



# **Annual Report on the OECD Guidelines for Multinational Enterprises**

**ENCOURAGING  
THE CONTRIBUTION OF BUSINESS  
TO THE ENVIRONMENT**



**OECD** 

**2004**

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OF BUSINESS TO THE ENVIRONMENT

2004



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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PROMOUVOIR LA CONTRIBUTION DES ENTREPRISES À L'ENVIRONNEMENT

2004

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## Foreword

**T**o many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct among such companies is a growing challenge since their operations often straddle dozens of countries and hundreds of cultural, legal and regulatory environments. The OECD Guidelines for Multinational Enterprises aim to help businesses, labour unions and NGOs meet this challenge by providing a global framework for responsible business conduct. While observance of the Guidelines is voluntary for businesses, adhering governments are committed to promoting them and to making them influential among companies operating in or from their territories. This Annual Report on the Guidelines, the fourth in a series, describes what governments have done to live up to this commitment over the period June 2003-June 2004. It also provides an overview of how the OECD Guidelines for Multinational Enterprises can help to promote the positive contribution of business to the environment.

## Note by the Editor

*The 2004 Annual Report on the OECD Guidelines for Multinational Enterprises was developed and derestricted for publication under the joint responsibility of the National Contact Points (NCPs) and the Investment Committee.*

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## PART I

# **Meeting of National Contact Points – An overview of Guidelines-related activities**



# **Summary Report of the Chair of the meeting on the activities of NCPS**

## **I. Introduction and Background**

The 2004 meeting of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) gave NCPs an opportunity to take stock of their experiences during the fourth year of implementation since the June 2000 Review. Consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and with non- governmental organisations (now joined in a more formal network) provided further inputs on Guidelines implementation. The 2004 Roundtable on Corporate Responsibility focused on responsible environmental management.

The present report reviews NCP’s activities over the June 2003-2004 period. It is based on the individual NCP reports and on other information received during the reporting period. The report is divided into seven sections. These include: institutional arrangements (Section II); information and promotion (Section III); specific instances (Section IV). Section V describes steps taken to date to respond to issues raised by the UN Expert Panel on Illegal Exploitation of Nature Resources in the Democratic Republic of Congo. Section VI describes how Guidelines institutions have followed up on some of the issues raised during the 2003 Annual NCP meeting and Corporate Responsibility Roundtable. Section VII summarises progress to date and proposes steps for further action. There are four Annexes: 1) Structure of the NCPs; 2) Contact details for NCPs; 3) Summary Table – Specific Instance Considered by NCPs to date; 4) Archive of Documents.

Overall, the report suggests that the gains in visibility and user recognition – already noted in the 2002 and 2003 reports – were consolidated over the June 2003-2004 period. Support for this conclusion is widespread:

- The Guidelines have been referred to at high-level meetings. Their role in promoting a responsible market economy was mentioned in the June 2003 Evian Summit Declaration.<sup>1</sup> Kofi Annan cited them as an important initiative in an April 2004 presentation to the United Nations Security Council (see Archive document 4).

- Use of the Guidelines implementation processes by business, trade unions, NGOs and by governments has been extensive (see Section IV). In the context of their handling of a number of specific instances, NCPs believe that they have contributed to reducing tensions in the global economy and to promoting appropriate business conduct.
- The Guidelines have now been translated into 28 languages<sup>2</sup> – particularly noteworthy is TUAC and its partners' translation of the Guidelines into Chinese, Indonesian and Thai. Web coverage is extensive and growing. More than 70,000 web pages refer to the Guidelines (up from 25 000 last year).
- A World Bank-sponsored survey<sup>3</sup> looked at corporate use of major standards for corporate responsibility. The survey asked managers of large multinational enterprises, which global corporate responsibility instruments were "most influential on practice at their companies". Twenty two per cent of the respondents mentioned the Guidelines without prompting.<sup>4</sup>

Thus, the NCPs and the Investment Committee would appear to have some grounds for satisfaction regarding their progress in promoting the Guidelines to date. Yet, the consultations showed that the trade unions and NGOs still have concerns about specific implementation issues and, more generally, about the credibility of the instrument. While expressing overall satisfaction with the fairness of implementation procedures, BIAC noted that specific instances considered to date had focused mainly on the labour chapter and had largely ignored the other chapters. The discussions suggested that NCPs will need to renew their efforts to reassure all partners that they will preserve the political balance that underpins the current text of the Guidelines, while also showing their willingness and ability to deal meaningfully with some of the difficult ethical issues that arise in connection with international investment.

## **II. Institutional Arrangements**

The NCP reports show that institutional arrangements were largely stable over the June 2003-2004 reporting period. Latvia effectively became an adherent to the OECD Declaration in January 2004. Its newly-created NCP is inter-ministerial and tripartite in structure (Annex 1). Overall, the structure of NCPs can be summarised as follows:

- 21 NCPs are single government departments;
- 6 NCPs are multiple government departments;
- 9 NCPs are tripartite; and
- 2 NCPs are quadripartite.

NCPs noted that they also use other means for organising consultations and for expanding the inclusiveness of their activities. A number of countries reported using advisory committees or permanent consultative bodies whose members include non-government partners. Others stated that they convene regular meetings with business, trade unions and civil society. Still others state that they consult with NGOs or other partners on an informal basis or in reference to specific issues where partners' expertise is required.

### III. Information and Promotion

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities and to handle enquiries. NCPs have continued to be active in this area. This section summarises the descriptions of promotional activities contained in the individual NCP reports.

#### III.a. Selected promotional activities by NCPs

Selected developments and innovations in promotion include:

- *Reflecting the Guidelines in domestic standards.* The Australian NCP continued its efforts to incorporate the Guidelines into domestic corporate, government and social responsibility reporting frameworks. It commented on the Australian Securities and Investment Commission's Socially Responsible Investing Disclosure Guidelines and the Australian Competition and Consumer Commission's Guidelines for developing and endorsing effective voluntary industry codes.
- *Strategic approach to promotion.* The Canadian NCP has formulated a strategic approach to promotion with the business community. The Canadian NCP report notes that more focus is being given to extractive industries, where both Canadian business and the government "share an interest in maintaining a positive image" ... and in "ensuring that Canadian businesses contribute positively to the broader social and environmental objectives of the communities in which they operate." As follow up on this strategy, the Canadian NCP contacted or participated in the events of several mining associations.
- *Deputy Ministers promote Guidelines with overseas missions.* The Canadian report also notes that the Deputy Ministers of Foreign Affairs and Trade promoted the Guidelines by sending a message to the heads of all Canadian embassies, consulates and high commissions. The message included a recommendation to promote the Guidelines with Canadian companies operating abroad and provided links to on-line reference material and tools to enable the missions' staff to effectively promote responsible corporate behaviour, including the Guidelines.

- *National corporate responsibility programme and report.* The Finnish NCP is reorganising itself into a cooperative body involving government, business and other actors with a view to increasing the versatility of Guidelines promotion. The Ministry of Trade and Industry aims to enhance corporate responsibility within the framework of a programme called Corporate Responsibility Finland, which will assign a prominent role to the OECD Guidelines. A report has been prepared on Finnish progress in developing the OECD Guidelines, the Global Compact and the Global Report. The report aims to provide an overall picture of international guidelines and initiatives and looks at how far Finland has progressed in the promotion of corporate responsibility reporting and other forms of corporate governance. In April 2004, the Finnish NCP organised a special seminar on the report.
- *Comparison with national law.* The NCP from New Zealand has compared the Guidelines with national law with a view to identifying areas of conflict (none were found) or areas where the Guidelines impose more stringent requirements than national law.
- *Training of entry-level government economists.* Economists preparing to work for the government of the Netherlands received training in the Guidelines. This year's annual study tour of "young policy advisors" took place in India. The agenda included corporate responsibility discussions with Dutch companies in India and with Indian companies.
- *Norwegian Petroleum Fund uses Guidelines as a benchmark.* The government has proposed new ethical guidelines for the management of the Government Petroleum Fund (the Fund invests North Sea oil revenues) that will cover exercise of ownership rights to promote long-term financial return, negative screening to exclude companies that produce weapons whose normal use violates fundamental humanitarian principles and exclusion of companies in which there is deemed to exist an unacceptable risk of contributing to violations of fundamental humanitarian principles, gross violations of human rights, gross corruption or severe environmental degradation. The Fund will be based on the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the OECD Corporate Governance Principles.
- *Major international conference on the role of development cooperation agencies in corporate responsibility.* On 22-23 March, the Swedish development cooperation agency sponsored a conference which brought together OECD and non-OECD actors to discuss such issues as building local responsible business practices, corruption and transparency, corporate responsibility standards and norms in developing countries and private companies in conflict prone zones. The Guidelines were presented to the conference by the Chair of the OECD Investment Committee. The report from the conference is available on [www.ud.se/ga](http://www.ud.se/ga).

- *Swedish Partnership on Global Responsibility.* The Partnership, discussed in the 2003 NCP report, is a Swedish government initiative that encourages Swedish companies to become “ambassadors for human rights, core labour standards and a sound environment all over the world. Its points of departure are the UN Global Compact and the OECD Guidelines for Multinational Enterprises. The Secretariat in charge of the Partnership keeps track of information on international developments in corporate responsibility, international systems of rules and conventions and practices experience and research results. It also organises and facilitates a wide range of activities such as counselling in-house training, network building, seminars and workshops. The OECD Guidelines are used in these activities.
- *State owned enterprises.* In December 2003, the Swedish Minister for Industry and Trade sent out a questionnaire to 34 out of 59 state owned companies, asking them about their work related to the implementation of the OECD Guidelines and the principles of the UN Global Compact. The questionnaire was followed up by a seminar in June 2004. The Swedish NCP is closely involved with this work, through which the government seeks to “lead by example.”
- *Promotion by the European Commission.* The Commission’s European Multi-stakeholder Forum brings together business and business federations, trade unions and NGOs to promote best practice and innovation in corporate responsibility. The Forum’s Development Roundtable has examined case studies of how to implement corporate responsibility practices in developing countries. The Roundtable on “Improving knowledge about CSR and facilitating the exchange of experience and good practice” looked at a Guidelines’ specific instance based on a presentation by the Czech Republic’s NCP. Two other events also permitted promotion and discussion of the Guidelines. The Commission seeks to have a coherent policy on corporate responsibility – it has cited the Guidelines in its communications on such issues as conflict prevention, human rights, core labour standards and sustainable development. The Commission also sponsored four regional outreach seminars on the Guidelines.
- *Promotion by the Committee Chair.* The Chair actively promoted the Guidelines over the reporting period. He presented the Guidelines in Stockholm (conference on development cooperation and CSR); London (handling of UN Expert Panel reports); Amsterdam, (responsible investment); Lisbon (World Congress of Consumers International); Lusaka, (TUAC/FES workshop); Amsterdam (Annual Conference of the International Corporate Governance Network); Brussels (EU multi-stakeholder forum).

Other promotional activities undertaken by NCPs during the reporting period included:

- Outreach to companies via contacts or presentations to individual companies or to business associations (Australia, Belgium, Brazil, Canada, Estonia, France, Finland, Italy, Japan, Korea, Lithuania, Mexico, New Zealand, Netherlands, Poland, Portugal, Slovenia, Switzerland, United Kingdom).
- Consultations with national partners (Australia, Belgium, Brazil, Chile, Canada, Czech Republic, Denmark, Estonia, Finland, Iceland, Ireland, Japan, Korea, Mexico, New Zealand, Netherlands, Norway, Portugal, Poland, Slovak Republic, Spain, the United Kingdom, the United States);
- Newsletters, interviews, articles in the national press or other promotion through the media (Belgium, Chile, Denmark, Switzerland, United States).
- Participation in conferences organised by non-governmental actors (Argentina, Australia, Belgium, Canada, Chile, Germany, Italy, Mexico, Slovak Republic, Switzerland, United Kingdom, United States).
- Cooperation with universities and think tanks (Canada, Chile, Japan, Slovak Republic, Sweden, Turkey, United States).
- Development of promotional material (Austria, Germany, Japan, Mexico, New Zealand, Poland, Portugal, Spain, Turkey).
- Website development (Australia, Portugal, United Kingdom).

### **III.b. Promotional activities within governments**

- Promotion with and training of embassy and consular staff (Australia, Canada, Portugal, Spain, United Kingdom); the UK NCP presents the Guidelines to Commercial Officers from British Embassies as part of their induction/refresher course (every six weeks).
- Trade and Investment Promotion missions or activities (Canada, Germany, Netherlands, United Kingdom).
- Inter-ministerial promotion of corporate responsibility (Canada, Chile, New Zealand, United States); The New Zealand NCP has asked all government departments to conduct a comparison of the guidelines with the areas of national law for which that department is responsible.
- Promotion through overseas development agencies (Canada, Sweden).
- Answering questions from Parliaments, Ombudsmen or other government bodies (Denmark, European Commission).

### **III.c. Investment promotion, export credit and investment guarantee agencies**

Adhering governments have continued to explore how to ensure that their support for the Guidelines finds expression in other aspects of national policy, including export credit and investment promotion or guarantee

programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Fifteen NCPs report that such links exist. Relative to the 2003 version of this table, the main change is in the UK text describing how the Guidelines are to be used by the UK export credit agency.

### **III.d. High level promotion**

In April, 2004, the United Nations Secretary-General cited the Guidelines in a presentation to the United Nations Security Council. The full text of the presentation – entitled “The Role of business in armed conflict can be crucial – for good and for ill” – is available as Archive document 4.

The G8 Labour and Employment Ministers Conference (meeting 14-16 December 2003 in Stuttgart, Germany) encouraged in its conclusions all companies – including small and medium-sized companies to respect the OECD Guidelines.

Three Netherlands’ Ministers – Economic Affairs, Development Cooperation, Social Affairs and Employment – participated in Guidelines promotion during the reporting period.

The Ambassador for the Swedish Partnership for Global Responsibility held a presentation about the Partnership and the OECD Guidelines at the EU Italian Presidency’s corporate responsibility conference in Venice, November 2003.

The United States Secretary of State promoted the Guidelines in October 2003 at a meeting for the Secretary of States’ Award for Corporate Excellence.

EC Trade Commissioner has participated as a speaker in a number of seminars on international investment and corporate responsibility, including in the European Parliament, and has consistently promoted the Guidelines.

### **III.e. Promotion by the OECD Secretariat**

OECD Forum 2004, held May 12-13 2004 in conjunction with the OECD Ministerial Meeting, included a session on the “Role of Corporate Responsibility and the OECD Guidelines for Multinational Enterprises”. The panel for this session included a journalist and representatives from the business, trade union and academic communities. The audience was also given an opportunity to participate in the discussions. A summary of the event appears in Archive document 6.

A Guidelines promotion event focusing on the environment chapter of the Guidelines was organised in association with the Global Forum on International Investment, held in South Africa from 17-18 November 2003.

Table 1. **The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes**

Australia	Export credit and investment promotion	<p>Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines.</p> <p>The Australian NCP has developed a comprehensive website including access to the Guidelines, related documentation, links to related sites, procedures for lodgement and review of specific instances, a notice-board advertising coming events and a secure site offering its consultation group secure access to official Investment Committee documents.</p> <p>Many Australian government agency web sites provide links to the Australian NCP site.</p>
Canada	Export Credits	<p>The Export Development Corporation (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.</p>
Czech Republic	Investment promotion	<p>There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the CR. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.</p>
Estonia	Investment promotion	<p>The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.</p>
Greece	Investment promotion	<p>The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.</p>
Finland	Export promotion	<p>This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.</p>
France	Export credits and investment guarantees	<p>Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines ("<i>avoir pris connaissance des Principes directeurs</i>").</p>
Germany	Investment guarantees	<p>A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.</p>
Israel	Investment Promotion Centre	<p>The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.</p>
Japan	Trade-investment Promotion	<p>The ASEAN-Japan Centre is an international organisation which was established based on the Agreement Establishing the ASEAN Promotion Centre on Trade, Investment and Tourism signed by the governments of ASEAN and Japan. The Japanese NCPs have built up a linkage to the organisation's website in order to provide information on the Guidelines.</p>



Table 1. **The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes** (cont.)

Latvia	Latvian Investment and Development Agency (LIDA)	The Guidelines (basic texts) are available electronically on the sites of the MFA ( <a href="http://www.mfa.gov.lv">www.mfa.gov.lv</a> ) and Latvian Investment and Development Agency (LIDA) ( <a href="http://www.lida.gov.lv">www.lida.gov.lv</a> ). The Guidelines and the relevant decisions of the OECD Council have been translated in the Latvian language. The LIDA plans a seminar in order to promote information on the Guidelines and NCP.
Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
Slovenia	Investment promotion, export credits and investment guaranties	Both organisations have added links to the NCP web site. Export credits and investment guaranties (SID) call the Guidelines to the attention of outward investors.
Spain	Investment guarantees	The CESCE (Export Credit Agency) that manages investment guarantees), COFIDES (Corporation for Development Finance) and ICO (the Official Credit Institute) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on bribery, the OECD GL for MNE's and the Swedish Partnership for Global Responsibility
Turkey	Investment promotion	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for inward investment promotion. The investment promotion website provides information on the Guidelines.
United Kingdom	Export Credit	Links connect Guidelines website and export credit guarantee department's website and <i>vice versa</i> . The following text is now in the guarantee documentation. "The UK Government encourages all multinational companies to adopt the recommendations on responsible business conduct contained in the "OECD Guidelines for Multinational Enterprises". ECGD's internal procedures will check on the consistency of the operations of its customers (both in the UK and overseas) with these recommendations, and in particular those relating to the environment, employment, combating bribery and transparency.
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

The OECD Secretariat accepted invitations to present the Guidelines at many meetings over the period. Highlights include presentation of the Guidelines' anti-bribery chapter to a UN Global Compact Policy Dialogue held by the Compact as part of its consideration of whether to add a tenth, transparency principle. Presentations were also made to specialised business

associations (e.g. French Observatory on the Societal Responsibility of Enterprises, World Business Council for Sustainable Development), various development assistance agencies (e.g. the French Development Agency), business schools, think tanks and at various international corporate responsibility conferences. The Secretariat also presented the Guidelines to the press and to other OECD bodies.

The Secretary-General contributed an article in May 2004 for inclusion in a book on Corporate Social Responsibility to be published by the International Bar Association and Kluwer Law International. Deputy Secretary-General Hecklinger delivered a keynote speech at a Chatham House “Corporate Responsibility in Practice” conference in March 2004.

The Investment Committee cooperated with Global Reporting Initiative (GRI) as it developed a table exploring and summarising the synergies and complementarities between the OECD and GRI Guidelines.

## **IV. Specific Instances**

The OECD Council Decision of June 2000 instructs the NCPs to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP is expected to offer a forum for discussion and to assist the business community, employee organisations and other parties concerned in dealing with the issues raised. Thus, the “specific instances” procedure provides a channel for promoting observance of the Guidelines’ recommendations in the context of individual companies’ operations. In some cases, the specific instances are being or have been considered by more than one NCP – thus, a given specific instance could be included in the counts of two or more NCPs.

The individual NCP reports for the June 2003- June 2004 implementation cycle indicate that new specific instances were raised and that several were concluded.

### **IV.a. Specific instances – nature and numbers**

In order to improve its reporting on the handling of specific instances, the OECD Investment Committee agreed in April 2004 that a new historical archive table should be included in subsequent annual reports on the Guidelines. This table can be found in Annex 3.

Some 78 specific instances have been filed with NCPs. Individual NCPs reports indicate the following numbers of specific instances since the 2000 Review: Austria (2), Belgium (1), Brazil (1), Canada (4), Chile (1), Czech Republic (5), Denmark (2), Finland (1), France (11), Germany (6), Japan (5), Korea (3), Mexico (1), Netherlands (11), Norway (1), Poland (2), Portugal (1), Spain (1), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (3) and United States (11).

Most specific instances concern Chapter IV (Employment and Industrial Relations). However, some deal with other issues such as other human rights, environment, combating corruption and political involvement.

#### **IV.b. Selected specific instances described in individual NCP reports**

**Brazil.** The Brazilian NCP has discussed an Italian multinational enterprise's labour relations practices with the company's management and with Brazilian trade unions. Tensions had arisen during the company's relocation of its agri-food activities in Brazil. The NCP found that the company had offered compensation to the affected workers that was above the level required by Brazilian law, but that it could have consulted more extensively with its workers prior to taking the decision. At the same time, the Brazilian NCP recognised that the company has the right to make plant closure decisions. In June 2003, the NCP encouraged the company to seek more actively the participation of affected parties when making future decisions that might adversely affect the communities in which it operates.

