risk management, traceability and transparency in these fields.

Besides the company engagement, the project has also included dialogue with other stakeholders which have relevant expertise, in order to further increase knowledge, learn more about industry challenges, best practices etc.

During the course of engagement, all four companies (Burberry, L Brands, AB Foods/Primark, Ralph Lauren) have shown awareness of the rising importance of sustainable cotton. Different levels of commitment have been outlined, but gaps in performance are visible as some of the companies are yet to formalize it into a policy, set targets or a company-wide strategy to meet such targets. Without a strategy for sustainable cotton, companies are exposed to significant risks relating to the cultivation of conventional cotton.

There are various ways to work with sustainable cotton, which is shown through the different strategies among the companies in the engagement. AB Foods/Primark has opted for the path of developing its own Sustainable Cotton Programme. This has the advantage that it gives the company full control of the cotton sourced through the programme, ensures sustainability and that no Uzbek cotton is prevalent. However, this approach is limited in terms of the quantity and volume of sustainable cotton available; the total percentage used by the company is still fairly low, and it has stated it is not keen to set any target of 100 % cotton nor to develop a more over-arching strategy in this area.

Another approach is to commit to Better Cotton Initiative (BCI) cotton, which the other companies in the engagement are doing to a various extent. Burberry is the most advanced one having set a clear target of committing to 100 % BCI cotton by 2022. It is well in line with meeting the target which makes it the best performing company in the benchmark. As previously mentioned, the cotton supply chain has a complex structure where cotton from multiple sources is mixed up, making it impossible to ensure no Uzbek cotton is prevalent in the BCI cotton. Instead, the BCI strategy is to compensate this by ensuring a specific amount of sustainable cotton is farmed due to member companies' specific demands and volumes. This has the advantage of offering a more structural strategy and solution to sustainable cotton, instead of a one-off isolated programme. The name 'better' cotton indicates that it is not the perfect solution, but it is a good way of risk mitigation as it addresses both environmental and social risks related to cotton sourcing and can offer large-scale volumes. Apart from BCI cotton, there are other options like organic or recycled cotton. However, these are limited in terms of volume available but also in the quality of the cotton after having gone through the recycling process.

In relation to the engagement target, all companies in the engagement showed progress over the engagement period, to varying extents. As mentioned, Burberry is the most advanced having developed a clear sustainable cotton policy and strategy, with good results and the company is close to meeting the target. AB Foods/Primark lacks a holistic strategic approach but shows measurable progress by expanding the Sustainable Cotton Programme, both in terms of farmers included and the amount of sustainable cotton this results in. Ralph Lauren has taken a good leap during the course of engagement by developing a forward-looking sustainability strategy including setting a target of 100 % sustainable cotton by 2025. However, the company has not been ready to share many details on this. For a long time during the engagement, L Brands did not show any progress. Therefore, it was a positive development when the company in spring 2019 informed that it had initiated its first sustainable cotton pilot product, made out of BCI cotton. However, this constitutes a small part of the company's production, and it is not close to developing any sustainable cotton policy or setting any targets.

To conclude, an increased awareness of sustainable cotton and the importance of mitigating the related risks is definitely seen. However, it is clear that progress often takes time, from developing policies to seeing them translated into concrete results. In relation to this, it should be noted that 1.5 years (the period of the engagement project) is relatively short. It is nevertheless very positive to see that the thinking is starting to take off, and it will hopefully result in substantial actions and outcomes.

Engagement contributed to UN Sustainable Development Goal(s):



ENGAGEMENT ON TCFD DISCLOSURE

During 2019, NEC began a proactive engagement in relation to the agricultural sector and driving the roll out of the Taskforce on Climate-related Financial Disclosure (TCFD) reporting standards.

The TCFD has developed voluntary climate-related financial risk disclosures for use by companies in providing information to investors, lenders, insurers, and other stakeholders.

The companies targeted in this engagement are Danone, Glanbia, Kerry and Tyson Foods. Dialogue has been held with all companies except Tyson Foods during the year. During the dialogue it was clear that there is a gradual movement towards improved reporting on climate change and the companies were aware and signalled they are moving towards implementing TCFD alignment.

However, there is still significant movement required from companies to reach sufficient standards on climate reporting and even more to be done to take concrete action on reducing overall emissions, while some gaps in performance are visible. Danone have taken the most action to address this thus far. All three companies stated they have started looking into what can be done and how strategies can be developed but have so far not taken any practical steps towards long-term ambitious direct emissions reduction. The companies have all also stated intent to implement TCFD reporting, with Danone signalling plans to do so as soon as the 2020 reporting cycle.

There are a number of different approaches and levels of readiness in the companies to TCFD-aligned reporting. Danone currently has climate experts working throughout its operations, providing training down to farm level. The materiality of this is important as approximately 95 percent of Danone’s carbon footprint fall within scope 3. The company indicated it had thus far not yet attempted TCFD-aligned reporting as it wanted to clearly understand what requirements are and gain a better understanding of recommendations. The company hopes to move to incorporate scenario analysis in the long term and has now made commitments to meet alignment to 1.5-degrees for emissions reduction. The company will also create a roadmap to match these targets. Danone can certainly be seen to be leading the way on taking steps to implement this, within the engagement and industry as a whole.