**Chile.** In September 2002, the Chilean NCP received a request from Dutch and Chilean NGOs to consider a specific instance involving the labour and environmental management practices of a Dutch fisheries and aquaculture company, Marine Harvest S.A., operating in the vicinity of Puerto Montt, Chile. The request raised a broad range of issues, including legal compliance, freedom of association, right to collective bargaining, protection of artisanal fishing rights and protection of the environment. The NCP met several times with the parties and requested information from the Dutch NCP. It visited the company's facilities, interviewed trade union leaders and met with representatives of local associations. The NCP also asked for expert advice on environmental issues in the fisheries sector and requested a report from Chile's National Labour Directorate. After concluding its consideration of this matter, the NCP made a public statement (Archive document 9) and published a detailed report containing recommendations designed to reduce tensions and to improve compliance with fisheries and aquaculture regulations and to improve the company's local suppliers' compliance with labour regulations. The report proposes that an ongoing dialogue be initiated between the company, the NGOs and various local associations. The NCP's report states that the constructive dialogue established by its consideration of the instance created positive results for all the interested parties.

**Czech Republic.** In October 2003, a trade union raised a specific instance regarding a Swiss-owned multinational enterprise with operations in the Czech machinery maintenance sector. The submission cited the labour and industrial relations chapter of the Guidelines. Two negotiating sessions were held to find a solution acceptable to all parties. The results were made publicly available through the Ministry of Finance's press service. The Czech NCP report

states that “all the parties involved appreciated the procedure and expressed their satisfaction with the solution itself”. The Czech NCP presented its handling of this instance to the OECD Investment Committee as part of its exchange of views on NCP procedures.

*France.* A French trade union asked the NCP to look into the declaration of bankruptcy by the French subsidiary of the Finnish company ASPOCOMP Oyj, despite the signing of a redundancy scheme (a plan for mitigating the impacts of a mass redundancy) with its French employees. The French NCP contacted all parties to this specific instance as well as the Finnish NCP in order to obtain the information about what headquarters knew about the financial difficulties of its subsidiary at the time the redundancy scheme was signed. Based on the information it was able to collect and on the chronology of events, the NCP decided that, if headquarters knew about the subsidiary's financial condition and still let the subsidiary commit to a redundancy scheme, then this would not be compatible with recommendation 6 of the Employment and Industrial Relations Chapter. It also concluded that the subsidiary did not inform employees of its problems even though its auditor had initiated a warning procedure (which warns of serious financial difficulties) at about the same time. See Archive document 7 for the final statement on this specific instance.

*Germany.* In September 2002, the German NCP received a request by the Clean Clothes Campaign (CCC) to consider a specific instance against a German manufacturer of sports equipment. Based on a report by Oxfam, the CCC claimed that the Indonesian suppliers of the German manufacturer in Indonesia had not observed the recommendations in Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations). After numerous conciliation proceedings and a constructive dialogue, the NCP closed the specific instance in May 2004 and issued a public statement which was posted on the Ministerial homepage of the German NCP (see Archive document 10). The statement notes that there are ongoing disagreements on the basic facts of the case (despite efforts by both the company and the NGO to clarify the situation in Indonesia). The parties have agreed to exchange information and to promote further improvements of labour conditions in Indonesia.

*Netherlands.* Two labour unions asked the Dutch NCP to consider the behaviour of an engineering and construction company with operations in Myanmar. In a tripartite meeting, the trade unions and the company agreed that they would look for ways to contribute to improving the situation in Burma. One of the actions that resulted from these discussions was the decision by the company to visit the Ambassador of Myanmar in London (a union representative was also present). During the meeting, the company expressed its concern about human rights violations and about use of forced labour in Myanmar.<sup>5</sup>

## V. The UN Expert Panel Report

In February 2004, the OECD Investment Committee issued a statement on activities undertaken by it and by NCPs in response to the issues raised by the United Nations Expert Panel on Illegal Exploitation of Nature Resources and other Forms of Wealth in the Democratic Republic of Congo (DRC) in its reports to the UN Security Council. This section is based on this statement, with additions for developments since February 2004.<sup>6</sup>

In June 2000, the UN Security Council asked the UN Secretary-General to establish the Expert Panel. The Panel produced three reports, two of which referred to the OECD Guidelines for Multinational Enterprises. In its October 2002 report (S/2002/1146), the Expert Panel claimed *inter alia* that 85 companies had not observed the OECD Guidelines for Multinational Enterprises and challenged the governments adhering to the Guidelines to use them to promote responsible behaviour among companies active in the DRC. In October 2003, the Panel reported on its efforts to verify, reinforce and update its earlier findings. This report describes the conclusions drawn by the Panel from its dialogue with many of the companies accused of not observing the Guidelines in its 2002 report.

In January 2003, the Chair of the Investment Committee wrote to the UN Security Council expressing general support for the work of the Panel and informing it that the adhering countries take seriously their role of furthering the effectiveness of the Guidelines (the Box provides a chronology of communications on this matter). The Chair's letter also stated that the Committee would welcome the opportunity to co-operate with the Panel. It hoped to receive information on which the Panel based its conclusions and offered to make it available to the NCPs. In Resolution 1457, the UN Security Council asked the Expert Panel to provide relevant information to the Committee and to the NCPs. The Panel met with the Committee Chair and relevant NCPs in April 2003 to discuss cooperation. The Panel presented its final report (S/2003/1027) in October 2003 and its mandate has now ended.

At the December 2003 meeting of the Committee, only three NCPs (out of the 10 NCPs from countries where enterprises accused by the Panel are based) reported having received some information from the Panel by the end of its mandate. Two of the NCPs reported that the information received tended to be general in nature (not specific to the Panel's accusations) and that it did not cover all the companies cited in the October 2002 report. Several NCPs have taken up consideration of "specific instances" in relation to multinational enterprise activity in the DRC (see below). In addition, several NCPs (Belgium, Canada, Finland, Germany, Sweden, United Kingdom, United States) have proactively contacted the companies named in the report (even in the absence of information from the Panel) in order to enquire about their activities and to

stress the importance their governments attach to responsible business conduct in “difficult” environments such as the DRC.

The Investment Committee concluded that, while national experiences were mixed, there is room for improved cooperation between the Committee and any future Expert Panels that might be mandated by the UN Security Council. The Chair of the Committee has written a letter (see Archive document 1) that has been transmitted by the OECD Secretary-General to the UN Secretary-General. The letter suggests ways that future cooperation might be enhanced.

A number of NCPs continue to engage with some of the companies named by the Panel. The following describes steps and decisions taken by NCPs since the Panel issued its final report:

- *Belgium.* The Expert Panel interviews with Belgian companies were followed by the Belgian ambassadors to those countries. The Belgian NCP received 7 dossiers from the Expert Panel. The 7 companies concerned have been interviewed by the Belgian NCP with a view to forming a preliminary evaluation of each case. The Belgian NCP intends to follow the procedural guidance for specific instances as it pursues its examination of these dossiers.
- *Canada.* The Expert Panel's third and final report put seven of the eight Canadian companies in the category – “Resolved – no further action required”. The report listed one Canadian company as “Pending Cases with Government” and requested further enquiry by the government. The NCP has accepted the conclusions of the Panel's report and is in the process of following up with the eighth company. A representative of the NGO coalition was informed of the NCPs approach in a February 2004 meeting.
- *France.* The French NCP is currently engaging with a transport company that appeared in category V of the Expert Panel Report (“Parties that did not react to the Panel report”).
- *Germany.* The German NCP has conducted exploratory talks with the German companies named in the Panel's report. This process of contacting and discussing with companies has led to a considerable increase of awareness of the Guidelines and in the likelihood that they will be taken into account in future operations in the DRC. The Panel report of October 2003 points to only one case that will require further clarification, but the NCP has had difficulty obtaining sufficient information to enable it to determine whether there has been non-compliance with the OECD-Guidelines.
- *Netherlands.* The Dutch NCP looked into an NGO request to consider a case related to the Expert Panel's claim that a Dutch company had “violated” the Guidelines. After several meetings with the company and NGOs, the NCP decided that the instance should be declined due to the lack of an “investment nexus”.

### Box 1. **Chronology of Communications on the UN Expert Panel's DRC Reports**

**February 2003.** The CIME Chair (the OECD Investment Committee has taken over CIME responsibilities as of April 2004) transmits a letter to UN Secretary-General. It notes that NCPs take their responsibilities seriously and asks for the information backing up the Panel's claims.

**April 2003.** Representatives of the 10 NCPS with companies named in the report meet with the UN Expert Panel. The CIME Chair sends an email to UN Ambassador who is the Head of the Panel, thanking the Panel for its promised cooperation and asking that information be sent to the NCPs.

**May 2003.** Email from the Head of the Expert Panel. He reports on the activities of the Expert Panel and "suggests that it might be useful if the NCPs were to receive information on companies that have responded to the Panel in identifying problem areas".

**June 2003.** The annual NCP meeting reveals that no NCP has received information, though several state that they have asked the Panel for it.

**July 2003.** The CIME Chair emails the Head of Expert Panel repeating the Committee's request to receive the information backing up the Panel's claims.

**August 2003.** The Head of the Expert Panel sends a letter to the CIME Chair expressing his willingness to send information "in the coming weeks".

**September 2003.** At a CIME meeting, cooperation with the Expert Panel is discussed. No information has been received. The Chair sends a letter to the Head of the Expert Panel stating that the lack of information is a "serious barrier to NCPs being able to take up their responsibilities".

**15 October 2003.** Email from the Head of the Expert Panel. This contains a list of the "category III companies" from the October 2003 report (that is, of "unresolved cases referred to NCPs").

**December 2003.** The CIME discusses the Panel's final report and cooperation with the Panel and decides that there is room for improvement.

**January 2004.** The CIME Chair writes the UN Secretary-General suggesting how future cooperation might be enhanced.

- **United Kingdom.** The UK National Contact Points has issued a public statement (Archive document 8) on the Expert Panel's claims regarding DeBeers. The statement says that the claims are "unsubstantiated".
- **United States.** The US NCP has determined that no further involvement is warranted given that all of its companies were included in Category I (Resolved – No further action required) of the Panel's final report.

The Investment Committee, which has oversight responsibility for Guidelines implementation, recognises that companies with operations in the DRC face a wide range of ethical challenges – human rights, bribery and political influence, disclosure of information, labour management, environment, and management of relations with supply chains and with local partners. Finding appropriate responses to these challenges is made more difficult by the fact that host country institutions (both public and private) may not be working well. In particular, public sectors may not have been willing or able to provide basic services that support corporate responsibility (e.g. protection of the rights framework, appropriate regulation, and effective law enforcement).

The Committee has agreed to undertake a project that will explore some of the generic corporate responsibility issues raised by doing business in countries affected by conflict, such as the DRC. This work will build on the Panel's reports, on previous Committee work on business and conflict and on the DAC Guidelines on Helping Prevent Violent Conflict. The purpose of the work will be to assist companies, NCPs and other actors to understand better what it means to conduct business responsibly in the DRC and other “weak governance zones”. This project will also draw on other OECD instruments, such as the Anti-Bribery Convention and Recommendation, Corporate Governance Principles and Guidelines for Avoiding Conflict of Interest in the Public Service.

## **VI. Follow-up on issues raised at the June 2003 Meetings**

This section follows up on a number of the strategic issues for Guidelines implementation that were identified in the Chair's summary of the 2003 Annual NCP Meeting and of the Corporate Responsibility Roundtable. This section looks at the following issues:

- NCP procedures and parallel legal proceedings.
- Improving the transparency of handling of specific instances.
- The BIAC request for assistance for companies dealing with solicitation.
- Determining whether and how the Guidelines are becoming a useful tool for international business.

### **VI.a. NCP procedures and parallel legal proceedings**

The 2003 Summary Report of the Chair of the NCP Meeting notes that, during the June 2002-2003 implementation period, the Committee and its Working Party have “invested heavily in their consideration of NCP procedures. This discussion has shown that NCPs felt comfortable with the framework provided by the Council Decision and its Procedural Guidance.” Despite this broad agreement on suitability of the general framework, there



appear to be some significant and unexplained differences in practice. The report then proposes that the Committee and its Working Party pursue a case-based approach to ongoing consideration of this issue. Under this approach, individual NCPS would volunteer to share and discuss their experiences in handling specific instances.

The Czech, Netherlands and Swedish NCPS volunteered to present their experiences at the December 2003 meeting of the Working Party. Japan and Belgium presented their experiences at the April 2004 meeting – the focus of these presentations was on specific instances that are raised when there are parallel legal or administrative proceedings.

Delegates concluded that this experience sharing was useful – it helped NCPS understand each other's approaches to specific instances. Some of the key findings of these discussions are:

- *Satisfaction with the Council Decision and its Procedural Guidance.* All five “volunteer” NCPS confirmed their satisfaction with the official guidance for handling specific instances – it establishes a useful framework for considering specific instances without unduly limiting NCP's room for manoeuvre.
- *NCPS need flexibility in dealing with specific instances.* The discussions brought into relief the diversity of NCP experiences. The circumstances underpinning the specific instances described by the “volunteer” NCPS varied considerably (complexity of issue covered, relationship between the NCP and the interested parties, availability of information about the specific instance, etc.).
- *Balance between confidentiality and transparency.* Public statements were made by some NCPS at the beginning and the end of the process of considering specific instances. The Swedish NCP noted that the handling of information disclosure over the course of the specific instance could have an “impact on finding a solution”. There seemed to be broad agreement on the usefulness of making public statements at the conclusion of their consideration of their specific instances – four of the five NCPS issued such statements. In some cases, these statements represented a consensus among the parties to the instance while, in others, they expressed only the views of the NCP. The Czech NCP stressed that there can be no hard and fast rule as to whether companies should be named in these statements – companies' names appear in two Czech public statements, but not in a third (where the NCP felt that anonymity was useful).
- *Collecting information.* While two of the “volunteer” NCPS described instances involving business operations in their own countries, three were asked to consider business conduct in non-adhering countries. Thus, access to information and knowledge of local circumstances were highly variable among the specific instances presented and NCP approaches to collecting information were also variable. While some relied only on information

provided by the parties to the instances, others invested heavily in information collection – for example, members of the Swedish NCP travelled to Ghana on a fact-finding mission. The Swedish embassy in the region was also used as a source of information (a practice also adopted by other NCPs; see Section VI.c).

- *Establishing procedures.* Most of the NCPs have either formal or informal procedures that seek to adapt the procedural guidance to local institutions and circumstances. The Netherlands' procedural measures call for providing minutes of meetings within a week (the NCP notes that keeping parties informed of progress puts them in a position of seeing that dealing with a specific instance and trying to reach consensus among parties can be very time consuming).

The NCPs of Belgium and Japan presented specific instances that were considered in parallel with legal or administrative proceedings in the host country. In the case of Japan, the parallel legal proceedings were in non-adhering countries, while the Belgian specific instance concerned business operations in Belgium. The Czech NCP had also considered a specific instance that was the subject of Czech legal proceedings.

Japan noted several key considerations that influenced its approach to this issue. First, all of its specific instances concern the employment and industrial affairs chapter of the Guidelines. Second, they all concern business conduct in non-adhering countries. The NCP noted that it was difficult to make contact with the parties directly concerned by the instance and it feared (unintentionally) interfering with the domestic affairs of these countries.

The Japanese NCP stated that its current thinking was that it ought to give priority to the domestic institutional and legal framework. When domestic legal processes are underway, NCPs should seek to collect relevant information and to develop an understanding of the issue. When the domestic proceedings have reached a conclusion, the Japanese NCP views its role as “keeping an eye on the implementation of the binding conclusions”.

The Belgian NCP handled a specific instance involving Marks and Spencer's closing of its retail operations in Belgium. This instance was considered in parallel with administrative proceedings conducted by the Belgian Labour Ministry regarding respect for collective labour agreements and consultations with unions when decisions on mass redundancies are taken. The Belgian NCP notes that, in this area, Belgian domestic law is stricter than the Guidelines. It also noted that the decisions of the Ministry of Employment and Labour were a major influence on its own approach to this issue. Consideration of the instance was further complicated by the fact that the French NCP had been asked to look into similar issues regarding Marks and Spencer's closing of its French retail sites and by the fact that the UK

securities laws which applied to Marks and Spencer also have provisions as to when information is made publicly available and when it is made available to particular stakeholders (e.g. employees).

The general impression left by the discussion is that NCP consideration of specific instances in parallel with legal and administrative proceedings continues to be an area of concern for Guidelines implementation. Not only is such parallel consideration quite common, but it would appear that many NCPs are unsure of how it should be handled. Numerous Working Party delegates expressed an interest in further work in this area.

### **VI.b. Improving transparency**

Trade unions and NGOs expressed concerns about the transparency of NCPs' handling of specific instances at both the 2002 and 2003 Annual Meetings of National Contact Points.<sup>7</sup> As part of their evaluation of their own practices over the past two years, NCPs have looked carefully at disclosure of information during the entire process of handling specific instances (see also "Background Paper on NCP Procedures", pages 45-56 of the 2003 Annual Report). Based on the surveys, the recent round of cases studies (see Section VI.a) and individual NCPs reports, it would appear that divergences in information disclosure practices persist. For example, while some NCPs do not issue public statements at the end of their consideration of specific instances (presumably because they believe that this decision promotes the best interests of the Guidelines), many do issue such statements (for example, Belgium, Chile, Czech Republic, France, Germany, Netherlands, Sweden and the United Kingdom).

In order to respond to requests for further information on specific instances, the Investment Committee asked, at its April 2004 meeting, that NCPs prepare an historical table on their handling of specific instances. This historical table appears in Annex 3 and is intended to be a permanent feature of Annual Reports on the Guidelines.

### **VI.c. BIAC request for assistance for companies facing solicitation**

The Summary of the 2003 Roundtable on Corporate Responsibility, when describing Roundtable participants' proposals for enhancing the Guidelines' contribution to the fight against corruption, states:

*Perhaps the most innovative proposal ... came from the business community. Business representatives challenged the NCPs to assist companies confronted with solicitation of bribers and extortion... They argued that NCPs can act as non-judicial gatekeepers into home country governments for multinational enterprises wishing to lodge allegations of serious instances of solicitation. This is perhaps the first time that business has requested a service from the institutions*

*responsible for the Guidelines – a fact that was welcomed by the NCPs. The practical difficulties surrounding the creation of such a facility were noted by several NCPs, but there was also a clear readiness to give serious consideration to the proposal.*

BIAC reiterated its request several times after the June Roundtable (see Archive document 5).

The Committee and the Working Group on Bribery considered this issue at several of their meetings. A background note was prepared by the Investment Committee Secretariat that described some of the main strategic challenges and institutional requirements associated with creating such a facility. Investment Committee delegates recognised the need for a broad based approach involving many actors including the business community, NGOs, trade unions, other international organisations and governments from non-adhering countries. The Committee, recognising that reporting on solicitation raises both institutional and legal issues, asked the Working Party on the Declaration and the Working Group on Bribery to develop a joint proposal defining the respective roles of the public and the private sector in collecting information on solicitation and to report back on their work.

As part of its response to this request, the Working Group on Bribery organised a Workshop on “The possible establishment of facilities to report bribery solicitation”. The Workshop, held at International Chamber of Commerce (ICC) headquarters in Paris on April 21, 2004 (in association with the International Bar Association's annual anti-bribery conference), was attended by more than 45 participants. In addition to BIAC, TUAC and ICC representatives, eight business sector representatives attended – mainly lawyers from law firms and legal departments of multinational enterprises and representatives from transparency NGOs. The meeting provided a forum in which these actors could contribute their views on how governments can help in fighting the demand side of corruption and on the roles the private sector could play.

The general message from business was clear – they are looking for public recognition of the problem and for assistance in cases of solicitation. BIAC noted that, while deterrence against supply side of corruption has been strengthened, the same cannot be said of the demand side – in many countries, public officials are free to solicit bribes with impunity.

The discussions indicate that business is facing a variety of problems and is looking for a variety of solutions. Key points include:

- *Awareness and guidance.* A representative from the business community asked for greater guidance from governments on the different anti-corruption instruments and related legislation and on how the legislation

would be implemented. Another business representative highlighted the need for governments to help companies learn how to confront corruption.