Kerry and Glanbia meanwhile are both moving forward and looking to implement TCFD reporting, however there is currently no timeline for this. Both companies have significant progress to make in working to reduce emissions and improve reporting on climate risk but are also committed to doing so. NEC will be continuing the dialogue here to encourage the companies to increase ambition in this respect.

The engagement will continue throughout 2020 with follow up dialogues expected to take place in March 2020.

Engagement contributes to UN Sustainable Development Goal(s):



NORM-BASED ENGAGEMENTS

COMPLETED ENGAGEMENTS 2019

NEC closed engagement with Eni, Royal Dutch Shell and Novartis during 2019, and the cases are described below.

ENI & ROYAL DUTCH SHELL

Eni is an integrated oil and gas company that explores for, produces, and refines oil around the world. In 2018, the company produced 0.9 million barrels of liquids and 4.6 billion cubic feet of natural gas per day. The Italian government has de facto control of Eni through a 30.1% stake in the company. NEC added Eni to its focus list in 2016.

In 2011, Eni and Royal Dutch Shell paid the Nigerian government USD 1.3 billion for an offshore oil block, OPL 245, located in Nigerian waters. This transaction subsequently became a source of serious controversy as some USD 1.1 billion of the sale proceeds were transferred to a company called Malabu Oil and Gas, owned by a former oil minister, and convicted money launderer, Dan Etete. It was alleged that these funds had then been largely embezzled by Etete and a number of other individuals associated with the Nigerian government, including former president Goodluck Jonathan. It has also been alleged that senior management at Eni and Shell were aware that the sale proceeds would be misappropriated in this way. Although some of this money has been recovered, a large proportion of it has not. As such, this affair is believed to have had a real impact on the people of Nigeria, as the disappeared millions were reportedly equivalent to 80 per cent of the country's proposed annual health budget for 2015.

Eni and Shell have been embroiled in criminal and civil litigation in several countries in relation to the oil block for several years. The companies and a number of former and current officials, including Eni CEO Claudio Descalzi, are presently standing trial in Italy on charges of international corruption, in what is believed to be the biggest ever trial of its kind. Both companies and their senior managers protest their innocence.

NEC has been engaging with Eni and Shell in response to this issue. As the legal proceedings render the company unwilling to talk about the finer details of the OPL 245 deal, our engagement has focused on encouraging the companies to ensure that their code of conduct, due diligence and risk management processes in the areas of acquisitions and divestments are robust and universally applied.

Eni and Shell have provided a significant volume of information about their anti-corruption frameworks. Eni's Code of Ethics includes a prohibition on corruption and it has also published a detailed Management System Guidance (MSG) on Anti-Corruption, which, among other topics, covers acquisitions and disposals and due diligence, as well as relations with public officials and 'Relevant Private Entities'. The MSG requires that Eni staff identify 'key risk factors and Red Flags' ahead of a transaction and that legal counsel working on a transaction advise on anti-corruption risks. The company states that it has an Anti-Corruption Compliance Program, an 'articulated system of rules and controls for the prevention of corruption', which includes the MSG. Adoption of the Compliance Program is mandatory for the company and its subsidiaries and the company has indicated that training in the MSG has been conducted or is underway for all staff.

Meanwhile, Shell's Business Principles and Code of Conduct include a clear prohibition on bribery and facilitation payments and it has risk assessment processes in places relating to countries, joint venture partners and specific contracts. Significant transactions, including licences, are considered at board level from three different angles. The company discloses a process of Ethics and Compliance due diligence, rooted in a consolidated ethics manual. It also states that it communicates its anti-corruption policies and procedures to directors, employees and business partners.

Bearing in mind these developments, NEC considers that, on the face of it, the companies have essentially met our engagement objective. Therefore, we treat the engagement cases as resolved. However, we also recognise that the continuing litigation in Italy may discourage complete transparency on the part of Eni and Shell about any weaknesses in their anti-corruption systems. Furthermore, it is possible that the decision of the Italian court, now expected in the second half of 2020, may expose further structural issues in this system. In particular, we note that Eni CEO continues to occupy the role of head of the company's Anti-Corruption Compliance Unit. NEC will therefore monitor the progress of the trial and other proceedings and review the status of these engagements once the proceedings are concluded.

ROYAL DUTCH SHELL

Shell Petroleum Development Company (SPDC), a subsidiary of Royal Dutch Shell, operates onshore oilfields in the Niger Delta region of Nigeria on behalf of its joint venture partners: The Nigerian National Petroleum Corporation (55 per cent), Total E&P Nigeria Ltd (10 per cent) and Eni subsidiary Agip (5 per cent). In 2011, the extensive oil pollution attributable to SPDC's operations in Ogoniland, part of the Niger Delta, was scientifically documented for the first time by the United Nations Environment Programme (UNEP).

UNEP scientists examined 69 sites and found that a severe risk to public health was posed at more than ten locations. The report further said that the impact on the mangrove habitat has been 'disastrous'. The extent of the pollution was regional in scale and UNEP estimated that clean-up would take 30 years and cost at least USD 1 billion. A range of recommendations was made to oil companies and the Nigerian government.

Our goal for this engagement was for Shell to have a detailed programme in place to address the recommendations of the UNEP report and demonstrate that regular progress is being made towards achieving the objectives. We also expected the company to communicate the plan and its progress in a transparent way to shareholders, as well as to exert its influence on all stakeholders to counter oil theft activities and its related social and environmental impacts.

The company has displayed progress against this change objective in a number of ways. It stated that it has taken steps in relation to emergency measures for water required by the UNEP report. It has reviewed its assets in Ogoniland and carried out education, training and surveillance in cooperation with local communities in order to prevent illegal activities. The 15 SPDC joint venture sites mentioned in the UNEP report have been reassessed and/or remediated. Shell has reviewed its remediation system and implemented improvements. And it has made and pledged contributions to the Environmental Restoration Fund for Ogoniland as envisaged by the UNEP report.

As such, 27 out of 36 (75 per cent) of the UNEP's recommendations relevant to Shell have been partly or completely fulfilled in our view. We see a positive momentum in the company and other stakeholders to address the remaining recommendations. With regards to the prevention of oil spills from illegal tapping

specifically, it is not clear if there is much more the company can do on its side to prevent them. In conclusion, NEC considers that the company has substantively achieved the change objective and we decided to resolve the case.

Nevertheless, we note that there are ongoing legal proceedings involving the company regarding oil pollution in Nigeria. In the case of Okpabi vs. Royal Dutch Shell, the Bille and Ogale communities in the Niger Delta allege that they have suffered pollution for years because of the company's operations. UK courts had previously ruled that they do not have jurisdiction over the claims, but the communities have been given permission to appeal to the UK Supreme Court. NEC will continue to monitor the news media for updates on these proceedings and consider re-opening dialogue if the court finds in favour of the Niger Delta communities.

NOVARTIS

The engagement case on Novartis regarding corrupt practices case was closed during 2019. A meeting was held with the company in March 2019 during which the company outlined how it was addressing anti-bribery and corruption training across its workforce. Very few changes in protocols had occurred, instead the company was addressing the behaviour of the workforce seeking to amend how the decision process was addressed. The company stated that the Compliance Department was totally independent of the rest of the company and undertook both audits and investigations on alleged breaches of business ethics. Where necessary external law enforcement was involved if the breach was suspected to be criminal in nature. The company did not see the necessity for external third-party audits, as they asked, "how do you audit behaviour?". The company also detailed training across the company and how it was tailored to high-risk groups.

An example of its system was reported in August 2019, when the company reported a data manipulation at its subsidiary AveSis during the development of the drug Zolgensma. The incident was reported to the US Federal Drug Administration (FDA) which subsequently opened an investigation into the reported data manipulation. During a company event in September 2019, Novartis explained that the alleged data manipulation was reported through its whistle-blower channels, the company promptly opened two investigations into the causes, and the implications, of the reported data manipulation. The investigations ran for some 35 and 37 days respectively, during which time the company self-reported the incident to the FDA. The data manipulation had occurred at a single laboratory and during a single test procedure at AveSis and pre-dated AveSis' acquisition by Novartis in May 2018. The whistleblower was an AveSis employee who only felt confident of reporting due to the systems put in place by Novartis following the acquisition.

Also, during 2019 the investigations into alleged corrupt practices in Greece, which had allegedly involved several politicians had stalled, with many of the suspects having charges dropped following investigations. A reported incident in China was also closed off following an internal investigation by the compliance department.

Overall, there have been numerous improvements at the company for example in governance, the new Chief Compliance Officer is now a board level appointee and reports direct to the CEO, in its tailored training, its strong whistle-blower system and subsequent investigations. We therefore consider that Novartis has reacted responsibly to its issues on alleged corrupt practices.

ONGOING PROJECTS AND COMPANY DIALOGUES

NEC had ongoing dialogues with all companies on the NEC Focus List, with the exception of Tyson, during 2019. Specific actions within NEC include company meetings, conference calls, investor letters, contacts with NGOs and labour unions. Through quarterly meetings, the NEC members determine the strategic direction for their joint engagements.

Case profiles for all norm-based cases on the NEC Focus List can be found in the appendix. The Volkswagen case is highlighted here in more detail. It is an engagement case that has been held on the NEC Focus List for more than the usual three year period which was judged to be appropriate action since the dialogue is progressing on this complex and severe incident which in its nature takes time to resolve.

VOLKSWAGEN

In September 2015, the US Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) revealed that Volkswagen AG (Volkswagen) used illegal software, a so-called "defeat device", in several diesel car models in order to bypass US environmental standards. According to the regulators, the company installed a device that boosted emissions controls during testing and turned them down during normal driving, which resulted in exceeding the pollution limits allowed under federal clean air rules by up to 40 times. As a result, the EPA ordered a recall of over 480,000 cars produced in the years 2009-2015 and Volkswagen announced at the end of September 2015 that it would refit 11 million cars. In November 2015, several engineers at Volkswagen admitted to about 800,000 vehicles sold in Europe being affected by irregularities as well. Volkswagen admitted to fitting the device in September 2015 and reached civil and criminal settlements with US authorities during 2016-17 in relation to the 2.0 and 3.0 litre diesel engine vehicles. VW was put on a three-year probationary period, with a court-appointed monitor overseeing the necessary compliance systems changes. Further fines have been issued in 2018 and 2019 by the Braunschweig, Munich and Stuttgart public prosecutors for a total of around EUR 2.3 billion, with a combined impact from the emissions scandal estimated to be well in excess of EUR 30 billion.