- *Fighting impunity – making business’ information on solicitation available to anti-corruption practitioners.* Reiterating statements made during earlier discussions of this issue, business representatives noted that they have information about notorious bribe solicitors that may not be usable in a court of law, but that could nevertheless be useful to anti-corruption practitioners in home and host countries.
- *Mitigating adverse effects on business.* Another possible use of information would be assisting companies facing economic costs due to solicitation (e.g. loss of business). It was noted, that ICC Commercial Crime Services provides services – helping companies confronted with illegal activities – and several public officials stated that their governments sometimes assist companies in this way. Different NCPs reiterated – already in evidence during earlier discussions – that NCPs may not be the appropriate institution for responding to this need.
- *Demand side solutions for a demand side problem.* A US lawyer noted that some of the proposals being discussed involved a supply-side solution for a demand-side problem. He supported the idea of using peer reviews to improve public sector management in host countries where solicitation is a problem.
- *Legitimacy and reaction of non-OECD actors.* Trade union representatives stressed the importance of considering the reaction of non-OECD actors and of involving them in further discussions of this issue. They cited the danger of creating such a facility without adequate non-OECD involvement. They also warned that OECD governments might be perceived as strongly promoting measures with non-OECD governments that are not necessarily common within the OECD area.

Overall, the discussions suggested that there is no “silver bullet” for solving the problem of solicitation. Durable solutions will require partnership and sustained efforts. Workshop participants recommended that a private-public task force be set up to discuss how the various concerns of business might be addressed in more concrete terms. There was general agreement that the ICC Commercial Crime Services might be an interesting partner in this respect.

Participants also recommended that governments find ways to communicate more effectively on the issue of solicitation. The Working Group on Bribery will consider the Workshop’s conclusions at its June 2004 meeting and hopes to report on its views of the feasibility of the Workshop’s conclusions at the Investment Committee’s September meeting.

### **VI.d. Are the Guidelines emerging as a useful tool for promoting appropriate business conduct?**

The 2003 Annual Report noted that interest in and use of the Guidelines were growing, but also that adhering governments still “face ongoing challenges when trying to ensure that the Guidelines live up to their potential as a vital instrument for the international business community and for home and host societies” (page 26, 2003 Annual Report). This section takes stock of the impact of the Guidelines.

Several events and studies suggest that Guidelines are becoming quite well known and are being extensively used as a benchmark. In addition to the evidence cited earlier in this report (e.g. references to them by the UN Secretary-General Kofi Annan and in the G8 Summit Declaration), the Guidelines now routinely figure in surveys on corporate responsibility practices. As noted earlier, the Guidelines were incorporated in the World Bank Group’s corporate practices survey. They also figured in the World Business Council for Sustainable Development’s corporate responsibility toolkit and in Ethical Corporation Magazine’s recent overview of “international standards for corporate responsibility”. The latter article describes the Guidelines as being one of a select set of instruments that have “attained a high degree of recognition and a significant following<sup>8</sup>”.

In addition to being a prominent international benchmark, the specific instances procedure of the Guidelines also allows for case-based exploration of ethical issues encountered in concrete business situations. Drawing on what is now 4 years of NCP experience with specific instances, this section proposes several areas in which the Guidelines are emerging as a unique and useful corporate responsibility instrument:

- *Emergence of embassy networks as a transparency mechanism.* It is becoming common for NCPs to use embassies (as well as overseas development assistance programs) as sources of information for consideration of specific instances (e.g. Canada, Korea, Sweden, United Kingdom). Although these institutions have undoubtedly been used by governments in this way before, the Guidelines provide a channel for formalizing this process and making the resulting information more available to public dialogue on responsible business conduct.
- *Empowering trade unions and civil society actors from the non-OECD area.* Many of the specific instances have been brought by trade unions and NGOs from the non-OECD area working in partnership with OECD based actors. The Guidelines strengthen these non-OECD actors by providing an international forum in which they can voice their concerns and by allowing them to gain experience with international institutions and procedures. Examples of partnership between OECD and non-OECD actors can be found in specific

instances considered by Canada, Korea, Netherlands, Sweden and the United Kingdom.

- *A way for governments to engage with companies in a non judicial setting.* Several actors (e.g. the Czech NCP in its presentation of its handling of specific instances and the UN Expert Panel) have noted that the Guidelines implementation processes allow governments to engage with companies with greater flexibility and with faster and more cooperative outcomes than would be allowed by legal proceedings
- *A tool for companies.* Trade unions and NGOs have been interested in the specific instances procedure for some time. But companies are now starting to realize that it can be a useful tool for them as well. Business recently asked the Guidelines institutions to assist them in dealing with bribe solicitation and ways of responding to this request are currently being explored (see Section VI.c of this report). In addition, the specific instances procedures can help provide concrete guidance to companies – it can reassure them or set the record straight (for example, see Annex document 8) while sometimes also helping them to identify shortcomings.

## VII. Progress to date and considerations for future action

NCPs noted with satisfaction the continued growth in the use of the Guidelines by companies, trade unions and NGOs over the June 2003-June 2004 period. They reaffirmed their commitment to effective implementation of the Guidelines and took note of partners' ongoing concerns about whether the June 2000 Decision's call for "functional equivalence"<sup>9</sup> is being met. NCPs recalled the significant efforts they have made over the past two years to improve the effectiveness, transparency and timeliness of their procedures. Despite this progress and their growing confidence that the Guidelines are a useful instrument for promoting appropriate conduct by international business, NCPs recognised the validity of some concerns. In particular, they underscored the need to speed up handling of specific instances (but noted that other parties to specific instances also sometimes slow consideration by not reacting to NCP correspondences or by not providing information in a timely manner).

The NCP discussions and consultations clearly indicated that the scope of the Guidelines – especially the concept of "investment nexus" – still poses problems for trade unions and NGOs. In its statement published in the 2003 Annual Report (Chapter VI, "Scope of the Guidelines"), the Investment Committee recognised the broad relevance of the Guidelines' concepts and principles for business conduct. However, it also stressed that the Guidelines are part of a broader investment instrument and that "their application rests on the presence of an investment nexus." The statement notes that NCP consideration of whether

to take up specific instances involving supply chain issues needs to be done flexibly and that decisions need to be made on a case-by-case basis.

NCPs strongly reaffirmed their support for the 2003 statement on the “investment nexus”. They noted that they had been called upon to deal with many specific instances involving supply chains – they had invoked the lack of an “investment nexus” in some instances and agreed to take up consideration of the issues in others. The investment nexus principle is not a means for limiting the scope of the Guidelines relative to the original scope intended by the drafters of the 2000 revision. However, NCPs also recognised that this was an issue that would require continued vigilance in order to protect the integrity and credibility of the Guidelines and associated NCP procedures.

The NCPs identified the following as areas in which the Investment Committee consider taking up work during the June 2004-June 2005 cycle of implementation:

*Parallel legal proceedings.* The 2002 and 2003 Annual Reports flagged the importance of exploring the relationship between Guidelines implementation and national legal and administrative procedures. This issue was also discussed at the April 2004 meeting of the Working Party on the Declaration. The discussions at the 2004 NCP meeting and the consultations confirmed that this is a continuing and increasingly pressing concern for NCPs and for TUAC. Some NCPs stated that they had encountered particular difficulties with this issue in the context of specific instances dealing with business conduct in non-adhering countries.

*Non adhering countries.* NCPs highlighted the importance of further consideration of the relationship between the Guidelines and non-adhering countries. Non adhering countries present numerous challenges for both promotion (e.g. why should actors from non-adhering countries be interested in the Guidelines?) and implementation (e.g. how does one get information about business conduct in non-adhering countries?). NCPs suggested that the role of the Guidelines in non-adhering countries might be a suitable topic for the 2005 Roundtable on Corporate Responsibility.

*UN Commission on Human Rights.* NCPs noted with interest BIAC’s invitation to NCPs, the Investment Committee, TUAC and NGOs to work with it in promoting the Guidelines in the context of the work of the UN Commission on Human Rights (see BIAC Submission to the consultations). The Guidelines were referred to by the UN Sub-Commission on the Promotion and Protection of Human Rights – an independent advisory body to the UN Commission on Human Rights – in its draft “norms” on the human rights responsibilities of trans-national corporations. The UN Commission did not adopt the draft norms, but, in its 19 April 2004 decision, requested that the Office of the UN High Commissioner for Human Rights report to it on existing



initiatives and standards relating to the responsibility of trans-national corporations with regard to human rights. BIAC noted that this report will provide an important promotional opportunity for the Guidelines.

NCPs also identified two other areas that might merit further exploration by the institutions charged with Guidelines implementation.

- *Business and human rights.* Business' role in the protection of human rights has arisen on several occasions in the context of Guidelines implementation – including recent work on the Democratic Republic of Congo. NCPs acknowledged that this was an area on which some might criticise the Guidelines for not being sufficiently explicit or detailed.
- *Outsourcing and relocation.* A number of NCPs stressed the importance of exploring the social implications of outsourcing and of relocation of economic activities. Several OECD Committees are working on a horizontal project proposed at the 2004 MCM and relevant to these issues. NCPs proposed that the Investment Committee should monitor this work and consider possible synergies and implications regarding the role of the Guidelines.

## Notes

1. The June 2003 G8 Summit in Evian and the Summit Declaration's mention of the OECD Guidelines was already covered in the 2003 Annual Report on the Guidelines.
2. Arabic, Chinese, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Lithuanian, Norwegian, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish, Thai, Turkish and the official languages of Belgium and Switzerland.
3. *Race to the Top: Attracting and Enabling Global Sustainable Business. Business Survey Report.* The World Bank Group. Social Responsibility Practice. Project undertaken by Political and Economic Link Consulting and Ethical Corporation Magazine. October 2003.
4. The most-mentioned instruments were ISO 14000, which was cited by 46 per cent of respondents, and the Global Reporting Initiative, with 36 per cent. Thirty-three per cent of the respondents mentioned the UN Global Compact.
5. See [www.oesorichtlijnen.nl](http://www.oesorichtlijnen.nl) – national contactpunt/verklaringen for more information.
6. The full statement may be found at [www.oecd.org/daf/investment/guidelines/](http://www.oecd.org/daf/investment/guidelines/).
7. See, for example, page 26 of the 2002 Annual Report and pages 96 and 102 of the 2003 Annual Report.
8. January 2003 issue of *Ethical Corporation Magazine* "International Standards for Corporate Responsibility" by Malcolm MacIntosh, Ruth Thomas, Deborah Leipziger and Gill Coleman.
9. "Functional equivalence" means that, although NCPs may have adopt different institutional structures and implementation practices, they should still perform to the same standard in terms of their visibility, accessibility, transparency and accountability.

## ANNEX A.1

### *Structure of the National Contact Points*

Annex A.1. **Structure of the National Contact Points**

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Argentina	Single department	(National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		
Australia	Single department	Foreign Investment Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds bi-annual interdepartmental meetings chaired by the Australian NCP to discuss Guidelines issues. The NCP holds bi-annual community consultations with business, trade unions and other NGO representatives.  In the assessment of specific instances, the NCP may establish a special advisory consultation group of interested parties, including government, members from the business community, labour federations and other NGOs and experts.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economic Affairs and Labour	Other division of the Federal Ministry of Economic Affairs and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments.	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Brazil	Single department	Ministry of Finance	Ministry of Foreign Relations Ministry of Planning, Budget and Management Ministry of Labour and Employment Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Brazilian Central Bank	Representatives from other government Offices can be asked to participate as well as Trade Unions, like CUT and “Força Sindical”; NGOs that deal with Ethics, like ETHOS; Industry and Trade Confederations; and other institutions like SOBEET (Brazilian Society For Trans- national Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	International Trade Canada	Foreign Affairs Canada International Trade Canada Industry Canada Human Resources Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an “as required” basis. <i>E.g.</i> , Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Council of International Business, the Canadian Labour Congress and the Confédération des syndicats nationaux.
Chile	Quadripartite	Ministry of Foreign Affairs, Directorate of International Economic Relations	Ministry of Economics Ministry of Labour General Secretariat of the Presidency	The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Finance	Ministry of Labour and Social Affairs Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners.

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Denmark	Tripartite with several ministries	Ministry of Employment	Environmental Protection Agency Ministry of Economic and Business Affairs Ministry of Foreign Affairs	
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Investment Agency Estonian Export Agency Ministry of Foreign Affairs	
Finland	Quadri-partite with several ministries and civil society partners	Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Trade and Industry	Ministry of Trade and Industry Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Social Affairs and Health Ministry of Labour Ministry of Environment	<p>The Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Trade and Industry as a wide-scoped forum of public and private representatives for issues related to investments, acts as the Finnish NCP.</p> <p>The MONIKA Committee, which has been established by the Government Decree 335/2001, takes care of the promotion of the Guidelines as important principles of Corporate Social Responsibility and serves as an advisory forum in other issues related to the Investment Committee.</p> <p>The Ministry of Trade and Industry is responsible for the handling of inquiries and the implementation in Specific Instances.</p> <p>The members of the committee come from various ministries, The Bank of Finland, business and labour organisations and NGOs</p> <p>Social partners are represented in the NCP by TT – The Confederation of Finnish Industry and Employers, The Finnish Section of the International Chamber of Commerce (ICC) and the Central Organization of Finnish Trade Unions SAK. The NGOs are represented by the Service Centre for Development Cooperation KEPA.</p> <p>The committee has met several times over the review period.</p>
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Germany	Single Department	Federal Ministry of Economics and Labour	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues.
Greece	Single Department	Directorate for International Organisations and Policies, Ministry of Economy		
Hungary	Interdepartmental Office	Ministry of Economy and Transport	Ministry of Economy and Transport Ministry of Finance Ministry of Foreign Affairs	In 2002 after the election Ministry of Economic Affairs and the Ministry of Transport and Water Management were merged. The legal successor is the Ministry of Economy and Transport which was restructured and which kept the task of the Secretariat of HNCP.
Iceland	Interdepartmental Office	Ministries of Industry and Commerce		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment		
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee has been composed of representatives from other ministries.
Italy	Single Department	General Direction for Development and Competitiveness, Ministry of Production Activities	Ministry of Welfare Ministry of Foreign Affairs Ministry of Environment Ministry of Agriculture Ministry of Health	
Japan	Interministerial body composed of three ministries.	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Korea	Interdepartmental Office, with regional governments and several ministries	Executive Committee on Foreign Direct Investment	Ministry of Foreign Affairs Ministry of Finance and Economy Korean Trade-Investment Promotion Agency	
Latvia	The OECD Consultative Board – Interministerial body including representatives of business and labour organisations, Bank of Latvia	EU External Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare The Bank of Latvia Latvian Confederation of Employers Association of Free Trade Unions	The members of the OECD Consultative Board represent various ministries, the Bank of Latvia, business and labour organisations. The OECD Consultative Board holds regular consultations with the governmental institutions involved as well as social partners. The Secretariat of the OECD Consultative Board is directly responsible for the coordination of activities related to the Investment Committee.
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economics	Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industry	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		
Netherlands	Interdepartmental Office	Ministry of Economic Affairs	All departments, especially: Ministry of Social Affairs Ministry of Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders.

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
New Zealand	Single Department	Ministry of Economic Development	All departments, particularly the Ministry of Foreign Affairs and Trade, Department of Labour, Ministry for the Environment and Treasury	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Department for Trade Policy, Environment and Resources, Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Industry and Trade	
Poland	Single Department	Polish Information and Foreign Investment Agency		
Portugal	Single Department	ICEP Portugal Ministry of Economy		
Slovak Republic	Single Department	Ministry of Economy		The NCP belongs as a single department to the Ministry of Economy, under the Division of Enterprise and Tourism, Department of Economic Strategy.
Slovenia	Single Department	Foreign Economic Relations Division, Ministry of the Economy	Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency	The Advisory Committee has considered if a Single department structure is the best solution. No decision has been made, yet.
Spain	Single Department	General Secretary for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment Ministry of Justice Ministry of Health and Consumption Ministry of Labour and Social Affairs	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	Ministry of Industry, Employment and Communications Ministry of Environment Ministry of Justice National Board of Trade	The Ministry for Foreign Affairs, Department for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions.

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.



Annex A.1. **Structure of the National Contact Points** (cont.)

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary and has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets as required.
Turkey	Single Department	General Directorate of Foreign Investment, Undersecretariat of Treasury		
United Kingdom	Single Department	Trade Negotiations and Development Unit, Department of Trade and Industry	Foreign and Commonwealth Office HM Treasury Department for International development	The NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an <i>ad hoc</i> basis.

\* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

## ANNEX A.2

### *Contact Details for National Contact Points*

## Annex A.2. Contact Details for National Contact Points

**Allemagne – Germany**

Bundesministerium für Wirtschaft und Arbeit	Tel:	(49-30) 2014 7577, 75 21
- Auslandsinvestitionen VC3	Fax:	(49-30) 2014 5378
Scharnhorststrasse 34-37	Email:	buero-vc3@bmwa.bund.de
D-10115 Berlin	Web:	<a href="http://www.bmwi.de/Navigation/Unternehmer/auslandsgeschaefte.html">www.bmwi.de/Navigation/Unternehmer/auslandsgeschaefte.html</a> <a href="http://www.bmwi.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html">www.bmwi.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html</a>

**Argentine – Argentina**

Minister Felipe Frydman	Tel:	(54-11) 4819 7020/7568
National Direction of International Economic Negotiations (DINEI)	Fax:	(54-11) 4819 7566
Ministry of Foreign Affairs, International Trade and Worship	Email:	fef@mrecic.gov.ar igf@mrecic.gov.ar
Esmeralda 1212, 9th floor		
Buenos Aires		

**Australie – Australia**

The Executive Member	Tel:	(61-2) 6263 3795
Foreign Investment Review Board	Fax:	(61-2) 6263 2940
c/- The Treasury	Email:	<a href="mailto:ancp@treasury.gov.au">ancp@treasury.gov.au</a>
Canberra ACT 2600	Web:	<a href="http://www.ausncp.gov.au">www.ausncp.gov.au</a>

**Autriche – Austria**

Director	Tel:	(43-1) 711 00 5180 or 5792
Export and Investment Policy Division	Fax:	(43-1) 71100 15101
Federal Ministry of Economic Affairs and Labour Abteilung C2/5	Email:	<a href="mailto:POST@C25.bmwa.gv.at">POST@C25.bmwa.gv.at</a>
Stubenring 1	Web:	<a href="http://www.oecd-leitsaetze.at">www.oecd-leitsaetze.at</a>
1011 Vienna		

**Belgique – Belgium**

Service Public Fédéral Economie,	Tel:	(32-2) 206 58 73
PME, Classes Moyennes and Energie	Fax:	(32-2) 230 00 50
Direction générale du Potentiel Economique	Email:	<a href="mailto:colette.vanstraelen@mineco.fgov.be">colette.vanstraelen@mineco.fgov.be</a>
Rue Général Leman 60		
1040 Bruxelles		

**Brésil – Brazil**

Mrs. Angela Semíramis de Andrade Freitas	Tel:	(+5561) 412 22 27 or 412 22 33
International Affairs Secretariat	Fax:	(+5561) 412 17 22
Ministry of Finance	Email:	<a href="mailto:pcn.ocde@fazenda.gov.br">pcn.ocde@fazenda.gov.br</a> <a href="mailto:angela.freitas@fazenda.gov.br">angela.freitas@fazenda.gov.br</a>
Esplanada dos Ministérios, Bloco P – Sala 225	Web:	<a href="http://www.fazenda.gov.br/multinacionaispcn">www.fazenda.gov.br/multinacionaispcn</a>
70048 – 900 Brasília DF		

**Canada**

Canada's National Contact Point	Tel:	(1-613) 996 3324
Room C6-273	Fax:	(1-613) 944 0679
International Trade Canada	Email:	<a href="mailto:ncp.pcn@dfait-maeci.gc.ca">ncp.pcn@dfait-maeci.gc.ca</a>
125 Sussex Drive	Web:	<a href="http://www.ncp-pcn.gc.ca">www.ncp-pcn.gc.ca</a>
Ottawa, Ontario K1A 0G2		

Annex A.2. **Contact Details for National Contact Points** (cont.)

<b>Chili – Chile</b>			
Chef du Département OECD/DIRECON	Tel:	56 2 565 93 25	
Dirección de Relaciones Económicas Internacionales	Fax:	56 2 565 93 64	
Ministerio de Relaciones Exteriores de Chile	Email:	clrojas@direcon.cl	
Teatinos 20, tercer piso,	Web:	www.direcon.cl	
Santiago		“compromisos multilaterales”	
<b>Corée – Korea</b>			
Director	Tel:	82-2-2110-5356	
Ministry of Commerce, Industry and Energy	Fax:	82-2-503-9655	
1 Chungang-dong	Email:	fdikorea@mocie.go.kr	
Gwacheon-si	Web:	www.mocie.go.kr	
Kyonggi-do			
<b>Danemark – Denmark</b>			
Deputy Permanent Secretary of State	Tel:	(45) 33 92 99 59	
Labour Law and International Relations Centre	Fax:	(45) 33 12 13 78	
Ministry of Employment	Email:	eed@am.dk	
Ved Stranden 8	Web:	www.bm.dk/kontaktpunkt	
DK-1061 Copenhagen K			
<b>Espagne – Spain</b>			
National Contact Point	Tel:	(34-91) 91 349 38 60	
General Secretary for International Trade	Fax:	(34-91) 457 2863	
Ministry of Industry, Tourism and Trade	Email:	pnacional.sccc@mcx.es	
Paseo de la Castellana nº 162	Web:	www.sgcomex/home1fra.htm	
28046 Madrid			
<b>Estonie – Estonia</b>			
National Contact Point of the OECD Declaration on International Investment and Multinational Enterprises	Tel:	372-625 6399	
Foreign Trade Policy Division, Trade Department	Fax:	372-631 3660	
Ministry of Economic Affairs and Communication	Email:	hellehelena.puusepp@mkm.ee	
Harju 11	Web:		
15072 Tallinn			
<b>États-Unis – United States</b>			
Director	Tel:	(1-202) 736 4274	
Office of Investment Affairs	Fax:	(1-202) 647 0320	
Bureau of Economic and Business Affairs	Email:	usncp@state.gov	
Department of State	Web:	www.state.gov/www/issues/economic/ifd_oia.html	
2201 C St. NW		www.state.gov/e/eb/oecd/	
Washington, DC 20520			
<b>Finlande – Finland</b>			
Secretary-General, Chief Counsellor	Tel:	+358-9- 1606 4689	
Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA)	Email:	jorma.immonen@ktm.fi	
Ministry of Trade and Industry	Web:	www.ktm.fi/monika	
PO Box 32			
FIN- 00023 Valtioneuvosto			
Helsinki			

Annex A.2. **Contact Details for National Contact Points** (cont.)

<b>France</b>			
Madame Claire Waysand	Tel:	(33) 01 44 87 73 70	
Sous-directrice " Europe et Affaires Monétaires Internationales "	Fax:	(33) 01 45 18 36 29	
Direction du Trésor	Email:	claire.waysand@dt.finances.gouv.fr	
139, rue de Bercy		anne.muxart@dt.finances.gouv.fr	
75572 Paris cedex 12	Web:	www.minefi.gouv.fr/TRESOR/pcn/pcn.htm.	
<b>Grèce – Greece</b>			
Director	Tel:	(30210) 328 6301 or 328 6231	
Directorate for International Organisations and Policies	Fax:	(30210) 328 6309	
General Directorate for Policy Planning and Implementation	Email:	nsyms@ath.forthnet.gr	
Ministry of Economy and Finance	Web:	www.elke.gr	
Ermou and Cornarou 1			
GR-105 63 Athens			
<b>Hongrie – Hungary</b>			
Department of Economic Development Programmes	Tel:	(36-1) 374-2877	
Ministry of Economy and Transport	Fax:	(36-1) 269-3478, 332-6154	
V., Honvéd utca 13-15	Email:	tejnora@gkm.hu	
H-1055 Budapest	Web:	www.gkm.hu	
<b>Irlande – Ireland</b>			
National Contact Point for the	Tel:	(353-1) 631 2605	
OECD Guidelines for Multinational Enterprises	Fax:	(353-1) 631 2560	
Bilateral Trade Promotion Unit	Email:	Pat_Hayden@entemp.ie	
Department of Enterprise, Trade and Employment	Web:	www.entemp.ie/epst/fdi2.htm	
Kildare Street			
Dublin 2			
<b>Islande – Iceland</b>			
Director for Financial Markets and Economic Affairs	Tel:	(354-1) 609 070	
Ministry of Industry and Commerce	Fax:	(354-1) 621 289	
Arnarhvoli			
150 Reykjavik			
<b>Israël – Israel</b>			
Mr. Shai Aizin	Tel:	(972-2) 666 2687	
Israel's National Contact Point	Fax:	(972-2) 666 2956	
Ministry of Industry, Trade and Labour	Email:	shaiaizin@moit.gov.il	
Bank Israel Street	Web:	www.ncp-israel.gov.il	
Jerusalem			
<b>Italie – Italy</b>			
Ms. Loredana Gulino	Tel:	(39-06) 47052988/47052475	
Direzione Generale Sviluppo e Competitività	Fax:	(39-06) 47052475	
Ministero Attività Produttive	Email:	loredana.gulino@minindustria.it	
Via Molise 2		pcn1@minindustria.it	
I-00187 Rome	Web:	www.minindustria.it	

Annex A.2. **Contact Details for National Contact Points** (cont.)

<b>Japon – Japan</b>	
Director	Tel: (81-3) 5501 8348
Second International Organisations Division	Fax: (81-3) 5501 8347
Economic Affairs Bureau	Web: <a href="http://www.mofa.go.jp/mofaj/gaiko/oecd/">www.mofa.go.jp/mofaj/gaiko/oecd/</a>
Ministry of Foreign Affairs	
2-2-1 Kasumigaseki	
Chiyoda-ku	
Tokyo	
Director	Tel: 81-3)-3595-2402
International Affairs Division	Fax: (81-3)-3502-1946
Ministry of Health, Labour and Welfare	Web: <a href="http://www.mhlw.go.jp">www.mhlw.go.jp</a>
1-2-2 Kasumigaseki	
Chiyoda-ku	
Tokyo	
Director	Tel: 81-3)-3501-6623
Trade and Investment Facilitation Division	Fax: (81-3)-3501-3638
Ministry of Economy, Trade and Industry	Web: <a href="http://www.meti.go.jp/policy/trade_policy/oecd/html/cime.html">www.meti.go.jp/policy/trade_policy/oecd/html/cime.html</a>
1-3-1 Kasumigaseki	
Chiyoda-ku	
Tokyo	
<b>Lettonie – Latvia</b>	
Director	Tel: + 371 7016258
EU External Economic Relations Department	Fax: + 371 7321588
Ministry of Foreign Affairs of the Republic of Latvia	E-mail: <a href="mailto:eu.econ.dep@mfa.gov.lv">eu.econ.dep@mfa.gov.lv</a>
36 Brivibas Bulvaris	Web: <a href="http://www.mfa.gov.lv">www.mfa.gov.lv</a>
Riga LV – 1395	
<b>Lituanie – Lithuania</b>	
Director	Tel: 370 2 62 05 82
Company Law Division	Fax: 370 2 62 39 74; 370 2 62 56 04
Ministry of Economy of the Republic of Lithuania	E-mail: <a href="mailto:I.Jakubenaite@ukmin.lt">I.Jakubenaite@ukmin.lt</a>
Gedimino ave. 38/2	Web: <a href="http://www.ukmin.lt">www.ukmin.lt</a>
01104 Vilnius	
<b>Luxembourg</b>	
Secrétaire du Point de Contact national	Tel: (352) 478 – 41 73
Ministère de l'Economie	Fax: (352) 46 04 48
Secrétariat du Comité de Conjoncture	<a href="mailto:marc.hostert@eco.etat.lu">marc.hostert@eco.etat.lu</a> ou
L-2914 Luxembourg	<a href="mailto:anne-catherine.lammar@eco.etat.lu">anne-catherine.lammar@eco.etat.lu</a>
<b>Mexique – Mexico</b>	
Secretaría de Economía	Tel: (52-5) 5729-9146
Attn: Kenneth Smith	Fax: (52-5) 5729-9352
Alfonso Reyes	Email: <a href="mailto:pcn-ocde@economia.gob.mx">pcn-ocde@economia.gob.mx</a>
30, Piso 18	<a href="mailto:ksmith@economia.gob.mx">ksmith@economia.gob.mx</a>
Col. Condesa C.P. 06140	Web: <a href="http://www.economia-snci.gob.mx/">www.economia-snci.gob.mx/</a>
Mexico, D.F	

Annex A.2. **Contact Details for National Contact Points** (cont.)

<b>Norvège – Norway</b>	
Ministry of Foreign Affairs	Tel: (47) 2224 3418
Department for Trade Policy, Environment and Resources	Fax: (47) 2224 2784
WTO/OECD-section	Email: s-wto@mfa.no
PO Box 8114	Web: <a href="http://odin.dep.no/ud/norsk/handelspolitikk/032061-990006/index-dok000-b-n-a.html">http://odin.dep.no/ud/norsk/handelspolitikk/032061-990006/index-dok000-b-n-a.html</a>
N-0032 Oslo	
<b>Nouvelle Zélande – New Zealand</b>	
Senior Advisor	Tel: (64-4) 474 2967
Ministry of Economic Development	Fax: (64-4) 471 2658
PO Box 1473	Email: <a href="mailto:marian.kljakovic@med.govt.nz">marian.kljakovic@med.govt.nz</a>
Wellington	Web: <a href="http://oecd-multinat.med.govt.nz">http://oecd-multinat.med.govt.nz</a>
<b>Pays-Bas – Netherlands</b>	
Head of the Investment Policy and International Organisations Division	Tel: (31-70) 379 6378
Ministry of Economic Affairs	Fax: (31-70) 379 7924
P.O. Box 20102	Email: <a href="mailto:ncp@minez.nl">ncp@minez.nl</a>
NL-2500 EC The Hague	Web: <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a>
<b>Pologne – Poland</b>	
Polish Information and Foreign Investment Agency (PAIIZ)	Tel: (48-22) 334-98-75
Ul. Bagatela 12	Fax: (48-22) ) 334-99-99
00-585 Warsaw	Email: <a href="mailto:michal.mierzejewski@paiz.gov.pl">michal.mierzejewski@paiz.gov.pl</a>
	Web: <a href="http://www.paiz.gov.pl">www.paiz.gov.pl</a>
<b>Portugal</b>	
ICEP Portugal	Tel: (351-1) 808 214 214/217 909 351
Avenida 5 de Outubro, 201	Fax: (351-1) 217 909 577
1050-051 Lisbon	Email: <a href="mailto:icep@icep.pt">icep@icep.pt</a> / <a href="mailto:paula.rod@icep.pt">paula.rod@icep.pt</a>
	Web: <a href="http://www.icep.pt/empresas/dirempmulti.asp">www.icep.pt/empresas/dirempmulti.asp</a>
<b>République slovaque – Slovak Republic</b>	
National Contact Point of the Slovak Republic – NKM SR	Tel: 421-2-48541610
Odbor hospodarskej strategie	Fax: 421-2-48543613
Ministry of Economy	Email: <a href="mailto:aradyova@economy.gov.sk">aradyova@economy.gov.sk</a>
MH SR, Mierova 19	Web: <a href="http://www.economy.gov.sk">www.economy.gov.sk</a>
827 15 Bratislava	
<b>République Tchèque – Czech Republic</b>	
Director General	Tel: (420-2) 5704 2133
International Organisations Department	Fax: (420-2) 5704 2795
Ministry of Finance	Email: <a href="mailto:lenka.loudova@mfcz.cz">lenka.loudova@mfcz.cz</a>
Letenská 15	Web: <a href="http://www.mfcz.cz/static/zahrvtahy/oecd.htm">www.mfcz.cz/static/zahrvtahy/oecd.htm</a>
118 10 Prague 1	
<b>Royaume-Uni – United Kingdom</b>	
UK National Contact Point	Tel: (44-20) 7215 4254
Department of Trade and Industry	Fax: (44-20) 7215 4539
Bay 357, Kingsgate House	Email: <a href="mailto:uk.ncp@dti.gsi.gov.uk">uk.ncp@dti.gsi.gov.uk</a>
66-74 Victoria Street	Web: <a href="http://www.dti.gov.uk/ewt/ukncp.htm">www.dti.gov.uk/ewt/ukncp.htm</a>
London SW1E 6SW	

Annex A.2. **Contact Details for National Contact Points** (cont.)

<b>Slovenie – Slovenia</b>			
Ministry of the Economy	Tel:	00 386 2 2341035	
Foreign Economic Relations Division	Fax:	00 386 2 2341050	
Economic Multilateral Sector	Email:	slonkt.mg@gov.si	
Kotnikova 5	Web:	www.mg-rs.si	
1000 Ljubljana			
<b>Suède – Sweden</b>			
Department for International Trade Policy	Tel:	(46-8) 405 1000	
Ministry of Foreign Affairs	Fax:	(46-8) 723 1176	
103 33 Stockholm	Email:	sofia.calltorp@foreign.ministry.se	
	Web:	www.ud.se	
<b>Suisse – Switzerland</b>			
Point de contact national	Tel:	(41-31) 324 08 54	
Secteur Investissements internationaux et entreprises multinationales	Fax:	(41-31) 325 73 76	
Secrétariat d'État à l'économie	Email:	WHIN@seco.admin.ch	
Effingerstrasse 1	Web:	www.seco.admin.ch	
CH-3003 Berne			
<b>Turquie – Turkey</b>			
Deputy Director General	Tel:	903 122 1289 14-15	
Undersecretariat of Treasury	Fax:	903 122 1289 16	
General Directorate of Foreign Investment	Email:	zergul.ozbilgic@hazine.gov.tr	
İnönü Bulvarı		ozlem.nudrali@hazine.gov.tr	
06510 Emek-Ankara	Web:	www.hazine.gov.tr	
<b>Commission européenne – European Commission*</b>			
Mr Hugh Pullen	Tel:	322.295.16.55 or +322.298.61.63	
Directorate General for Trade, Unit F2	Fax:	322.299.16.51	
Rue de la Loi 200	Email:	Hugh.Pullen@cec.eu.int	
B-1049 Brussels		http://europa.eu.int/comm/trade/csr/index_en.htm	
	Web:		

\* The European Commission is not formally a "National Contact Point". However, it is committed to the success of the Guidelines.



## ANNEX A.3

### *Specific Instances Considered by National Contact Points to Date*

This table provides an archive of specific instances that have been or are being considered by NCPs. The table seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines. Discrepancies between the number of specific instances described in this table and the number listed in Section IV.a could arise for at least two reasons. First, there may be double counting – that is, the same specific instance may be handled by more than one NCP. In such situations, the NCP with main responsibility for handling the specific instance would generally note its co-operation with other NCPs in the column “NCP concerned”. Second, the NCP might consider that it is not in the interests of effective implementation of the Guidelines to publish information about the case (note that recommendation 4.b. states that “The NCP will... make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines”). The texts in this table are submitted by the NCP. Company, NGO and trade union names are mentioned when the NCP has mentioned these names in its public statements or in its submissions to the Secretariat.

Annex A.3. **Specific Instances Considered by National Contact Points to Date**

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium.	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [ <a href="http://www.ncp-pcn.gc.ca/annual_2002-en.asp">www.ncp-pcn.gc.ca/annual_2002-en.asp</a> ]. The Swiss company was kept informed of developments.
Canada	Follow-up to allegations made in UN Experts Report on DRC.	December 2002	Democratic Republic of Congo	Not specified in UN Report	Ongoing	n.a.	The NCP accepted the conclusions of the UN Panel's final report and is making enquiries with the one Canadian company identified for follow-up.
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country.	November 2002	Myanmar	Employment and Industrial Relations; Environment	Ongoing	n.a.	The NCP has offered to facilitate a dialogue between the parties and continues to pursue this goal. The focus of discussion would be on Employment and Industrial Relations.
Czech Republic	Czech subsidiary of a German-owned multinational enterprise involving the right to trade union representation.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.

Annex A.3. **Specific Instances Considered by National Contact Points to Date** (cont.)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Czech Republic	A Swiss-owned multinational enterprise's labour management practices.	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	Czech subsidiary of a multinational enterprise involving the right to trade union representation.	January 2004	Czech Republic	IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP set it aside until results of a parallel legal procedure are available for further consideration.
Czech Republic	Czech subsidiary of a multinational enterprise involving the right to trade union representation	February 2004	Czech Republic	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration.
Denmark	Trade union representation in Danish owned enterprise in Malaysia.	February 2002	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Still pending.
Denmark	Trade union representation in plantations in Latin America.	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Ongoing	n.a.	To be initially assessed (connection to Denmark still to be established)
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003 (see Documents archive). <a href="http://www.minefi.gouv.fr/TRESOR/pcn/compcn131103.htm">www.minefi.gouv.fr/TRESOR/pcn/compcn131103.htm</a>
France	Marks and Spencer's announcement of closure of its stores in France	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 <a href="http://www.oecd.org/dataoecd/33/39/2489273.pdf">www.oecd.org/dataoecd/33/39/2489273.pdf</a>
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	February 2003	France	V. Environment plus chapeau; III. Information and disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.

Annex A.3. **Specific Instances Considered by National Contact Points to Date** (cont.)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	February 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.
France	Accusation of non-observance of the Guidelines in the areas of environment, “contractual” and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	October 2003	Turkey, Azerbaijan and Georgia	II. General Principles	Ongoing	n.a.	In consultation with parties.
France	DRC – Report by the expert Panel of the United Nations. Violation of the Guidelines by a transport company in the Congo, named in the third report as not having responded to the Panel’s requests for information.	October 2003	Democratic Republic of Congo	No information supplied by Panel	Ongoing	n.a.	In consultation with parties.
Germany	Labour conditions in a manufacturing supplier of Adidas.	September 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 <a href="http://www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html">www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html</a> (see Documents Archive).
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.

Annex A.3. **Specific Instances Considered by National Contact Points to Date** (cont.)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Japan	Industrial relations of a Philippines subsidiary of a Japanese company.	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	February 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector.	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' labour relations.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by a common consent between the interested parties on November 2003. Korean NCP decided, in May 2004, to specify the NCP procedures and promote the Guidelines more aggressively.
Korea	Korean company's business relations in Malaysia's wire rope manufacturing Sector.	2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration.
Mexico (consulting with the German NCP)	Closing of a plant.	2002	Mexico	IV. Employment and Industrial relations	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding. Currently, the parties are negotiating a solution.
Netherlands	Adidas' outsourcing of footballs in India.	2002	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 <a href="http://www.oecd.org/dataoecd/33/43/2489243.pdf">www.oecd.org/dataoecd/33/43/2489243.pdf</a> .

Annex A.3. **Specific Instances Considered by National Contact Points to Date** (cont.)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases.	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Portugal	Closing of a factory.	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector.	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 <a href="http://www.oecd.org/dataoecd/16/34/15595948.pdf">www.oecd.org/dataoecd/16/34/15595948.pdf</a> .
Switzerland (consulting with Korea)	Industrial relations on a Korean subsidiary of a Swiss multinational enterprise.	November 2003	Korea	IV. Employment and Industrial Relations	Ongoing	n.a.	While the labour dispute between the parties was resolved, some questions relating to the Guidelines procedures are still under discussion. The Swiss NCP issued an intermediate press statement <a href="http://www.seco.admin.ch/news/00197/index.html?lang=en">www.seco.admin.ch/news/00197/index.html?lang=en</a> .
United Kingdom	Complaint from an international labour organisation over BAT activities.	2003	Burma	II. General Policies IV. Employment and Industrial Relations	Concluded	No	There was previously some dialogue between the parties which had reached an impasse. The U.K. NCP acted as a communications facilitator, a dialogue resumed, the company disinvested from Burma and the complaint was withdrawn.
United Kingdom	Activities of De Beers alleged in a UN Expert Panel report..	2003	Democratic Republic of Congo	This was not specified in the UN Panel report	Concluded	Yes	The U.K. NCP issued a statement in May 2004 <a href="http://www.dti.gov.uk/ewt/debeers.doc">www.dti.gov.uk/ewt/debeers.doc</a> .
Lead UK NCP and Turkish NCP	Oil Pipeline across three states.	April 2003	Azerbaijan, Georgia and Turkey	I, II, III, V,	Ongoing	n.a.	Coordinating with lead UK NCP; keeping relevant US parties informed.