The former CEO and ten other VW executives of multiple counts related to the diesel emissions-cheating scandal, while CEO, Chairman have been charged for withholding information about the Dieselgate affair. VW is subject to allegations by the European Commission of having colluded with BMW and Daimler to delay the development of clean emissions technology between 2006 and 2014. The three companies have also been fined EUR 100 million by the German Federal Cartel Office for engaging in anticompetitive practices to buy steel. Poland and Australia have both levied the highest fines in their history against VW related to consumer fraud, while a class action lawsuit has commenced in the United Kingdom on behalf of 90,000 individuals. VW and the German consumer rights umbrella organization VZBV have entered into discussions about settlement of a class action lawsuit on behalf of 400,000 German motorists, without guaranteeing an outcome.

During 2019, there was one meeting and one call with Investor Relations, and a representative for NEC attended the second annual ESG convention in Berlin, raising questions in a public forum about board level independence, TCFD integration and a position paper as a forward-looking way to address the collusion allegations. The second Independent Compliance Auditor (ICA) report was released in August 2019, noting the substantive cooperative response of VW, and that no new violations had occurred under the Consent Agreement. With respect to "Golden Rules" internal procedures, only five of 433 action items remained open, and the ICA will further evaluate the sufficiency of remediation action items. Work is ongoing to strengthen the whistleblower program further, and to implement a considerable cultural change across a global organisation with more than half a million employees. A prior conflict of interest in U.S. vehicle

testing has been eliminated. The monitoring period has been extended till September 2020 and may be extended further if VW is not deemed compliant.

In 2020, the engagement will focus on independence of oversight, clawbacks, the whistleblower program, real driving emissions test results, and forward-looking measures (e.g. a position paper) to address allegations on a preventive, forward-looking basis.

Contributes to UN Sustainable Development Goal(s):



COMPANY NAME
ATLANTIA

SECTOR: Highways & Railroads
HEAD OFFICE: Italy

COUNTRY
Italy

INCIDENT

On 14 August 2018, the Morandi bridge located in Genoa, Italy, and operated by Autostrade per l'Italia (API), a subsidiary of Atlantia SpA (Atlantia), collapsed, killing at least 43 people and injuring 16 others. Separate investigations into the collapse were launched by the general prosecutor of Genoa, the Ministry of Transport and the company. API said that it had done regular checks on the structure and that the bridge was overhauled in 2016. The company has set up a EUR 500 million fund for the victims' families and to help relocate hundreds of people living close to the bridge. The cause of the collapse has not been established yet. At the end of September 2018, the Ministry of Transport published a report saying that API failed to take sufficient safety measures to prevent the bridge collapse.

NORM AREA
Human Rights

RESPONSE AND
PROGRESS
Good, Standard

GOAL

Atlantia needs to identify the cause of the bridge collapse, assess projects within its control to prevent similar failures in the future, develop a remedial strategy for the affected people, ensure project monitoring and maintenance systems and emergency procedures are in place.

THIS YEAR'S DEVELOPMENTS

Atlantia is open and responsive and Sustainalytics has had several conference calls with the company in 2019. What caused the Morandi bridge to collapse is still unknown, and the investigation by the Italian Ministry of Transport is expected to be concluded early 2020. The company's position remains unchanged, and it states to have fulfilled all contractual obligations. Before the collapse, there had been continuous maintenance work carried out, and there had been no signs of urgent alarm on the infrastructure.

Before establishing the cause of the collapse, it is difficult to define the company's liability and Sustainalytics is therefore awaiting the outcome of the final investigation. In the meantime, the dialogue with the company has focused on its risk management, monitoring of infrastructure projects and remedial strategies. After the collapse, the company made a proper maintenance check on 130 of its most important infrastructure projects in Italy and no risks were identified. Following the collapse, the company immediately set up a EUR 500 million fund for the victims' families and to help relocate hundreds of people living close to the bridge.

COMPANY NAME
ENBRIDGESECTOR: Oil, Gas & Consumable Fuels
HEAD OFFICE: CanadaCOUNTRY
United States**INCIDENT**NORM AREA
Human rightsRESPONSE AND
PROGRESS
Good, Good

In September 2016, the UN Special Rapporteur on the rights of indigenous peoples stated that the US Dakota Access Pipeline (DAPL) project posed significant risks to the Standing Rock Sioux tribe. The DAPL, part of the wider Bakken Oil Pipeline, transports crude oil from the Bakken fields of North Dakota to a distribution centre in Patoka, Illinois. The pipeline was developed by Energy Transfer LP, which holds a 38.25 per cent ownership in the pipeline. The remaining partners with significant ownership include Phillips 66, which owns 25 per cent of the pipeline, and Enbridge Energy Partners LP, an affiliate of Enbridge, with a 27.6 per cent stake. The pipeline passes close to the tribe's reservation and beneath the Missouri River, the reservation's main source of drinking water. The pipeline's risks include water pollution and the destruction of burial grounds and sacred sites. The Special Rapporteur, among others, has also alleged that the tribe was not effectively consulted and did not give its consent to the current routing of the pipeline. The project has been approved by regulatory agencies in all four states where the pipeline will operate. In February 2017, the US Army Corps of Engineers, the US authority which issues permits for the part of the pipeline crossing federal land, granted the final permit needed for its completion. In June 2017, the pipeline became operational.