Annex A.3. **Specific Instances Considered by National Contact Points to Date** (cont.)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States (consulting with French NCP)	Employment and Industrial Relations – Freedom of Association and Collective Bargaining.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached settlement.
United States (consulting with French NCP)	Employee representation.	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States included among numerous NCPs and the Investment Committee, working with the UN	Conducting business in conflict zones and illegal exploitation of natural resources.	October 2002	Democratic Republic of the Congo (DRC)	Numerous	Concluded	No	UN Panel Report concluded all outstanding issues with the US-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the US companies.
United State (consulting with Austrian and German NCPs)	Employee relations in global manufacturing operations.	November 2002	Global, with focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	USNCP concluded that the issues raised were being adequately addressed though other means.
United States	Employee representation.	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Investigate the conduct of an international ship registry.	November 2001	Liberia	II. General Policies III. Information and Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the specific conduct which was the basis of the concerns raised was being effectively addressed through other appropriate means, including through a United Nations Security Resolution.
United States consulting with the French NCP	Employment and industrial relations, collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.
United States consulting with the German NCP	Employment and industrial relations, representation and collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.

n.a. not applicable.

## ANNEX A.4

*Archive of Documents*

*Note by the Secretariat: This section reproduces material related to the implementation of the Guidelines which was published between June 2003 and June 2004. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.*

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## **Document 1. Letters on Democratic Republic of Congo**

### ***Letter from the Chair of CIME to the Chairman of the United Nations Panel of Experts on DRC***

Mr. Marinus W. Sikkel  
Chair of the Committee on International Investment and Multinational Enterprises  
Head of Investment Policy and International Organisations  
Ministry of Economic Affairs  
P.O. Box 20101  
2500 EC The Hague  
Netherlands

Paris, 26 September 2003

Dear Ambassador Kassem,

Thank you for the willingness – expressed in your letter of 8 August 2003 – to send “in the coming weeks” information on companies contacted by the Panel regarding possible non-observance of the OECD Guidelines for Multinational Enterprises. We congratulate the Expert Panel on the work that it has already accomplished and we note the extension of the Panel’s mandate until 31 October 2003.

At its meeting of 17-19 September, the OECD’s Committee on International Investment and Multinational Enterprises (CIME) took stock of how co-operation with the Expert Panel has been working. Several National Contact Points (NCPs) with companies appearing on the list in Annex III of the Expert Panel’s earlier report (S/2002/1146) have asked the Panel – through letters, e-mails and telephone calls – to provide the information backing up its remaining concerns about the companies. My 21 May and 3 July e-mails also request that the Panel’s information be made available to the relevant NCPs. These requests follow up on the agreement, made at the 11 April meeting between the NCPs and the Expert Panel, to pursue effective co-operation.

Despite these efforts, NCPs reported that no information backing up the claims against the companies had yet been received from the Panel. The CIME concluded that this lack of information is a serious barrier to NCPs being able to take up their responsibilities in this matter. CIME and the NCPs concerned urge the Panel to respond to the UN Security Council Resolution 1457, which

calls on the Panel to make such information available to them. Considering the desirability of retaining the possibility of further exchanges of view between the Panel and CIME/NCPs, it would be most helpful if this information would be made available well before the expiration of the Panel's mandate. We would urge that the Panel refrains from drawing final conclusions regarding the implementation of the Guidelines, without having given CIME and the NCPs the opportunity to act in conformity with their mandate.

Please be assured of the continuing willingness of the CIME and the NCPs to co-operate in addressing the concerns raised in the Expert Panel's report.

Yours sincerely,



Marinus Sikkel  
Chair of the OECD Committee on International  
Investment and Multinational Enterprises

Ambassador Mahmoud Kassem  
Chairman  
United Nations Panel of Experts on DRC  
P.O. Box 30302  
00100 Nairobi  
Kenya

- cc. Delegates of the OECD Committee on International Investment and  
Multinational Enterprises  
National Contact Points

**Letter from the OECD Secretary-General to the UN Secretary-General**

Mr. Donald Johnston  
Secretary-General  
OECD  
2 rue André-Pascal  
75775 Paris Cedex 16  
DJJ/2004.3.pn

9 January 2004

Dear Secretary-General,

At its session of 18-20 December 2003, the OECD Committee on International Investment and Multinational Enterprises, which has oversight responsibility for the OECD Guidelines for Multinational Enterprises, took stock of how co-operation has worked between it and the UN Panel of Experts on the Democratic Republic of Congo. I am conveying to you the views of the Committee as expressed in the attached letter by its Chair, for your attention and that of the Security Council. The letter asks for improved co-operation between the UN Security Council and the CIME is questions related to the OECD Guidelines arise in the future work of the Security Council.

Yours sincerely,  
Donald J. Johnston

Mr. Kofi Annan  
Secretary-General  
United Nations  
UN Headquarters  
First Avenue at 46th Street  
New York, NY 10017

## ***Letter from the Chair of CIME to the OECD Secretary-General***

Mr. Marinus W. Sikkel

Chair of the Committee on International Investment and Multinational Enterprises

Head of Investment Policy and International Organisations

Ministry of Economic Affairs

P.O. Box 20101

2500 EC The Hague

Netherlands

Paris, 18 December 2003

Dear Secretary-General,

In my capacity as Chair of the OECD Committee on International Investment and Multinational Enterprises, I am writing to ask you to convey the following views of the Committee to the Secretary-General of the United Nations for the attention of the Security Council.

The Committee congratulates the UN Expert Panel on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo (DRC) on the conclusion of its work. In both its October 2002 report (S/2002/1146) and its October 2003 report (S/2003/1027), the Panel refers prominently to the OECD Guidelines for Multinational Enterprises, an instrument for which the Committee has oversight responsibility.

At its meeting of 16-18 December 2003, the Committee discussed its co-operation with the Expert Panel during the follow-up to the October 2002 report and drew lessons for future co-operation with the UN institutions relating to the OECD Guidelines.

The Committee recognised the difficult conditions under which the Expert Panel was working and, in particular, the need to protect the security of the people who cooperated with the Panel. However, the Committee's discussion also revealed disappointment about the level of co-operation of the Panel with the National Contact Points (which deal with all matters relating to the implementation of the Guidelines in the national context). Although experiences were mixed, several National Contact Points reiterated concerns about their inability to obtain sufficient substantive information from the Panel. It is essential that such information be provided in order for the National Contact Points to fulfil their responsibilities regarding the companies listed in the Panel's reports. I had the opportunity to express this requirement, referring to UN Security Council Resolution 1457, to the Chair of the Expert Panel in communications following the release of the October 2002 report.

If questions relating to the Guidelines arise in the future work of the United Nations, it is the Committee's expectation that contact with the Committee will be made at an early stage and that communication and co-operation will be enhanced.

The Committee offers these observations in the hope that they will be useful in arranging future co-operation with the Security Council. Improved co-operation will help both the Security Council and the CIME to carry out their responsibilities and to meet their shared goal of assisting the DRC and other countries beset by conflict to achieve a path of sustainable development.

Yours sincerely,



Marinus Sikkel  
Chair of the OECD Committee on International  
Investment and Multinational Enterprises

Mr. Donald Johnston  
Secretary-General  
OECD  
2 rue André-Pascal  
75775 Paris Cedex 16

- cc. Delegates of the OECD Committee on International Investment and  
Multinational Enterprises  
National Contact Points

## **Document 2. Public Statement by the Committee at Conclusion of UN Expert Panel's Mandate**

12 February 2004

*The following statement by the OECD Committee on International Investment and Multinational Enterprises (CIME) reports on activities undertaken in response to the issues raised by the United Nations Expert Panel on Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of Congo (DRC).*

In June 2000, the UN Security Council asked the UN Secretary-General to establish the Expert Panel. The Panel produced three reports, two of which referred to the OECD Guidelines for Multinational Enterprises. In its October 2002 report (S/2002/1146), the Expert Panel claimed *inter alia* that 85 companies had not observed the OECD Guidelines for Multinational Enterprises and challenged the governments adhering to the Guidelines to use them to promote responsible behaviour among companies active in the DRC. In October 2003, the Panel reported on its efforts to verify, reinforce and update its earlier findings. This report describes the conclusions drawn by the Panel from its dialogue with many of the companies accused of not observing the Guidelines in its 2002 report.

The Guidelines, for which the CIME has oversight responsibility, are a government-backed voluntary code of conduct for international business covering such areas as disclosure of information, anti-corruption, environmental protection, respect for core labour standards, protection of human rights and taxation. In January 2003, the Chair of the CIME wrote to the UN Security Council expressing general support for the work of the Panel and informing it that the adhering countries take seriously their role of furthering the effectiveness of the Guidelines. The Chair's letter also stated that the CIME would welcome the opportunity to co-operate with the Panel. It hoped to receive information on which the Panel based its conclusions and offered to make it available to the National Contact Points (NCPs, government offices charged with promoting observance of the Guidelines by multinational enterprises operating in or from their territories). In Resolution 1457, the United Nations Security Council asked the Expert Panel to provide relevant information to the CIME and to the NCPs. The Panel met with the CIME Chair and relevant NCPs in April 2003 to discuss cooperation. The Panel presented its final report (S/2003/1027) in October 2003 and its mandate has now ended.

At the December 2003 meeting of CIME, three NCPs (out of the 10 NCPs from countries where enterprises accused by the Panel are based) reported having received some information from the Panel only by the end of its mandate. Two of the NCPs reported that the information received tended to be general in nature (not specific to the Panel's accusations) and that it did not

cover all the companies cited in the October 2002 report. In response to a relevant complaint, one NCP has taken up consideration of a “specific instance” in relation to MNE activities in the DRC. The “specific instances” procedure allows interested parties to call alleged non-observance of the Guidelines to the attention of the NCPs, who are then expected to facilitate discussion and assist the parties in dealing with the issues raised. In addition, some NCPs have contacted companies named in the reports (even in the absence of information from the Panel) in order to inquire about their activities and to stress the importance their governments attach to responsible business conduct in “difficult” environments such as the DRC.

The CIME concluded that, while national experiences were mixed, there is room for improved co-operation between the CIME and any future Expert Panels that might be mandated by the UN Security Council. The Chair of the CIME has written a letter that has been transmitted by the OECD Secretary-General to the UN Secretary-General. The letter suggests ways that future cooperation might be enhanced.

The CIME has also agreed to undertake a project that will explore some of the generic corporate responsibility issues raised by doing business in countries affected by conflict, such as the DRC. This work will build on the Panel’s reports and on previous CIME work on business and conflict. The purpose of the work will be to assist companies, NCPs and other actors to understand better what it means to conduct business responsibly in the DRC and other “weak governance zones”. This project will also draw on other OECD instruments, such as the Anti-Bribery Convention and Recommendation, Corporate Governance Principles and Guidelines for Avoiding Conflict of Interest in the Public Sector.

### **Document 3. Letter from the Chair of the Committee Regarding the Request for Clarification from the UK**

Mr. Marinus W. Sikkel  
Chair of the Committee on International Investment and Multinational Enterprises  
Head, Investment Policy and International Organisations  
Ministry of Economic Affairs  
P.O. Box 20101  
2500 EC The Hague

Paris, 13 April 2004

Dear Mr. Lawson,

I am writing you to report on CIME's consideration of the request for clarification that you made at the Committee's December 2003 meeting. Your request asks for "definitive guidance" regarding both the 1991 and 2000 versions of the Guidelines.

With respect to the 1991 version of the Guidelines, the CIME is reluctant to respond to your request. This reluctance stems from a number of considerations. First, the 1991 version has been repealed by the Council and, therefore, has no status as a text for clarification. Second, the current version of the "specific instances" procedure did not exist until the 2000 Guidelines were adopted by Ministers. This fact – and the recognition that the Guidelines text and implementation procedures were negotiated as an integral package – have made CIME reluctant to issue a clarification on a 1991 text that would be used in the context of a specific instance being considered under the 2000 Guidelines. While the 1991 text undoubtedly provides a useful written record of how people conceived of responsible business conduct in the early 1990s, it does not provide a basis for consideration of specific instances in 2004.

With respect to the questions raised on the 2000 version of the Guidelines, the CIMEs view is that the Guidelines text is sufficiently clear and that it allows useful flexibility to NCPs. The CIME also notes that, in their submissions, the UK NCP, the company and the NGO raising the specific instance agree on the answers to the second group of questions.

The CIME would like to call to the three parties' attention the final paragraph of the Guidelines preface. It states that the "common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations might give rise." The UK NCP – in partnership with the company and the NGO – needs to reflect on whether this specific instance



is likely to give rise to a constructive dialogue in which positive contributions can be encouraged or difficulties minimised.

If there is potential for such dialogue, then the procedural guidance (item C.2.d) asks the UK NCP to “offer, and with the agreement of the parties involved, facilitate access to non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.” In this context, the company’s view that it is unreasonable to expect that its managers should have been aware of or subject to the 1991 Guidelines might be a relevant input to consideration of the specific instance. Likewise, the NGO’s view that pre-1999 company behaviour needs to be taken into account in order to understand the current situation might be an important consideration.

Finally, the CIME recalls the statement made by the Chair of the Ministerial Council at the time the 2000 Guidelines were adopted. The Chair noted that the “success and effectiveness of the Guidelines will depend on the responsibility and good faith of all parties involved with their promotion and implementation.” The CIME encourages all parties to this specific instance – the UK NCP, the company and the NGO raising the issue – to keep this in mind.

Best regards,



Marinus Sikkel  
Chair of the OECD Committee on International  
Investment and Multinational Enterprises

Mr. Duncan Lawson  
Senior Policy Advisor  
Department of Trade and Industry  
Kingsgate House  
66-74 Victoria Street  
London SW1E 6SW

cc. Delegates of the OECD Committee on International  
Investment and Multinational Enterprises  
National Contact Points

## **Document 4. Remarks by Secretary-General Kofi Annan to the United Nations Security Council**

15/04/2004

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### **PRESS RELEASE**

**SG/SM/9256**

**SC/8059**

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### ***Role of business in armed conflict can be crucial – “for good and for ill”,***

#### **Secretary-General tells Security Council open debate on issue**

Following are Secretary-General Kofi Annan’s remarks at an open debate of the Security Council on the role of business in conflict prevention, peacekeeping and post-conflict peace-building in New York, 15 April:

I would like to thank the German Government for taking the initiative on this very important issue.

The economic dimensions of armed conflict are often overlooked, but they should never be underestimated. The role of business, in particular, can be crucial, for good and for ill.

Private companies operate in many conflict zones or conflict-prone countries. Their decisions – on investment and employment, on relations with local communities, on protection for local environments, on their own security arrangements – can help a country turn its back on conflict, or exacerbate the tensions that fuelled conflict in the first place.

Private companies also manufacture and sell the main hardware of conflict – from tanks to small arms, anti-personnel mines or even machetes.

And private enterprises and individuals are involved in the exploitation of, and trade in, lucrative natural resources, such as oil, diamonds, narcotics, timber and coltan, a crucial ingredient in many high-tech electronics. Governments and rebel groups alike have financed and sustained military campaigns in this way. In many situations, the chaos of conflict has enabled resources to be exploited illegally or with little regard for equity or the environment. When local populations are excluded from discussions on access and control of natural resources – and see little benefit from them in their communities – this in turn can be a cause of more conflict.

These are complex challenges. They touch on fundamental questions of sovereignty, democratic governance, corporate accountability and individual integrity. Moreover, many of the transactions involved occur in the shadows, or within the context of failed States that do not have the capacity to regulate activities that are driven by profit but which fuel conflict. Enforcement and

monitoring measures aimed at cracking down on such activities often lack teeth, if they exist at all. Supply chains are often so multi-layered as to defy efforts at greater transparency. Even legal activities can have unfortunate or unintended consequences.

Business itself has an enormous stake in the search for solutions. After all, companies require a stable environment in order to conduct their operations and minimize their risks. Their reputations -- not just with the public but with their own employees and shareholders -- depend not just on what product or service is provided, but how it is provided. And their bottom lines can no longer be separated from some of the key goals of the United Nations: peace, development and equity. All these are compelling reasons why business should play an active role in tackling these issues, without waiting to be asked.

The Security Council, for its part, has already addressed many of them. You have imposed targeted sanctions. You have supported the Kimberley Process which, though a voluntary initiative, has reduced the trade in so-called conflict diamonds. You have set up expert panels to assess the role of political economy in triggering or prolonging conflict. You have authorized some peacekeeping missions to assist in the monitoring of economic sanctions and arms embargos, and to support efforts to re-establish national authority over natural resources.

This meeting occurs against a backdrop of several important initiatives.

The Organization for Economic Cooperation and Development has adopted Guidelines for Multinational Enterprises, with the hope of ensuring corporate adherence to Security Council decisions and international conventions.

An initiative led by the United Kingdom aims to increase transparency in the extractive industry.

Some member States have issued voluntary principles on security and human rights, aimed at ensuring that, when security and protection is sub-contracted to private companies, this is done in ways that protect against violations of human rights.

And my own Global Compact has sought to improve global corporate citizenship. One product of the dialogue on this subject is the "Business Guide to Conflict Impact Assessment and Risk Management". Members of the Compact are also discussing adding a tenth principle, on corruption, to the existing nine on human rights, labour standards and the environment. And they are exploring what they can do to help implement the new UN Convention against Corruption. All of us -- governments, businesses, non-governmental organisations, and intergovernmental organisations -- need to learn to operate more openly, in the sunshine of transparency. This is essential

if we are to break the cycle of corruption and build greater confidence in our various institutions and enterprises.

In the specific context of the United Nations, you probably know that I am establishing an independent inquiry into allegations of fraud, corruption and mismanagement relating to the oil-for-food programme that we were running in Iraq. Transparency is the only way to deal with such allegations, and by far the best way to prevent corruption from happening in the first place. That, I believe, will be one of the main lessons we have to learn from this affair, whatever the outcome of the inquiry.

In any case, all of these efforts and initiatives have only begun to tackle the issue. The time has come to translate *ad hoc* efforts into a more systematic approach. At the United Nations, such an approach would promote greater cooperation and interaction between the security and development arms of the Organization. It would give us the tools with which to better understand, and more actively influence, the economic incentives and disincentives that drive the dynamics of armed conflict. And it would ensure that those factors are reflected in efforts to prevent conflict, in peace agreements and in the mandates given to peace operations.

With these aims in mind, I have established an inter-agency group, chaired by the Department of Political Affairs, which is looking carefully at the political economy of armed conflict and will provide recommendations on how to improve the response of the UN system and of Member States. I urge this Council, and Member States in general, to focus greater attention on this issue, and engage more dynamically with the private sector. The Secretariat will help in any way it can.

This is a subject on which passions run high, as we know. We need to find the proper balance between inducement and enforcement. There are times when outrage is the only proper reaction. There are times when appeals to the common good will fall on deaf ears. But with so much at stake, we cannot afford a situation in which the actors involved are polarized, demonizing each other and unable to engage in dialogue. We must create a space where all can come together and find solutions. I hope that this meeting will contribute to that goal.

## Document 5. BIAC Position on Solicitation of Bribes

*This paper by BIAC was presented to the OECD Working Group on Bribery in International Business Transactions during their Consultation with the Private Sector on the Establishment of Facilities to Report Bribery Solicitation which took place in Paris on 21 April 2004*

### I. Background

Up to now, governments have been reluctant to fully address the problem of bribe solicitation in international trade and investment. In fact, testimony and available evidence indicate that explicit or implicit requests for bribes by public officials are often the “initiating act” for bribes. In this sense, companies become victims of corrupt administrations.

Thus, BIAC has continuously asked OECD governments to publicly recognise the problem of solicitation of bribes and engage themselves to act against it by assisting companies in specific situations and co-operating internationally.

On the occasion of the OECD’s Corporate Responsibility Roundtable last June, BIAC started an initiative on using the Guidelines for Multinational Enterprises to assist companies confronted with bribe solicitation and extortion. The business community sees a strong need for establishing an institutional setting or using existing ones to deposit relevant bribe solicitation information on a confidential basis. Until now such information is lost.

### II. The challenge

For business the key challenges of bribe solicitation have not changed since the implementation of the OECD Anti-Bribery Convention and are unlikely to change with the new UN Convention against corruption:

- Despite legislative anti-bribery measures, businesses are frequently confronted with explicit or indirect solicitation of bribes in OECD and non-OECD countries.
- The BIAC Programme for Combating Solicitation of Bribes calls on OECD governments to focus on: public recognition of the problem and assistance in cases of solicitation.
- When confronted with demands for bribes, companies need a point of reference, independent from the prosecution authorities, to which they can report such instances. Until now, information about bribe solicitors is lost.
- BIAC continues to believe that governments have a role to play in assisting companies in situations of bribe solicitation instead of relying solely on *ex post* prosecution.