GOAL

Enbridge should enter into a reconciliation dialogue with Standing Rock, with the objective to reach an agreement on how to improve trust and collaboration related to similar project in the future, as well as mitigation measures by the company to minimise risks and impacts on Standing Rock's territory and population, including its water resources.

THIS YEAR'S DEVELOPMENTS

Although all permits are in place and the pipeline is operational, criticism by Standing Rock Sioux and others remains unresolved and is subject to a litigation process in the US. Similar to last year, Enbridge has however made continuous improvements in its human rights due diligence process, in particular in relation to indigenous peoples' rights. In June 2018, Enbridge released an extensive review of its processes to respect indigenous peoples' rights, including for minority investments such as DAPL. An engagement period followed the report with, among others, First Nations and investors. During 2019, in dialogue with NEC and its service provider Sustainalytics, Enbridge presented key stakeholder input following the review. The company highlighted a) a "lifecycle engagement" with indigenous peoples, i.e. not a one off dialogue before a project starts, but continuous relations throughout a project/operation, b) attention to internal culture building via training on indigenous peoples relation, and c) alignment with indigenous rights as

spelled out in UNDRIP, on FPIC in particular. We also continued engaging the company on security and human rights matters, as well as improvements in managing human rights issues in minority investments (such as DAPL). The company presented some developments in both areas. More engagement will follow on those.

COMPANY NAME:
JOHNSON & JOHNSON

SECTOR: Pharmaceutical and Healthcare
HEAD OFFICE: United States

COUNTRY	INCIDENT
United States	As the media reported in December 2016, a US federal jury ordered Johnson & Johnson (J&J) to pay over USD 1 billion in damages to six plaintiffs who alleged that they were injured by a faulty hip replacement device, Pinnacle Acetabular Cup System (Pinnacle), manufactured by a subsidiary of the company, DePuy. Reportedly, the plaintiffs experienced tissue death, bone erosion and other health problems. In December 2016, due to constitutional considerations, a US District Judge halved the damages award that the company was previously ordered to pay. Prior to that, in March 2016, the company paid USD 150 million in punitive damages to patients who were implanted with DePuy Pinnacle device. In November 2017, J&J was ordered to pay 247 million to six patients who claimed that the company hid defects in its hip replacement system. As of March 2018, there were over 9,400 pending lawsuits in relation to Pinnacle hip implants. Moreover, in March 2018, J&J was facing 13,000 lawsuits in relation to pelvic mesh devices. Additional 7,000 talc powder lawsuits were pending as of April 2018. In August 2019, J&J was found guilty under a public nuisance offence, in Oklahoma for its role in the so-called "opioid epidemic" in the US. The company was the first to be found guilty in relation to the alleged aggressive marketing and fuelling of the opioid crisis in the US. It was fined some USD 572 million but has stated publicly that it will appeal.
NORM AREA	
Human Rights	
RESPONSE AND PROGRESS	
Standard, Poor	

GOAL

Johnson and Johnson should ensure that the lessons learned from the numerous product quality issues have been incorporated into its protocols and procedures to minimise the risk of future litigation.

THIS YEAR'S DEVELOPMENTS

NEC issued an investor's letter to Johnson and Johnson (J&J) in July 2019, which prompted a detailed response from the company, and led to dialogue with the company. A conference call was held in November 2019. Unfortunately, due to J&J's sensitivity over the ongoing litigations in the US, the company requested that no minutes be recorded of the call. There have been a number of developments during 2019. In August, Oklahoma found J&J guilty, on public nuisance charges, in relation to the opioid crisis in the state. The judge stated that the company had "engaged in false and misleading marketing of both their and opioids generally"; USD 572 million in damages was awarded against J&J, far less than many analysts predicted, but given that the company had only 1 per cent of the opioid sales in the state an arguably disproportionately large sum. Then, in October 2019, a Philadelphia court awarded USD 8 billion in punitive damages to a man who had suffered from the side effects of taking the anti-depressant drug Risperdal as a child. J&J are appealing both rulings. The meeting agenda addressed both rulings, J&J were

robust in their defence of their products where the company believed that the science was “on their side” but stated that some settlements may be sought in relation to some of the ongoing litigations. The company also outlined some of its governance regarding quality and safety reviews of its products. J&J agreed to further meetings in 2020.

In many of the rulings it is either the company’s aggressive marketing practices and the “off-label” prescription (i.e. prescriptions for non-approved use) or, the quality of their products that have been called into question. These areas will be the focus of the next call.

COMPANY NAME
ENI SPASECTOR: Oil, Gas & Consumable Fuels
HEAD OFFICE: ItalyCOUNTRY
Nigeria**INCIDENT**