### **III. BIAC request**

Given this continuing situation, business is requesting a clear signal from the OECD and its Committees showing the commitment to combat bribe solicitation in whatever form. This expression of governmental will is crucial to establish the necessary confidence of the business community for a comprehensive fight against corruption. We therefore ask the Investment Committee of the OECD and its Working Group on Bribery in International Business Transactions to consider and further explore possible options aimed at helping companies.

In addition, BIAC will ask this year's OECD Ministerial to concretely address the issue of bribe solicitation at high-level and to establish a public-private OECD working group to elaborate concrete steps. Such should include the following:

- A revised Recommendation of the Council on Combating Bribery in International Business Transaction (last version 23 May 1997) including language on governmental measures against bribe solicitation;
- To elaborate the role of the NCPs in the context of the OECD MNE Guidelines (data collection function and joint external action);
- The establishment of governmental help lines in national administrations;
- The establishment of non-governmental help lines and contact points for businesses.

For business the exchange of information amongst all these institutions and mechanisms involved is of crucial importance. This could be ensured by establishing a respective forum/public-private network under the auspices of the OECD. BIAC asks the OECD to establish such a network as a first step.

At the same time, as the discussion evolves the need for differentiating situations of bribe solicitation becomes more obvious. The following general lines should be taken into account:

- There could be a need to focus in a first step on the business situations where no bribe has been paid yet. This could be a way of excluding many problems stemming from the duty of government officials in OECD countries to report any knowledge they might gather to prosecutors.
- The situation of companies in bidding processes must be addressed differently from the situation of endemic wide-spread corruption affecting all sectors of an administration of a particular country. For tackling bribe solicitation in bidding processes, a more sector specific approach can be more adequate. At the same time data collection and diplomatic pressure can be more relevant responses in situations of endemic wide-spread corruption.

### *a) Statement/OECD Council Recommendation by OECD Governments*

BIAC continues to expect from OECD governments to issue a high-level statement condemning bribe solicitation including a follow-up process. This should take the form of a revised Council Recommendation to the OECD Anti-bribery Convention including measures to be taken by governments on solicitation of bribes. A possible mechanism has been proposed by BIAC already in the context of the negotiation of the OECD Convention and merits still to be examined:

Such an addition to the OECD Convention would strengthen the support of the Convention in the business community, since it would be a clear signal to companies that governments take their practical problems on the ground seriously and help to resolve them. Another advantage of including such a paragraph into the Council Recommendation would be that the follow-up monitoring process established by the Convention could be extended to include the implementation of bribe solicitation facilities.

### *b) Role of the OECD MNE Guidelines*

BIAC still believes that the OECD MNE Guidelines must play a role in helping companies in instances of bribe solicitation:

- Since the Guidelines include text on bribe solicitation the issue must be promoted by governments and National Contact Points (NCPs) as part of their overall obligation to promote the Guidelines.
- The same applies to the outreach work the OECD is conducting with a wide range of non-member countries. Again, the fight against bribe solicitation must be an integral part of the OECD's anti-corruption and regulatory reform activities with non-member countries.
- Furthermore, the OECD Guidelines clearly attribute to National Contact Points (NCPs) the task of helping companies in situations of bribe solicitation. BIAC sees an obligation of NCPs deriving from the MNE Guidelines to assist companies in instances of bribe solicitation.

Already now, a company could bring such a specific instance under the Guidelines to the attention of the National Contact Point of its jurisdiction. Thus, NCPs would have already now an obligation to deal with such instances. That could involve communicating instances of bribe solicitation with other agencies of their own government or directly with counterparts in the respective host countries. Apart from that, NCPs should start taking on a data collection function for any instances arising on the bribery chapter of the Guidelines and support anti-bribery policies in the countries and administrations where corruption is abundant.

### c) Non-Governmental Anti-Bribery Helpline

In addition to that, another possible way of helping companies dealing with situations of bribe solicitations would be to establish an Anti-Bribery Helpline in the form of an independent non-governmental body.

Out of many suggestions, an independent, international helpline could be established as a non-governmental organisation operating under the protection of legal professional privileges in co-operation with the client seeking assistance. There could be advantages of such an approach. Companies might be more likely to turn to an independent non-governmental institution avoiding the risk of prosecution.

The following aspects might be also considered:

- What would be the “standing” of such a private institution *vis-à-vis* governments/administrations involved in solicitation of bribes? It seems to be an important difference whether an institution like the World Bank asks a host country government to implement its anti-corruption standards as part of their lending conditions or whether a non-governmental organisation tries to influence public administrations in OECD or non-OECD countries. Some attachment of such a non-governmental helpline to a public international organisation might be required.
- On a more general level, what would be the source of legitimacy of such an institution, not formally representing the business community, but intervening on behalf of it?
- The crucial challenge of such a facility will be to build up trust with all partners, companies as well as public institutions.

### d) Governmental Helpline

Furthermore and as proposed under a), business would strongly recommend to envisage the establishment of governmental helplines in national administrations. A governmental helpline to which companies can turn in instances of bribe solicitation should act as a co-ordinating institution and inject the information gathered into “the whole of government”, including – *inter alia* – official development financing, export/investment promotion facilities/guarantee schemes, government procurement and diplomatic pressure.

The performance of such a governmental helpline should be monitored by an international organisation and constantly reviewed as to its effectiveness. This is why it would make sense to include the request of establishing such a helpline into the system established by the OECD Convention.



#### **IV. Conclusion**

BIAC feels that the best solution would be to have a strong link of any kind of institutional setting to an international organisation with credibility on anti-bribery work and respective standing in the international community.

The OECD would be best suited, representing the large majority of world investment and trade activity and having worked on the issues for a long time, be it through the OECD Anti-Bribery Convention, its Convention-related outreach activities with non-members countries or its work on public governance and regulatory reform.

## **Document 6. 2004 OECD Forum – Summary of Presentations and Discussions**

### ***Corporate Responsibility and the OECD Guidelines for Multinational Enterprises Morning, 12 May 2004***

Summary prepared by Forum 2004 Secretariat

#### **Bridging the trust gap**

Moderator: Mark Landler, Frankfort Correspondent, New York Times

Panel: Jean-Philippe Courtois, CEO, Microsoft Europe, Middle East and Africa; John Monks, General Secretary, European Trade Union Confederation; Jane Nelson, Director of Corporate Social Responsibility Initiative, Harvard University, US; Nevenka Pergar, Board Member, Aktiva Invest, Slovenia

Are businesses acting responsibly in their affairs and how can the OECD Guidelines for Multinational Enterprises help them to achieve broad goals? Jane Nelson, Director of the Corporate Social Responsibility Initiative at Harvard University reminded the audience that the health of nations was a notion that embraced economic and environmental well-being. She noted that the OECD MNE Guidelines had three main principles: do no harm; be proactive; and promote corporate responsibility and transparency in the market. There is an acceptance of the need to involve stakeholders in corporate governance: “The way to go involved corporations/government/trade union partnerships.” Moderator, Mark Landler, pointed to the voluntary nature of the OECD guidelines as the one of the key issues, and subsequent speakers took up this point, wondering if stricter application was not needed.

John Monks, the general secretary of the European Trade Union Confederation, said he would adopt the role of cynic, taking as an example Shell’s efforts to improve its public image in the environment and energy conservation field, though this firm still fell foul to some questioned business practices. Mr Monks noted a recent European poll that showed that 61% of those polled did not trust large companies. “The goal of companies must be to improve trust, especially in financial institutions and pension funds”, he said. In particular, “the paternalism of corporations must end”.

Nevenka Pergar, board member of Aktiva Invest in Slovenia, pointed out that though Slovenia was not yet an OECD member, it had nonetheless signed the OECD MNE guidelines. As representative of a financial holding company, Ms Pergar was nonetheless in favour of more of making regulations more binding. She saw several major areas for improvement: transparency in

boardroom governance; quality management; education and strengthening links with civil society.

Jean-Philippe Courtois, CEO, Microsoft Europe, Middle East and Asia, said Microsoft was embarked on two journeys: that of becoming a global MNE, and that of “thinking it through” as Microsoft expanded its representation to 60 countries. The watchword at Microsoft was “people, planet, profits.” Business was part of society, not divorced from it. Standards of business conduct were key at Microsoft. In the short term, Microsoft was focusing on openness via business transparency to shareholders. Technology had a role to play in promoting that openness and furthering people participation and corporate citizenship. This included demanding high standards in corporate responsibility, as well as empowering communities through technology and education, including in developing countries.

Participants from the floor expressed some scepticism about the degree to which companies were willing to collaborate with governments in adhering to the OECD MNE guidelines. Jane Nelson acknowledged that more had to be done, and emphasised several ways to improve the guidelines’ effectiveness, including the need to provide clearer and better information, and to ensure that the guidelines were applied to government procurement.

Several speakers argued that it was all very well to want stakeholder participation, but these had to want to become involved, pointing to the difficulty of getting stakeholders into the boardrooms. There was also some concern about how stakeholder consultations might absorb company time and resources.

## **Document 7. Public Statement by the French NCP**

### **French NCP – ASPOCOMP**

Thursday, 13 November 2003

On 4<sup>th</sup> April 2002, the French NCP was asked to consider a specific instance by the French trade-union “Force Ouvrière” after the subsidiary of a Finnish group ASPOCOMP OYJ, based in Evreux, filed for bankruptcy despite having signed a collective redundancy agreement on 18<sup>th</sup> January 2002. The basis of this request is recommendation 6 of Chapter IV of the Guidelines which states: “In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees...”

In accordance to procedures set forth in the Guidelines, the NCP proceeded to consult all of the parties concerned. Following on from these consultations, the French NCP worked with the Finnish NCP to obtain further information as to whether the Finnish holding company was aware of its subsidiary's financial difficulties at the time the social agreement was signed.

On the basis of the information it gathered and the chronology of events, the NCP does not exclude the possibility that the Finnish holding company was aware of that its subsidiary's financial situation would not allow it to uphold the redundancy agreement. In this hypothesis, the company would not have complied with the terms of recommendation 6.

Moreover, the NCP confirms that the subsidiary did not inform its employees that its auditor would initiate a warning procedure, which happened shortly after the social agreement was signed. The NCP considers that this is not in accordance with recommendation 3 of Chapter IV of the Guidelines (which asks enterprises to disclose information to employees that is relevant to their economic status).

**© Ministère de l'Économie, des finances et de l'industrie, 13/11/2003**

## Document 8. Public Statement by the UK NCP

### Statement on De Beers

#### Introduction

De Beers was named in Annex 3 (Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises) of the initial UN Expert Panel report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (DRC) published in October 2002.

In the final Panel report published in October 2003 De Beers was named in Category 3 (unresolved cases referred to NCP for updating or investigation).

These lists contain the names of entities that the UN Expert Panel on the DRC alleged had been in breach of the OECD Guidelines for Multinational Enterprises.

#### Basis of allegations

Specifically the Panel alleged De Beers was in breach of its own Diamond Best Practice Principles, published by the Diamond Trading Company (a member of the De Beers group) in 2000 and, consequently, in breach of the OECD Guidelines. The Panel did not, however, identify which provision(s) of the OECD Guidelines for MNEs they alleged De Beers to be in breach.

The panel based its allegations on a claim that three sightholders, clients of the Diamond Trading Company (DTC) – the sales and marketing subsidiary of the De Beers Group – exported diamonds from the DRC, contributing to funding of parties involved in the conflict and that De Beers failed to monitor the compliance of these sightholders against The Diamond Trading Company's Diamond Best Practice Principles.

#### Co-operation with UN Expert Panel

These specific allegations (above) were only made known to De Beers by the Panel at a meeting between the two in May 2003. Prior to that date, De Beers were completely unaware of the basis upon which the Panel alleged that it was in breach of the OECD Guidelines.

The UN Expert Panel did not contact De Beers to discuss these allegations before publishing their initial report.

After the initial report was published, De Beers wrote to the Panel in December 2002 and February 2003 requesting a meeting to discuss the report; neither letter elicited any immediate response by the Panel. However, in

April 2003, the Panel invited De Beers to a meeting in May 2003, referred to above.

The Panel refused to give De Beers any details of the basis of their allegations prior to the meeting and consequently De Beers was unable to bring relevant documentation or appropriate members of staff to the meeting to address the Panel's concerns.

Following the meeting, De Beers replied in writing, addressing the specific allegations relating to the three sightholders raised by the Panel. The Panel did not reply to De Beers response nor ask De Beers for any further information and rather published its final report listing De Beers as a company that had been in breach of OECD Guidelines.

De Beers have stated their disappointment with the way this Panel conducted its affairs, particularly when they had previously enjoyed constructive relations with the United Nations, principally, in the development of the Kimberley Process Certification Scheme where their work was commended by the Secretary-General.

### **NCP Comments on Panel Accusations**

*Activities of 3 sightholders.* Based on the information which it has seen, the UK NCP is satisfied that the relationship between De Beers and the three companies named by the UN Panel is such that the activities of those three companies in the DRC, insofar as they relate to De Beers, are outside the remit of the UK National Contact Point (NCP) acting under the OECD Guidelines for Multinational Enterprises.

*Breach of Best Practice Principles.* The UN Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo (The UN Expert Panel) alleged that De Beers breached the DTC Diamond Best Practice and, consequently, were in breach of the OECD Guidelines for MNEs. The UN Expert Panel did not specify which provisions of those Guidelines were alleged to have been breached, failed to give adequate or timely information supporting its allegations and failed to engage meaningfully in the dialogue process envisaged by the Guidelines.

In the circumstances and on the basis of the information provided, the UK NCP concludes that the allegations made by the UN Expert Panel against De Beers are unsubstantiated.

## Document 9. Public Statement by Chilean NCP

### **The Marine Harvest Case: Developments and Results**

*(A longer report on this specific instance can be found at the following website address: [www.oecd.org/dataoecd/42/13/32429072.pdf](http://www.oecd.org/dataoecd/42/13/32429072.pdf))*

### **I. Presentation**

This is the first case submitted to the OECD National Contact Point in Chile, in accordance with the “OECD Guidelines for Multinational Enterprises”.

Marine Harvest S.A. (MH) is a subsidiary of Nutreco, a Dutch multinational and a leader in the competitive Chilean Salmon export industry.

The salmon industry has become one of Chile’s most prestigious and competitive industries. In fact, Chile is the world’s second largest salmon producer after Norway.

Therefore, given the economic significance of the salmon industry, the present case becomes particularly sensitive.

### **II. Case summary**

The Chilean NCP initiated proceedings on the case in November of 2002. Accordingly, the NCP responded the allegations presented by the NGO’s Ecoceanos (Chile) and Milieudefensie (Holland).

The allegations refer to certain aspects relating: employer – union’s relations, environmental impact of the salmon industry, and other related issues.

The NCP requested and received written reports from all competent governmental agencies. Also, the NCP ask the Parties to disclose all complementary information.

In view of the foregoing, the NCP presented a Final Report in October of 2003.

### **III. The results:**

#### **A. Round Table, X Region, Chile.**

This is the most significant result of the present case, as allowed all the Parties involved to exchange views, and eventually, reach an agreement. This Round Table was originally proposed by the NCP and included the participation, among others, of Marine Harvest and interested NGO’s, particularly the “Ecoceanos Centre”.

The points here agreed upon, will be the base for a Protocol signed by the Parties at a Plenary Meeting to be held in the southern city of Puerto Mont in June 2004.

The purpose of the initiative was to facilitate the exchange of views between the enterprise, civil organisations, and regional authorities directly related to the case.

The list of participants included: representatives from Marine Harvest Administration Division, representatives from the three different Unions of the enterprise, NGO's representatives, Regional Association of Sport Fishing representatives, the Director of the Regional Environment Commission (COREMA), and the Director of the National Fishing Service (SERNAPESCA), who has also served as the coordinator of this instance. The Chilean NCP has participated in the two plenary meetings so far performed.

## *B. Regional Level*

### *Participation*

The Round Table represents a real and effective space for public/private participation, with a real social impact. All parties interested were able to express their views and cooperate towards a commonly achieved goal, that is, to find a practical solution that guarantees the respect to the parties' demands.

### *Contents*

- a) The limits of the defense lines protecting the Domeyko concession, in Lake Llanquihue, will be removed from its current position, and reinstalled in a location that allows "sport fishers" to have free access to the existing resources.

The final agreement was reached between the Regional Association of Sport Fishers and the Regional Maritime Directorate. The agreement allowed the reestablishment of good relations between the parties.

- b) Subcontractors and the respect to Labor regulations

The Unions, NGO's, and public Institutions have agreed on the fact that, in general, subcontractors do not fully respect Labor regulations. It is well known that these enterprises are part of the multinationals productive chain in the aquiculture sector. Thus, the infringement of labor regulations represents a permanent social conflict at the regional level.

On this issue, an agreement was reached between Marine Harvest, the Unions, and the Regional Labor Directorate. The agreement consists in a complete set of internal rules to be applied by Marine Harvest in its commercial relationships (contracts) with contractors and subcontractors.

Content of the Rules adopted by Marine Harvest:

- I. General principles concerning, labor relations, social security, environmental regulations, hygiene, and risk prevention.



- II. A precise and detailed description of the regulations (statutes, acts, etc.) that the contractors and subcontractors shall comply with.
- III. Notwithstanding the jurisdictional attributions of governmental agencies, Marine Harvest committed to observe the compliance of such regulations.

All the parties involved had the opportunity to contribute in the process, so the final contents reflect their diverse interests. Labor Unions made a special contribution, as they participated in every stage of the initiative.

Since this initiative has been implemented, a number of enterprises in the aquaculture sector have expressed their desire to pursue similar initiatives.

- c) Research Initiatives on the aquaculture industry's impact on the environment

Marine Harvest is currently carrying on a number of studies concerning the issues presented above. Also, the National Organization of Aquaculture Enterprises, through Intesal Institute and along with the Universidad Austral are carrying on similar research initiatives.

Nevertheless, Marine Harvest has made it clear in rejecting the possibility of having external institutions, such as NGO's and other private organisations to participate in the research initiatives carried out by Marine Harvest, as these activities are part of a private and independent program belonging to the enterprise.

### C. NCP Report. Final results

The following section presents the final results included in the Final Report. In other words, those matters subjected to consideration, opinions or recommendations.

- a) Marine Harvest – Labor Unions relations

The Report by the NCP is strongly supportive of the role of the Unions and the compliance of Labor regulations. The report also points out that all of the rights and obligations mentioned in it are recognized either by Chilean or International Law. This statement was made in reference to the events that took place in a Marine Harvest facility in the course of the year 2001.

- b) On the right of the local communities to know the activities of the multinational enterprises (i.e. the limits and the extension of the concessions).

Marine Harvest has made available to the NCP and NGO's, all the necessary data to determine the geographical limits of all concessions owned by the enterprise.

- c) On the right to use the 5 miles extending from the Chilean coastline into the Pacific Ocean.

NGO's affirm the exclusive right of the artisan fishers to use this area.

On the contrary, the governmental agencies, particularly SERNAPESCA, affirm that such exclusive right does not exist; that the exclusiveness only applies to industrial fishing, with exclusion on any other activity, such as aquaculture.

Finally, that the NGO's legal interpretation is not acceptable.

- d) That aquaculture concessions could negatively affect other industries located in the surroundings of the facility.

Chilean regulations provide a number of safeguards to avoid negative collateral effects in other industries. There are also different mechanisms to question the establishment of the aquaculture industry.

NGO's claim is not sustainable. It does not identify any concession under the circumstances described in its allegation.

- e) Environmental impact

The NCP's report, shows that competent governmental agencies are aware of the environmental risks associated to this particular industry.

Consequently, Chilean regulations are being updated to comply with higher international standards. The best example is the new "Environmental Regulation", which entered into force in December, 2003.

This report requests SERNAPESCA to perform an evaluation on these issues, once the new law is fully implemented.

*Chilean NCP*

*Santiago, June 2004*

## Document 10. Public Statement by the German NCP

### **Statement by the German National Contact Point on a specific instance brought by the German Clean Clothes Campaign (CCC) against Adidas-Salomon**

Berlin, 24 May 2004

German National Contact Point for the OECD Guidelines for Multinational Enterprises on a specific instance brought by the German Clean Clothes Campaign (CCC) against Adidas-Salomon

On 5 September 2002, the Clean Clothes Campaign submitted a specific instance concerning Adidas-Salomon with the Austrian National Contact Point for the OECD Guidelines for Multinational Companies. This specific instance was forwarded to the competent German National Contact Point in the Federal Ministry of Economics and Labour, Berlin.

The German Clean Clothes Campaign (CCC – SÜDWIND Institut für Ökonomie und Ökumene, ver.di), alleged suppliers of adidas-Salomon in Indonesia of failing to comply with the OECD Guidelines (General Policies [Section II] and Employment and Industrial Relations [Section IV]). CCC chiefly based its allegations on statements in the OXFAM Report of March 2002 entitled “We Are Not Machines”. This report accused Indonesian supplier firms, including some delivering to adidas-Salomon, of failing to comply with the OECD Guidelines. In accordance with the OECD Guidelines, companies should ensure that the Guidelines are adhered to also in production sites in countries which are not themselves OECD members.

In response to the mediation by and at the invitation of the German National Contact Point (NCP), discussions were held on 28 May 2003 and on 16 February 2004 at the NCP in the Federal Ministry of Economics and Labour, Berlin, leading to a constructive dialogue and enabling both sides to present their respective view of this case. There was disagreement about the extent to which the allegations made in the OXFAM Report of March 2002 coincided with what actually happened, in some cases up to three years ago (December 1999-2000), and about the extent to which the relevant events actually took place at specific production sites of suppliers to adidas-Salomon. Therefore, at the request of the NCP, both adidas-Salomon and CCC presented several statements about working conditions, minimum wages and employees’ rights to form organisations at the firms supplying adidas-Salomon in Indonesia.

All parties concerned agreed that the treatment of the specific complaints towards solutions should be sought in structural approaches. In the individual cases, the parties involved were un-able to reach agreement,

neither on the facts of the matter gathered in subsequent research nor on the precise options for action to be derived from these facts. A major reason for this may have been that it was not possible to obtain the information needed for an unambiguous description and assessment of the facts.

The situation regarding the assessment of the general programme of global social responsibility of adidas-Salomon was different. Here, all sides took note of the fact that the company maintains a comprehensive internal programme intended to ensure that the principles contained in the in-house “Standards of Engagement” (SOE) are complied with by the supplier firms of its business partners. Key elements of this programme include obligatory recognition of core labour standards and relevant environmental standards by the management in the supplier factories, monitoring of these standards by experts, identification of specific problems, active training and advice for the factory management regarding potential for improvement and the consistent exerting of influence on the factory management to tackle any problems found. In the context of its participation in the programme of the Fair Labour Association (FLA),\* adidas-Salomon also commits itself to independent controls of supplier factories. According to adidas-Salomon, the above-mentioned elements of the SOE programme are specifically applied in the relevant supplier factories in Indonesia and are subject to FLA controls. The CCC is unable to confirm this assertion on the basis of the information available to it.

Both parties agree that the dialogue initiated by the NCP has contributed to an intensified exchange of information and to improved transparency, even if there are differing views about the facts of the matter which proved impossible to reconcile in the complaints procedure under the OECD Guidelines. The parties agreed to remain in communication on this issue and to utilise the information obtained for further progress on the improvement of working conditions, and in particular for improvements in communications between the company management and the employees in the Indonesian supplier factories named.

The NCP in the Federal Ministry of Economics and Labour thanks the parties, and especially Mr. Frank Henke, Global Director, Social and Environmental Affairs, adidas-Salomon, and Ms. Ingeborg Wick, academic assistant at the SÜDWIND Institut für Ökonomie und Ökumene, and Mr. Uwe Woetzel, ver.di, for their constructive co-operation.

\* The Fair Labour Association (FLA) is a non-profit-making organisation consisting of companies, non-governmental organisations and universities. It establishes labour standards and guidelines for health, safety and environmental protection at work and appoints accredited inspectors to monitor adherence to these standards by the companies participating in the programme.

The OECD Guidelines for Multinational Enterprises, which are based on the principle of voluntary compliance, form part of the OECD Declaration on International Investment and Multinational Enterprises and provide recommendations for responsible corporate conduct in foreign investment. The governments of the OECD member states and other participating countries have committed themselves to promoting the application of this code of conduct via their respective National Contact Points (in Germany: the Federal Ministry of Economics and Labour) and in the case of allegations to contributing towards solutions involving the relevant partners via confidential mediation.

## ANNEX A.5

### *Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises*

The institutions that promote and implement the Guidelines are set forth in the OECD Council Decision, a binding declaration subscribed to by all adhering countries. The Council Decision requires each adhering government to set up a National Contact Point. These play a key role of any Guidelines institution in establishing the Guidelines as an effective and vital tool for international business (see Diagram below). The National Contact is responsible for promoting the Guidelines in its national context and contributing to a better understanding of the Guidelines among the national business community and other interested parties.

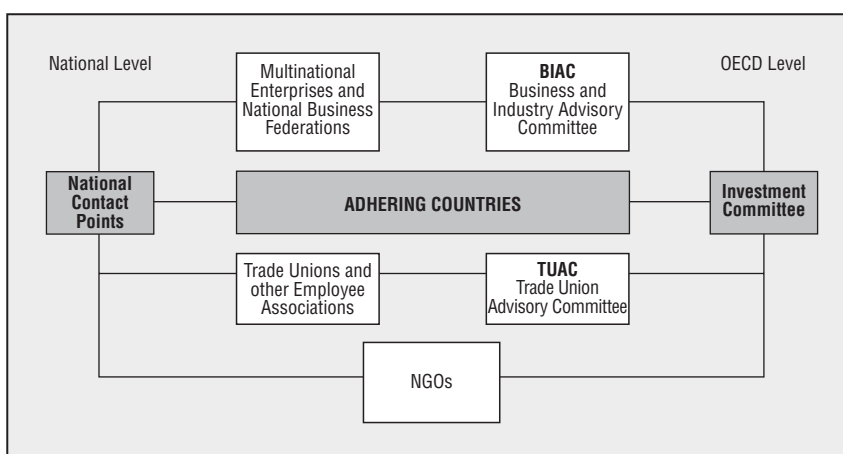
The National Contact Point:

- Responds to enquiries about the Guidelines.
- Assists interested parties in resolving issues that arise with respect to the application of the Guidelines in “individual instances” through the availability of its “good offices” and, if the parties agree, facilitating access to other consensual and non-adversarial means of resolving the issues between the parties. (Comment: more in keeping with the procedural guidance).
- Gathers information on national experiences with the Guidelines and reports annually to the Investment Committee.

Because of its central role, the National Contact Point’s effectiveness is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible,

accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments. The current publication summarises the reports by the individual National Contact Points and provides an overview of the discussions during the second annual meeting of the National Contact Points held in June 2004.

### Institutions Involved in Implementing the Guidelines



## **Consultations – Contributions by Business, Trade Unions and Non-governmental Organisations**

*Note by the Secretariat: The following texts are published in their original form. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.*



# BIAC Submission

**June 2004**

## **After 4 years of Guidelines promotion – where do we stand?**

In their fourth year of implementation since the June 2000 Review, the OECD Guidelines for Multinational Enterprises are on their way to becoming an effective instrument for the OECD business community.

The NCPs and the OECD Investment Committee have done valuable work in clarifying many aspects of the Guidelines and promoting its application. Although a certain degree of flexibility in dealing with Guidelines implementation procedures is needed, BIAC would like to underline the usefulness of clarification by the Investment Committee helping companies and NCPs to understand basic procedural standards like investment nexus, handling of purely domestic cases, parallel legal or administrative procedures, confidentiality and prevention of forum shopping. Having been a partner in the drafting of the Guidelines and the Procedural Guidance BIAC expresses its expectation that NCPs while establishing their own formal or informal procedures follow the majority view on procedural questions elaborated by the Investment Committee and taking due account of business views.

BIAC is reassured by the fact that the majority of “specific instances” dealt with by National Contact Points since the 2000 Review concluded that the allegations against investors involved have been found unsubstantiated or *bona fide* resolved. This shows that criticism against the investment related activities of corporations is often not based on factual evidence and that efforts aimed at the implementation of the Guidelines should focus on promoting their use as voluntary recommendations on good business practices rather than the implementation procedures.

We note that most of the 77 specific instances raised under the revised Guidelines concern the “Employment and Industrial Relations Chapter” of the Guidelines. This is a matter of concern to many of our members, since it indicates that the Guidelines, while in theory addressing a full range of corporate responsibility issues, in practice seem to be predominantly used as an instrument for traditional industrial relations conflicts – an area which is supposed to be

dealt with in the ILO. If such development continues the Guidelines risk to be regarded as an instrument that is misused to weaken the ILO.

## **1. Promotional Activities of the Business Community**

Throughout the last four years the OECD business community was actively involved in promoting the effective implementation of the Guidelines. BIAC member organisations continuously informed their company members of the content of the Guidelines and the procedure through conferences and publications.

The BIAC Secretariat installed a webpage link containing promotional material and started publishing the Guidelines Business Brief on various procedural and substantive issues related to the Guidelines – attached to this submission.

After four years of Guidelines implementation and promotion, many companies involved in specific instances report about their experiences to BIAC members. As the vast majority of NCP's are applying correctly the agreed procedures, such experience, shared within the global business community, is probably the best promotion: The notion of the Guidelines as an instrument to find solutions in a *bona fide* set-up for important issues together with the stakeholders is a corner stone for the future relevance of the Guidelines. Furthermore, since many allegations made against companies have been found unsubstantiated, business starts to regard the Guidelines as a valuable instrument helping to separate between relevant criticism and false allegations.

In an attempt to adapt the use of the Guidelines against Bribe Solicitation, which is a crucial issue for business, BIAC is promoting the Guidelines as an instrument with a high potential in the future.

Our member federations have been very active in assisting companies which are confronted with specific instances. In such situations, the *bona fide* nature of the Guidelines and the confidentiality of the implementation procedures, have repeatedly proven to be a good “selling” – argument to motivate companies to work closely with the relevant National Contact Points.

## **2. Using the Guidelines for Combating Bribe Solicitation**

Up to now, OECD governments have not reacted to business requests for fully addressing the problem of bribe solicitation by public officials in OECD and non-OECD countries. In fact, testimony and available evidence indicate that explicit or implicit requests for bribes are often the “initiating act” for bribes. In this sense, companies become victims of corruption as well.

Thus, BIAC has continuously asked OECD governments to publicly recognise the problem of solicitation of bribes and engage themselves to act

against it, to assist companies in specific situations, and to co-operate internationally. On the occasion of the OECD's Corporate Responsibility Roundtable in June 2003, BIAC started an initiative on using the Guidelines for Multinational Enterprises to assist companies confronted with bribe solicitation and extortion. One year of discussing this request has shown: There is a need to define a place to deposit relevant information about bribe solicitors on a confidential basis.

The challenge of bribe solicitation remains a key concern for OECD business. Despite anti-bribery measures, businesses are frequently confronted with explicit or indirect solicitation of bribes in OECD and non-OECD countries.

The BIAC Programme for Combating Solicitation of Bribes calls on OECD governments to focus on: public recognition of the problem and assistance in cases of solicitation.

When confronted with demands for bribes, companies need a point of reference, independent from the prosecution authorities, to which they can report such instances. Until now, information about bribe solicitors is lost.

BIAC continues to believe that the Guidelines have a role to play in assisting companies in situations of bribe solicitation. Governments can not only rely on *ex post* prosecution.

Business has requested at last year's NCP Roundtable a clear signal from the OECD and its Committees to combat bribe solicitation in whatever form. This expressed will from governments is crucial to establish the necessary confidence of the business community for a comprehensive fight against corruption. Meanwhile BIAC had a very promising exchange on the issue with the Investment Committee and more detailed with the Working Group on Bribery in April this year.

BIAC would like to ask NCPs and the OECD Investment Committee to support the idea of setting up what participants called a "Joint Public-Private Working Group on Bribe Solicitation" which BIAC would offer to co-ordinate. It would be vital for the success of such a Working Group that government officials participate alongside with business representatives.

In BIAC we continue to attribute to this issue high importance. Business brought a BIAC document on the issue of bribe solicitation to the attention of Ministers during this year's BIAC consultations with the OECD Council meeting at Ministerial Level.

### **3. Using the Guidelines for Defining "Due Process" Standards**

While it is an advantage of the Guidelines that the implementation process allows companies and governments to deal with allegations with

greater flexibility than it would be the case in legal proceedings, from a company point of view the Guidelines procedures – if applied strictly – provide for certain standards of “due process” like confidentiality, prevention from forum shopping or standards of bona fide. Business especially appreciates the role the Guidelines and the Investment Committee’s work played in educating other less well informed international organisations and users of the Guidelines on what can be regarded as *an emerging standard of “due process”* when it comes to allegations against companies for not complying with standards defined by the broader Corporate Social Responsibility debate.

### **3.1. The UN Expert Panel on the Democratic Republic of Congo**

BIAC would like to thank the OECD Investment Committee and NCPs for their efforts informing the UN Expert Panel on the Democratic Republic of Congo on the “due process standard” the Guidelines have established and business has a strong interest in remaining guaranteed. As we understood it, NCPs have time and again stated their frustration about the UN Expert Panel process. Meanwhile only one NCP has received information from the UN Panel which it can make use of under the Guidelines procedures while the other NCPs who received complaints induced by the UN Panel report on behaviour concerning companies in their jurisdiction have been not provided with any useful information.

Lack of evidence might be the real cause behind the inability of the Panel to hand over to NCPs meaningful dossiers. Sharing the concerns of BIAC about the complete lack of respect for “due process” standards in the proceedings of the UN Expert Panel, the OECD Investment Committee in a public statement from February 2004 insisted that “there is room for improved co-operation between the CIME and any future Expert Panels” on these matters.

### **3.2. The UN Draft norms**

BIAC would like to bring to the attention of NCPs a further issue of importance for business. The Guidelines were referred to by the UN Sub-Commission on the Promotion and Protection of Human Rights – an independent advisory body to the UN Commission on Human Rights – in the draft “norms” on the human rights responsibilities of transnational corporations, which they produced recently. The UN Commission during its full meeting did not adopt the draft norms, but, in its 19 April 2004 decision, requested the Office of the UN High Commissioner for Human Rights to produce a report which would include a description of existing initiatives and standards relating to the responsibility of transnational corporations with regard to human rights.

Since the Guidelines will almost certainly be covered under this review of existing initiatives, BIAC would like to ask NCPs and the Investment Committee of the OECD whether they would consider working with BIAC in the process to communicate to the UN High Commissioner the existence, utility and potential of the OECD Guidelines. The Investment Committee and BIAC could also jointly note the advantages of the Guidelines, including that they are voluntary, enjoy the support of business, and are open to participation by non-OECD countries. BIAC regards it as important to utilise the very credible tools we currently have in the form of voluntary guidelines rather than reinventing more onerous and inappropriate legal instruments.

# TUAC Submission

**June 2004**

## **1. Introduction and Summary**

Since 2001 TUAC has been running a project on the implementation of the OECD Guidelines for Multinational Enterprises. In 2003 this involved a major outreach initiative in non-OECD countries. Simultaneously TUAC has been assisting our affiliates and Global Union partners and trade unions in developing countries with support for cases that have been raised with National Contact Points (NCPs). We have also been tracking and analysing the outcome of these cases to help identify both what works in making the Guidelines a useful instrument in resolving conflicts as well as what clearly is not working in practice. This paper seeks to share experiences in promoting and implementing the Guidelines, particularly based on activities carried out in 2003. It offers reflections on how to improve the performance of NCPs and the management of cases. The paper also puts forward a number of recommendations to governments and others.

Our central recommendations are:

- i) Continued efforts to promote the Guidelines are greatly needed. Targeted awareness building of the Guidelines is particularly necessary in the Middle East and North Africa. It would be desirable to include Guidelines sessions in MENA (Middle East and North Africa) activities by the OECD.
- ii) Focused discussion should take place with regional organisations on promotion of the Guidelines (*e.g.* Mercosur, APEC, ASEM, NEPAD).
- iii) The embassies of adhering countries should have a role to play in disseminating the Guidelines and facilitating contacts with the social partners and NGOs.
- iv) Governments, trade unions, business and NGOs should work together to strengthen local capacity building to use the Guidelines effectively (*e.g.* Mexico and MERCOSUR). The support of the ILO should be sought in this work.

- v) It is necessary to improve the functioning of NCPs by appointing senior officials, acknowledge receipt of cases and use time frames when dealing with cases.
- vi) Greater attention must be paid by NCPs to satisfactory resolution of cases including those which are subject to parallel legal proceedings. The investment nexus must not be used as an excuse not to handle cases properly.
- vii) Consideration should be given on encouraging a network of informal NCPs in non-adhering countries and establishing a graduated process of adherence to the Declaration, starting with the Guidelines.

## **2. TUAC Outreach Activities**

### **2.1. Overview**

In 2003, TUAC and the Friedrich Ebert Foundation (FES) organised with the support of the European Commission (EC) four regional workshops in Mexico, Morocco, Zambia and Indonesia in order to raise awareness of the Guidelines and corporate social responsibility issues in developing countries. This has been accompanied by the widespread distribution of the TUAC User's Guide to the Guidelines, now available in 20 languages.

The workshops achieved their objective of making the Guidelines better known by governments, trade unions, business and NGOs in Central America, Northern and Southern Africa and Southeast Asia, and were attended by nearly 300 participants.

The participating trade unions, NGOs and governments in general showed a keen interest in both the workshops and the Guidelines, though some questioned their effectiveness. The interest among business representatives was more uneven, although no one formally opposed the Guidelines. The workshop in Morocco revealed more difficulty in raising interest in the Guidelines than those in the other regions. This was expected. Compared with Central America and Southeast Asia, North Africa has less of an FDI and MNE presence. In the other regions, there is more of a debate on these issues. Moreover, whilst the FES and TUAC have organised other events on the Guidelines in Latin America, Southern Africa and Asia (this was reflected by the high number of participants in the workshop in Jakarta that had already heard of the Guidelines) it was the first time we held a workshop on the Guidelines and investment in North Africa or the Middle East. It was therefore a significant first initiative to stimulate a discussion on these issues among various stakeholders in the Middle East and North Africa (MENA) region.

Several governments stated at the workshops that they may wish to adhere to the Guidelines in the future, notably Costa Rica (Minister of Labour) and Zambia (Deputy Minister of Labour and Social Security). This poses the issue as to whether a government can adhere only to the Guidelines or must adopt the whole Declaration on Multinational Enterprises and International Investment. Given the politically charged atmosphere surrounding international instruments on investment, adherence to the Guidelines could be a step to adherence to the Declaration. It is most important to follow up with those governments that would consider adopting the Guidelines. The OECD Secretariat/CIME, regional EC-offices and/or embassies of adhering countries could follow up these openings by approaching governments, to establish dialogue and provide information concerning the Guidelines procedures.

The adherence of Singapore and South Africa in the future was discussed at the workshops although without these governments being present. These countries have already been mentioned as potential candidates for adhering to the Declaration by the OECD. Therefore, additional momentum to this process could be gained by further contact. TUAC would encourage the OECD and the EC also to communicate with the Ministry of Labour in Indonesia, the Ministry of Finance of Morocco and the Ministry of Labour of Thailand since they expressed their interest in using the Guidelines. The FES and TUAC are currently in touch with the Labour Ministry in Indonesia over how to disseminate the Guidelines to multinational enterprises operating in Indonesia. The FES is reprinting the User's Guide in Bahasa-Indonesian and TUAC has provided further copies in English for distribution to foreign investors in Indonesia.

The workshops created an opening for dialogue between governments, trade unions, business and NGOs, which was not formerly present in some of the countries. To continue this dialogue, non-adhering governments could on their own initiative establish their own Contact Points to discuss issues concerning investment, multinational enterprises and corporate responsibility. This should be encouraged by the OECD. It would be useful for NCPs when dealing with cases in non-adhering countries to have a counterpart that could assist in contacting the parties concerned, verifying facts etc. These non-adhering country Contact Points could contribute to the promotion of the Guidelines in host countries. One government representative from the Ministry of Labour of Egypt favoured the establishment of a Contact Point in her country. This could be followed up by the OECD or the EC with a technical assistance programme. The local EC-representatives and embassies of non-adhering countries could also meet with the social partners to discuss whether they could support activities concerning the Guidelines. Participants



at the Jakarta workshop wished OECD embassies to encourage social dialogue on the Guidelines.

Through engagement with business representatives, the project was also aimed at improving observance of the Guidelines within the business community, including not only multinational enterprises but also companies not directly targeted by the Guidelines. Raising awareness was a first move towards achieving their observance as several of the business representatives had no prior knowledge of the Guidelines. The South African Chamber of Business (SACOB) has announced its interest in disseminating the Guidelines in South Africa, which of course is a condition for their appliance. The OECD, BIAC or EC may wish to contact SACOB to offer their support. One case was resolved thanks to the workshop in Jakarta. Through the workshop TUAC facilitated direct contacts between the trade union and the company in question.