In 2011, Eni and Royal Dutch Shell (Shell) paid the Nigerian government USD 1.3 billion for offshore oil block OPL 245. According to a May 2012 report by the NGO Global Witness, UK High Court case proceedings revealed the companies had known that USD 1.1 billion of the money would be transferred to Malabu Oil&Gas (Malabu), a company allegedly controlled by a former Petroleum Minister of the country. The case was fought between Malabu and an agency that said it had brokered the deal. According to the NGO, court documents indicate that both Shell and Eni dealt with the ex-minister before the payment to the government, which included secret meetings and negotiating the block's price. The companies denied the allegations. In October 2014 it was reported that, according to Italian prosecutors investigating Eni's involvement in the deal, at least half of the USD 1.1 billion was used to bribe local politicians, intermediaries and others. In December 2015 Global Witness reported that new evidence from leaked internal emails between senior Shell and Eni managers showed that the companies were fully aware and actively arranged for their USD 1.1 billion payment for OPL 245 to be sent Malabu Oil and Gas. In December 2017, media reported that an Italian judge had ordered Shell, Eni and the CEO of Eni, among past and present managers, to stand trial for corruption in Nigeria. The trial started in June 2018, and, in the first ruling in September 2018, the court reportedly sentenced to four years in prison two men who had acted as go-betweens in the attribution of rights over the oil block. According to a subsequent media report, in her written reason for this conviction, the judge said that Eni and Shell were fully aware that their 2011 purchase of a Nigerian oilfield would result in corrupt payments to Nigerian politicians and officials. The trial continues.

NORM AREA
Business EthicsRESPONSE AND
PROGRESS
Resolved**GOAL**

Eni should demonstrate that its code of conduct, due diligence and risk management processes in the areas of acquisitions and divestments are robust and universally applied.

THIS YEAR'S DEVELOPMENTS

In Q1, NEC reviewed the company's progress against the change objective and noted that Eni had provided a significant volume of information about its anti-corruption framework. Its Code of Ethics includes a prohibition on corruption and the company states that it has an Anti-Corruption Compliance Program, an 'articulated system of rules and controls for the prevention of corruption'. It has also published a detailed Management System Guidance on Anti-Corruption, which, among other topics, covers acquisitions and disposals and due diligence, as well as relations with public officials and 'Relevant Private

Entities'. Bearing in mind these developments, NEC considers that, on the face of it, the company has essentially met our engagement objective. However, we are continuing to monitor legal proceedings in multiple jurisdictions. According to media reports in December 2018, an Italian judge said that Eni and Shell were fully aware that their 2011 purchase of a Nigerian oilfield would result in corrupt payments to Nigerian politicians and officials. The judge made the comment in her written reasons for the September conviction of Emeka Obi and Gianluca di Nardo, middlemen in the OPL 245 deal. Eni said it would analyse the judge's remarks. The judge also observed, on the basis of investigations, that around USD 523 million of the USD 1.1 billion paid for the oil block were shared out as bribes to some former ministers and politicians. Allegedly, a former minister spent around USD 250 million on real estate, aircraft and cars. In July, a witness in the Italian corruption case told the court that Chief Executive Claudio Descalzi authorised a company manager named Claudio Granata to approach him to and offer him his job back if he agreed to modify his testimony. Both Descalzi and Granata have denied the accusation and say they have sued Armanna for defamation. NEC will follow developments in these proceedings and will consider re-opening the engagement in the event of court decisions that indicate unresolved weaknesses in Eni's anti-corruption system.

COMPANY NAME
ROYAL DUTCH SHELL PLC

SECTOR: Oil, Gas & Consumable Fuels
 HEAD OFFICE: United Kingdom

COUNTRY

Nigeria

INCIDENT

In 2011, Eni and Royal Dutch Shell (Shell) paid the Nigerian government USD 1.3 billion for offshore oil block OPL 245. According to a May 2012 report by the NGO Global Witness, UK High Court case proceedings revealed the companies had known that USD 1.1 billion of the money would be transferred to Malabu Oil&Gas (Malabu), a company allegedly controlled by a former Petroleum Minister of the country. The case was fought between Malabu and an agency that said it had brokered the deal. According to the NGO, court documents indicate that both Shell and Eni dealt with the ex-minister before the payment to the government, which included secret meetings and negotiating the block's price. The companies denied the allegations. In October 2014 it was reported that, according to Italian prosecutors investigating Eni's involvement in the deal, at least half of the USD 1.1 billion was used to bribe local politicians, intermediaries and others. In December 2015 Global Witness reported that new evidence from leaked internal emails between senior Shell and Eni managers showed that the companies were fully aware and actively arranged for their USD 1.1 billion payment for OPL 245 to be sent Malabu Oil and Gas. In December 2017, media reported that an Italian judge had ordered Shell, Eni and the CEO of Eni, among past and present managers, to stand trial for corruption in Nigeria. The trial started in June 2018, and, in the first ruling in September 2018, the court reportedly sentenced to four years in prison two men who had acted as go-betweens in the attribution of rights over the oil block. According to a subsequent media report, in her written reason for this conviction, the judge said that Eni and Shell were fully aware that their 2011 purchase of a Nigerian oilfield would result in corrupt payments to Nigerian politicians and officials. The trial continues.

NORM AREA

Business Ethics

RESPONSE AND PROGRESS

Under observation

GOAL

Shell should demonstrate that its code of conduct, due diligence and risk management processes in the areas of acquisitions and divestments are robust and universally applied.

THIS YEAR'S DEVELOPMENTS

In March 2019, NEC held a conference call with the Managing Director of SPDC and his colleagues as well as the VP Environment of Royal Dutch Shell. This covered the Shell and SPDC anti-corruption system, including vendor due diligence, anti-bribery and corruption requirements relating to government officials and sharing of information on corruption risk with competitors. NEC subsequently reviewed the company's progress against the change objective and noted that Shell had provided a significant volume of information about its anti-corruption framework and indeed it scores well against core criteria promoted by Transparency International. Its Business Principles and Code of

Conduct include a clear prohibition on bribery and facilitation payments and it has risk assessment processes in places relating to countries, joint venture partners and specific contracts. Significant transactions, including licences, are considered at board level from three different angles. The company discloses a process of Ethics and Compliance due diligence, rooted in a consolidated ethics manual. It also states that it communicates its anti-corruption policies and procedures to directors, employees and business partners.

Bearing in mind these developments, NEC considered that, on the face of it, the company had met our engagement objective, and we have therefore treated the engagement case as resolved. However, we are continuing to monitor legal proceedings in multiple jurisdictions. According to media reports in December 2018, an Italian judge said that Eni and Shell were fully aware that their 2011 purchase of a Nigerian oilfield would result in corrupt payments to Nigerian politicians and officials. The judge made the comment in her written reasons for the September conviction of Emeka Obi and Gianluca di Nardo, middlemen in the OPL 245 deal. Shell said that neither Obi nor Di Nardo worked for the company. The judge also observed, on the basis of investigations, that around USD 523 million of the USD 1.1 million paid for the oil block were shared out as bribes to some former ministers and politicians. Then, in March 2019, Shell stated in a press release that it had been informed by the Dutch Public Prosecutor's Office (DPP) that they are preparing to prosecute the company for criminal charges directly or indirectly related to the 2011 settlement of disputes over OPL 245. NEC will follow developments in these proceedings and will consider re-opening the engagement in the event of court decisions that indicate unresolved weaknesses in Shell's anti-corruption system.

COMPANY NAME
ROYAL DUTCH SHELL PLC

SECTOR: Oil, Gas & Consumable Fuels
 HEAD OFFICE: United Kingdom

COUNTRY
 NIGERIA

INCIDENT

Shell Petroleum Development Company of Nigeria Limited (SPDC), a subsidiary of Royal Dutch Shell, operates onshore oilfields in the Niger Delta region of Nigeria on behalf of its joint venture partners the Nigerian National Petroleum Corporation (55 percent), Total E&P Nigeria Ltd (10 percent) and Eni subsidiary Agip (5 percent). In 2011, the extensive oil pollution attributable to SPDC's operations in the Ogoniland, part of the Niger Delta, was scientifically documented for the first time by the United Nations Environment Programme (UNEP). UNEP scientists examined 69 sites and found that at more than ten locations a severe risk to public health was posed. The report further said that the impact on mangrove habitat has been "disastrous". The extent of the pollution was regional in scale and UNEP estimated that clean-up would take 30 years and cost at least USD 1 billion. A range of recommendations was made to oil companies and the Nigerian government.

NORM AREA
 HUMAN RIGHTS

RESPONSE AND
 PROGRESS

Under observation

GOAL

Our goal for this engagement has been that Shell should have a detailed programme in place to address the recommendations of the UNEP report and demonstrate that regular progress is being made towards achieving the objectives. We have also expected the company to communicate the plan and progress transparently to shareholders, as well as to exert its influence on all stakeholders to counter oil theft activity and its related social and environmental impacts.

THIS YEAR'S DEVELOPMENTS

In March 2019, NEC held a call with the Managing Director of SPDC and his colleagues as well as VP Environment of Royal Dutch Shell. The call covered progress against a number of aspects of the UNEP recommendations, including emergency measures for water, operational and technical recommendations, as well as the format of reporting on progress. NEC subsequently reviewed the company's progress against the change objective and noted that Shell has shown progress against around 75% of the relevant UNEP recommendations. Reported progress includes: taking steps in relation to the 'emergency measures' relating to water, re-assessing the 15 SPDC JV sites mentioned in the UNEP report and, where required, remediating the sites; and carrying out education, training and surveillance to prevent illegal activities. We therefore consider that the company has substantively achieved the change objective and have decided to close this case.

Nevertheless, we note that there are ongoing legal proceedings involving the company regarding oil pollution in Nigeria. In the case of Okpabi v Royal Dutch Shell, the Bille and Ogale communities in the Niger Delta allege that they have suffered pollution for years because of the company's operation. The UK courts had previously ruled that they do not have jurisdiction over the claims,

but the communities have been given permission to appeal to the UK Supreme Court. We will continue to monitor the news media for updates on these proceedings and consider re-opening the dialogue if the court finds in favour of the Niger Delta communities.

COMPANY NAME
VOLKSWAGEN

SECTOR: Transportation
HEAD OFFICE: Germany

COUNTRY
Germany

INCIDENT

In September 2015, the US Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) revealed that Volkswagen AG (Volkswagen) used illegal software, a so-called "defeat device", in several diesel car models in order to bypass US environmental standards. According to the regulators, the company installed a device that boosted emissions controls during testing and turned them down during normal driving, which resulted in exceeding the pollution limits allowed under federal clean air rules by up to 40 times. As a result, the EPA ordered a recall of over 480,000 cars produced in the years 2009-2015 and Volkswagen announced at the end of September 2015 that it would refit 11 million cars. In November 2015, several engineers at Volkswagen admitted to about 800,000 vehicles sold in Europe being affected by irregularities as well.

NORM AREA

RESPONSE AND
PROGRESS
Standard

Volkswagen admitted to fitting the device in September 2015 and stated that it was cooperating with an investigation led by the Department of Justice on behalf of the EPA in April 2016. In June 2016, Volkswagen reached a civil settlement with the US authorities and agreed to pay more than USD 15.3 billion to settle the charges in relation to the 2.0 litre diesel engine vehicles that were fitted with a defeat device. In December 2016, Volkswagen reached a civil settlement with the US authorities in relation to the 3.0 litre engine vehicles and agreed to pay USD 225 million toward nitrogen oxide reduction projects. In January 2017, Volkswagen pleaded guilty to three criminal felony counts in the US. The company agreed to pay USD 4.3 million to settle these remaining criminal and civil penalties and was put on a three-year probationary period, with a court-appointed monitor overseeing the necessary compliance systems changes. In June 2018, the public prosecutor in Braunschweig issued an administrative order and EUR 1 billion fine, while in October 2018, Audi was fined EUR 800 million by Munich prosecutors in relation to certain V6 and V8 diesel engines in vehicles manufactured by Audi. In September 2019, VW reported having recognised EUR 1.3 billion year-to-date, including EUR 0.5 billion administrative fine issued in May 2019 by the Stuttgart public prosecutor.

German prosecutors have accused former CEO Martin Winterkorn and ten other VW executives of multiple counts related to the diesel emissions-cheating scandal, while CEO Herbert Diess, Chairman Hans Dieter Pötsch and former Mr. Winterkorn have been charged for withholding information about the Dieselgate affair. VW is subject to allegations by the European Commission of having colluded with BMW and Daimler to delay the development of clean emissions technology between 2006 and 2014. The three companies have also been fined EUR 100 million by the German Federal Cartel Office for engaging in anticompetitive practices to buy steel. Poland and Australia have both levied the highest fines in their history against VW related to consumer fraud, while a class action lawsuit has commenced in the United Kingdom on behalf of 90,000 individuals. VW and the German consumer rights

umbrella organization VZBV have entered into discussions about settlement of a class action lawsuit on behalf of 400,000 German motorists.

GOAL

VW should ensure that it has adequate risk management systems and internal controls and that the Supervisory Board has sufficient oversight, independence and skills in order to prevent future violations. Furthermore, VW should demonstrate that it has improved its corporate culture.

THIS YEAR'S DEVELOPMENTS

In 2019, Sustainalytics focused its engagement primarily on controls and independence of oversight, clawbacks, the whistleblowing program, as well as testing results and alleged collusion to delay clean emissions technology. Sustainalytics had one meeting and one call with Investor Relations, and attended the second annual ESG convention in Berlin, raising questions in a public forum about board level independence, TCFD integration and a position paper as a forward-looking way to address the collusion allegations. The second Independent Compliance Auditor (ICA) report was released in August 2019, noting the substantive response of VW, and that no new violations had occurred under the Consent Agreement. The monitoring period has been extended till September 2020 and may be extended further if VW is not deemed compliant.

With respect to "Golden Rules" internal procedures, only five of 433 action items remained open, and the ICA will further evaluate the sufficiency of remediation action items by performing risk-based testing of VW Internal Audit's work. The ICA added new requirements for VW to inform three times in the next year about effectiveness measures and have Group Risk Management perform its own analysis of the scope of entities relevant for Consent Decree reporting requirements.

The ICA deemed that VW had brought its verification program in line with other automotive manufacturers, with ICA review of organisation charts and on-site walk-throughs, deeming emissions testing facilities to be sophisticated with ample procedures and testing data stored in a secure, segregated area. The ICA noted ample pre-clearance of projects by the Group Steering Committee, with occasional logistical issues tied to time differences in different geographical zones.

Furthermore, the report indicated a prior relationship between designated vehicle emissions tester University of California Riverside and Ramboell Environ U.S. Corp. (on behalf of VW) had ended in Q2 2018. Testing did not reveal deviation from established methodologies or the EPA-approved test plan, nor did the EPA or CARB express any negative feedback, criticisms or concerns with respect to testing or test results.

Written records now detail responsibilities to holders of over a thousand relevant positions and are structured to allow replacement employees to understand responsibilities, with the ICA evaluating the results of an internal

audit of tasks, authorities and responsibilities. Both the VW Group and AUDI hired independent auditors to review recorded risks and countermeasures, with progress of corrective measures tracked in a formalised system.

VW is developing its whistleblower system to clarify roles and responsibilities of certain departments, further define the type of alerts constituting Serious Regulatory Violations and incorporate additional monitoring processes. VW is implementing or enhancing 24/7 hotlines covering 97% of employees in 85% of Group entities and 17 languages, an IT tracking tool, timelines for prioritization and processing of alerts, measures to clean up backlogs, and processes for Investigation Offices. VW was asked to improve effectiveness on alerts relating to U.S. and California environmental laws and regulations.

Code of Conduct training has been concluded for 390,000 employees and 20,000 managers, with a target to reach all entities with over 1,000 employees in 2019. The “Together for Integrity” (“T4I”) program has been rolled out to 390,000 in 2019. VW expects to publish TCFD-related reporting in 2020.

In 2020, Sustainalytics will continue to focus on independence of oversight, review of the third report by the Independent Compliance Auditor, results of real driving emissions tests, enhancement of whistleblower programs, and roll-out of cultural transformation. Sustainalytics will emphasise board independence and a position paper or other solution to address future concerns tied to obstruction of emissions reduction or long-term carbon neutrality objectives.

A collaborative engagement
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Mere til dig

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