A further objective of the project has been to better prepare the cases submitted to NCPs. Following the workshops, TUAC has assisted some of the trade unions and NGOs that enquired either about the possibilities of raising cases or the outcomes of cases. This is leading to further cases being presented. TUAC will continue to assist trade unions and NGOs to raise cases with NCPs and is seeking further donor funding for this work. When concrete cases do arise, there are usually many questions on how to make a submission to an NCP. Even though this was dealt with in the workshops, participants wanted the FES and TUAC to “provide clear reporting procedure to report violation of the Guidelines” and “prepare simplified documents for forwarding submissions to NCPs”.

The assistance of the ILO and its regional offices could be useful in developing the capacity of trade unions to raise cases. The ILO Committee on the Tripartite Declaration has expressed the desire to act more as a clearing point for labour-related cases arising with different instruments. In return NCPs could also act as points for disseminating information on the relevant ILO instruments. This should be developed further.

## **2.2. Increasing the promotion of the Guidelines**

Participants at the workshops often stressed the need for follow-up seminars to raise awareness of the Guidelines. The majority of the participants had never come across the Guidelines before and thus felt that they needed more information. TUAC is currently in contact with affiliates, partners and other trade union organisations on this. Consideration should be given to the trade union requests/initiatives to hold seminars in the DRC, Thailand and Zambia. One suggestion arising from the workshop in Casablanca was to organise a specific workshop on the Guidelines for NGOs in

Morocco, provided that there would be resources for this. The local FES offices are also taking the Guidelines into account in their future activities. The FES and TUAC are in addition planning an event in Uruguay in October 2004 with participants from the MERCOSUR countries. TUAC has proposed that an OECD Labour/Management Programme meeting be held in Beijing at the end of the year on investment in Northeast Asia and the role of the Guidelines. TUAC's User's Guide has recently been translated into Chinese and could be distributed at the meeting.

In February 2004, TUAC participated in a trade union seminar to promote the Guidelines in Bulgaria. Again, trade unions were asking for follow-up seminars to further disseminate the Guidelines. TUAC has also participated in seminars on the Guidelines organised by human rights NGOs in Ecuador and trade unions in Thailand. Furthermore, TUAC assisted the US Solidarity Centre in organising seminars on the Guidelines in Ukraine in May 2004.

The OECD outreach activities are important opportunities to raise awareness of the Guidelines and TUAC welcomes initiatives to include them in country programmes and different projects. TUAC would propose to the OECD the inclusion of sessions on the Guidelines in all of the investment and related seminars organised as part of the MENA programme. It would also propose the involvement of the ILO in this work. One of the main arguments in the recent report of the World Commission on the Social Dimension of Globalisation is that the architecture of the global system has become unbalanced and that the system needs to return to "policy coherence" between the free market on the one hand and the social dimension on the other hand. Since the Guidelines are one instrument to direct foreign investment towards contributing to the social development of the economy, renewed attention to the promotion and application of the Guidelines is essential. The Guidelines should also be promoted in other international fora. They should for example form part of the NEPAD process in making Africa more attractive to investors. ASEM is another example of an organisation that could benefit from the inclusion of the Guidelines in its work.

In sum there is clearly a need for more promotional activities on the Guidelines. This is confirmed by a study cited in the OECD paper "Encouraging the positive contribution of business to environment through the OECD Guidelines for MNEs", which shows that the Guidelines have considerably less impact on multinational enterprises compared to initiatives such as the Global Reporting Initiative and the Global Compact or standards such as ISO 14000 and ILO conventions.

While recognising that there are a number of NCPs that are actively promoting the Guidelines, individual NCPs would have to do considerably more to increase their visibility. Given that NCPs are responsible for making

the Guidelines known, it is disquieting that several NCPs, four years after the review, still have not organised one single conference to inform the business, labour and/or NGO communities of the Guidelines. Equally worrying is the fact that it has been impossible to engage some NCPs for TUAC/FES workshops, namely the Japanese, Korean and Mexican NCPs. If NCPs refuse to participate in meetings on the Guidelines organised by others, they should themselves initiate activities to disseminate the Guidelines.

It is to be noted that the Procedural Guidance suggests that the NCP should either be a senior government official or be headed by a senior official. Considering that NCPs have to deal with complicated and sometimes difficult tasks, this is an appropriate recommendation. Moreover, the commentaries explain that “NCP leadership should be such that it retains the confidence of social partners”. This is not the case today. Some NCPs still do not take the Guidelines element of their work seriously. The OECD should discuss how better to engage Ministers at the national level in order to raise the profile of the Guidelines.

### **3. Improving the Treatment of Cases**

The internal TUAC analysis of the Treatment of Cases raised by trade unions with NCPs reveals the poor performance of certain NCPs. About half a dozen cases that were raised by trade unions in 2001 and 2002 remain unresolved or have not reached an official outcome as of May 2004. The average length of time for dealing with a case appears to be around 10 months. TUAC therefore reiterates a proposal first made in 2002 to set a time frame for the handling of cases. The fact that a case normally takes about 10 months to complete would be more acceptable if cases were handled seriously in accordance with the Procedural Guidance.

Some NCPs acknowledge receipt of cases – a practice that TUAC strongly recommends. NCPs should notify the party raising the case when it has been received. This would avoid confusion and misunderstandings as happened in the specific instance raised with the Korean NCP concerning the anti-union behaviour of the Korean company Kiswire Sdn Bhd. The Malaysian Trades Union Congress submitted the case in May 2003 by e-mail as well as ordinary mail. The Korean NCP however claimed in April 2004 that it had not received the submission.

One model for applying the Procedural Guidance addressed to NCPs would be to use the procedures developed by the ILO Committee on Freedom of Association for dealing with cases.

### **3.1. Cases being treated under parallel domestic procedures**

In the commentaries to the Guidelines, it is noted that NCPs, when examining cases, should take into account “the relevance of applicable law and procedures” and “how similar issues have been, or are being, treated in other domestic or international proceedings”. These commentaries were made to help guide NCPs to fulfil their tasks, not to limit their possibilities of taking action. Consequently, if a company is believed to infringe both national law and the Guidelines, it is still relevant, despite the legal proceedings, for the NCP to examine whether the Guidelines have been breached. Though, naturally, the outcome of the legal proceedings could affect the NCP case as well as other relevant rules and regulation. This should however not be interpreted as if NCPs are expected to await the outcome of court decisions or other juridical procedures in order to handle an issue or come to a conclusion. Nor does it mean that NCPs can systematically refer cases to other fora. The spirit of the Guidelines is that they provide a forum for problem-solving that can limit damage and find constructive solutions to cases. The Guidelines go beyond national law and since the NCP procedures are not juridical procedures NCPs can manage cases which are being processed elsewhere.

The fact that legal or other proceedings do not rule out NCP proceedings has been confirmed in the handling of a number of cases. The French NCP dealt with one of the first cases under the revised Guidelines, Marks and Spencer, notwithstanding the parallel legal proceedings. The same was true of the Dutch NCP with the Plaid case, the German NCP and the Bayer case and the Swiss and Korean NCPs with the Nestlé case.

However, some NCPs appear to be using the fact of legal proceedings to avoid doing anything themselves, for example by awaiting court rulings before reaching their conclusions, or they simply refer cases to other fora. The delegate of Japan stated at the CIME consultations in April 2004 that it was difficult for the NCP to act on the case filed by the Malaysian Trades Union Congress in March 2003 concerning the activities of the Japanese company Top Thermo Manufacturers because it was also pending in the Malaysian Supreme Court. The Maersk case, also concerning activities in Malaysia, raised with the Danish NCP in February 2002 is another example. Although TUAC acknowledges that this is a complicated case, it appears that the NCP has been reluctant to proceed because of the legal proceedings in Malaysia.

This appears particularly true with regard to the US NCP. The US NCP has twice closed a case with vague references to the case being dealt with elsewhere and without any follow-up action. In the Trico case, which lasted almost two years, the NCP was reluctant to handle the issue as it had been taken up by the National Labor Relations Board (NLRB). In its final communication to the unions concerned, the NCP stated that further

involvement was not warranted and that the NLRB could “consider the matter on the basis of US labor law”. Yet the Guidelines as a non-legally binding instrument are clearly complementary to national labour law. In another case raised with the NCP regarding the activities of the Liberian International Ship and Corporate Registry, it again claimed that the issue was “effectively addressed through other appropriate means”. As far as TUAC is aware, the issue was never resolved.

NCPs are reminded that they are supposed to assist the parties involved in trying to reach an agreement on an issue. If this is not possible, the NCP should issue a statement and make recommendations as appropriate. Thus, even if a case is pending in court, NCPs should be capable of making an assessment whether a company has violated the Guidelines.

This issue is particularly important in non-adhering countries. Since the law enforcement in some countries is weak, trade unions cannot always rely on the juridical procedures to settle an issue. The Honda and Bayer cases are two examples where the companies at least initially refused to abide by the court decisions. The NCP can thus be seen as the last resort to resolve a problem. It is therefore essential that NCPs are qualified to examine whether a company is observing the Guidelines irrespective of the result of the legal procedure. This does not mean that an NCP cannot take into account a legal outcome for its own conclusions if relevant.

Another reason for trade unions to also seek the help of an NCP, is the possibility of mediation and conciliation. Since the NCP offers a forum for discussion, this may be a more useful way to deal with a case than legal action. Sometimes trade unions have no choice. They may not have the possibility to negotiate with the company or representatives of management that are authorised to take decisions. If the NCP procedures were more reliable, in terms of the parties knowing that a case would be treated in an efficient and timely manner, that the Procedural Guidance would be followed, that NCPs would actually offer their “good offices” to resolve a problem, and that the legal proceedings would not be used as excuses for inaction, it might not be necessary to raise issues in several instances.

If NCPs continue refusing to deal with cases properly with reference to parallel legal proceedings or other fora, the issue will have to be clarified by the CIME.

### **3.2. Investment nexus**

Following the CIME meeting in April 2003, a statement was issued concerning the scope of the Guidelines. This statement explained that NCPs would take into account the presence of an investment nexus when investigating cases. The statement also recognised that “the international

community may continue to draw on the values underlying the Guidelines in other contexts” as well as “the fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances”. In TUAC’s opinion, the statement confirmed that the Guidelines are relevant to the growing complexity of supply chains in a range of sectors that blur the distinction between trade and investment. Thus, the so called investment nexus did not change the spirit of the Guidelines. This was recognised at the CIME consultations in April 2003. The chair of the Working Party on the Declaration stressed that they did not intend either to limit or to extend the scope of the Guidelines. Yet it appears that the “investment nexus” argument is increasingly being used as a reason not to examine cases by some NCPs.

NGOs have several times brought this up as a serious problem at the consultations. Trade unions share their concern as we are beginning to have similar experiences.

A case raised with the Dutch NCP concerning travel agencies promoting tourism in Burma was first considered receivable. Thereafter the NCP changed its opinion explaining that the Guidelines were not applicable because of the investment nexus. Yet, it was the Dutch government in the first place that suggested the trade unions should raise the case with the NCP. The case shows that NCPs are using the investment nexus to change the meaning of the Guidelines and avoid dealing with cases.

# OECD WATCH Submission

**June 2004**

This is the second annual report by OECD WATCH, which reviews the performance of the National Contact Points for the OECD Guidelines (NCPs).<sup>1</sup> It covers the period June 2003 – June 2004. Reports were received about the work of the following NCPs: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Italy, Mexico, The Netherlands, Norway, Slovak Republic, Sweden, Switzerland, United Kingdom and the United States. The NGOs were asked to assess the activities of their NCPs against the core criteria set out in the OECD Guidelines' Procedural Guidance: visibility, accessibility, transparency and accountability. The report is divided into the following sections: i) Promotional Work; ii) Implementation Procedures; iii) Interpretation of the Guidelines; iv) Follow up to the UN Panel of Experts on the Democratic Republic of Congo; v) Update on the activities of OECD WATCH; vi) Recommendations to NCPs and the Investment Committee. The findings and recommendations of the NGO review will be presented to the Annual Meeting of NCPs in Paris on 15 June 2004.

## Summary

The NGO reports indicate that some excellent promotional work is going on and that a few NCPs have made outstanding efforts through innovative websites to highlight the work on the Guidelines. Other NCPs are commended for engaging in regular dialogue with all stakeholders about the ethical dilemmas that confront responsible companies in the globalised economy. The reports also show the positive contribution that task forces, working groups or other advisory bodies can make to improve the work of the NCPs. It is difficult in many places to assess the extent to which adhering governments are making genuine efforts to promote and improve the implementation of the Guidelines. But the lack of transparency and low visibility of the NCPs are indicators of governmental ambivalence. But positive developments are offset by the increasing resort to procedural devices to disallow complaints. After only four years of implementation, the process is showing signs of strain. Despite the apparent openness of some NCPs, NGOs in most countries feel that the process is cosmetic and that prior decisions about the cases have

been taken behind closed doors at the companies' behest. After inordinate delays and numerous excuses some progress is being made in examining the allegations of the UN Panel of Experts Investigating the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (DRC). What NGOs expect is for NCPs to make a clear distinction between corporate conduct that conformed to the Guidelines and conduct that manifestly failed to do so. But the recent decision by the Dutch NCP raises doubts about their capacity to act independently. NCPs cannot be both company confidant and honest broker. New rules are needed to govern contacts between the NCPs and companies that are the subject of specific instances. A national mechanism should be set up to review NCP decisions.

## **1. Promotional Work**

The Report for the Fourth Annual Meeting of the NCPs by the Investment Committee (the new name for the Committee on International Investment and Multinational Enterprises) expresses its satisfaction with the progress that has been made in promoting the Guidelines. While it is certainly true that the Guidelines have received greater international recognition thanks in part to the commitment and enthusiasm of the Investment Committee's outgoing Chair, Mr Marinus Sikkels, and the efforts of the Secretariat, NGOs have stressed that not enough is being done at a national level to promote and implement the guidelines. This reflects the ambivalent attitude of many adhering governments to the Guidelines, who tend to use them as a rhetorical device to deflect insistent calls for more effective measures to curb unethical corporate behaviour. This lukewarm or opportunistic attitude to the Guidelines is perhaps most clearly seen in the case of Italy, which after four years still only has a "temporary secretariat" without a precise location within the Ministry for Productive Development. This "chronic dysfunctionality" has been allowed to persist despite protests from Italian trade unions and NGOs. The OECD Secretary-General has recently reminded members "governments make a binding commitment to promote [the Guidelines] among multinational enterprises operating in or from their territories".<sup>2</sup>

In the UK, according to a recent survey, only 15 British companies listed in the FTSE 100 refer to the Guidelines in their annual reports or other public documents. In Norway, it seems to have taken four years to produce a general information leaflet and the NCP is such a well-kept secret that many of the civil servants working in the Ministry of Foreign Affairs (where the NCP is located) are unaware of its existence. Websites are one of the most obvious means of publicising the Guidelines and the work of the NCPs. There are some good examples of accessible, informative and well laid out websites, the Australian and Brazilian NCPs being seen as the leaders in this area. But there are signs of slippage with the Dutch website which "has deteriorated over the



last couple of years". The Dutch however are commended for the prominent way the NCP's statements are displayed and summarised. But the experience of trying to locate information about the Swiss NCP on the website of the State Secretariat for Economic Affairs (Secco) is "like an obstacle course". In the UK, as the NCP pointed out, it is easier to access the Guidelines' webpage via Google rather than by logging onto the Department for Trade and Industry's website, where it is tucked away under the heading Europe and World Trade. The Slovak Republic has made the effort to translate the Guidelines and the contact details for the NCP is provided on the Ministry of Economy's website but no promotional activities have as yet been undertaken. Mexico, which has been reluctant to develop the NCP or to publicise the Guidelines, seems to have learnt from its experience with the complaint against the Euzkadi Tyre Company. The NCP has recognised that it needs to be better known and a pamphlet, "lightly touching on some the issues covered in Guidelines", has been prepared.

It is difficult in most countries to assess how or indeed whether the Guidelines are being promoted to the business community. In the UK the CBI, representing business interests, has refused to participate in stakeholder meetings with NGOs and the TUC. In more open societies like Sweden it is clear that the Guidelines are taken seriously through the Swedish Partnership on Global Responsibility, whose Secretariat provides advice, training and workshops to encourage companies to become "ambassadors for human rights, core labour standards and a sound environment". The position in France is mixed. There is little promotional activity and the general public knows very little about the work of the NCP. *"Corporate social and environmental responsibility is not at all a tradition in the French administration, and this is translated into how the NCP works and behaves. Furthermore, the French presidency has encouraged French multi-nationals to join the UN Global Compact and work within that particular framework, to the detriment of the OECD Guidelines."* Moreover, the tripartite structure of the French NCP is impeding the development of a proper relationship with NGOs, who are not invited to meetings.

In some other OECD countries, from the opaqueness of the NCP reports and the lack of public government support, one can infer that the Guidelines are not being actively promoted as firm recommendations to companies. Indeed, unilateral efforts by NCPs to re-interpret the Guidelines and to disbar complaints on quite spurious grounds strongly suggests that under pressure from the business lobby some governments are trying to row back from the revised, negotiated text. This is discussed below in Section iii) *Interpretation of the Guidelines*.

## 2. Implementation Procedures

The potential of the OECD Guidelines resides in the unique implementation procedure, which is, “*the most visible sign of adhering governments’ commitment to the Guidelines*”.<sup>3</sup> Concerns about companies’ behaviour can be brought to the attention of the NCP and the matter resolved through the specific instance mechanism. The emphasis is on solving problems but at the end of the process the NCP is expected to issue a public statement indicating whether or not a company was found to have breached the Guidelines. After only four years of implementation the process is showing signs of strain.

One sign of this is the lack of clarity about how many complaints have been officially acted upon by the NCPs. For the first time the Secretariat has been allowed to include “a historical archive table” in the Report for the Fourth Annual Meeting, which provides some basic information on the estimated 77 specific instances, that have been filed with NCPs over the past four years. But then, according to the information in the table between 2001 and 2004, only 27 “specific instances” have been “considered”. The table gives some information on cases, which have either been stopped or come to some kind of resolution. It then lists eleven cases as still “pending” or “under consideration” which is certainly not complete. The UK NCP makes no mention of the three cases that have been on the books for between one and two years but has included two cases neither of which was dealt with as a specific instance. One of them, the De Beers’ case, which was brought to the UK NCP at the company’s request as a result of the UN Panel of Experts report on the Democratic Republic of Congo, was never, according to the British Minister, a specific instance so it is not clear why it has been included. While OECD WATCH welcomes the effort to be more transparent about the complaints it is to be hoped that in the future the table will more accurately reflect the NCPs’ genuine achievements and output as well as the precise basis of their intervention and the current status of the cases. But the confusion about the number of cases highlights the reasons why the Secretariat has been asked to play a stronger role in record keeping.

In a separate study, *Complaints under the OECD Guidelines – specific instances brought by NGOs*, OECD WATCH notes that a total of fifteen complaints have been filed over the past four years. Proceedings in six complaints have been concluded and five are still pending. Information from NGOs indicates that approximately five new cases are in the pipeline. In only two cases did the complaints result in an agreement between the parties. NCPs adopt widely differing approaches to the way they handle complaints, the procedures in the main are slow and cumbersome and seem designed to discourage complainants. The average time taken by NCPs to conclude the specific instance procedure is about 10 months, but some NCPs, like the UK NCP are

taking more than twice as long. The Austrian NCP rarely takes responsibility for dealing with a complaint and seems to prefer to delegate the issue to another NCP. But at least the issues raised are discussed in the Task Force, of which NGOs are members. The German NCP, on the other hand, has used a variety of pretexts to block NGOs from filing complaints. But at least in Germany as in Austria the complaints are discussed in a working group, which includes business sector, trade unions and NGOs. On balance, the practice of the Dutch NCP still provides the best model: decisions on admissibility are usually taken within a reasonable period of time; the complainants soon after have a meeting with the NCP and other government representatives to discuss the case; after an exchange of information between the parties the NCP convenes a further (and usually) final, meeting after which a decision is made. The Dutch NCP plays a proactive role in helping identify areas of agreement as well as pinpointing areas of disagreement. Where possible, the NCP attempts to get the parties to endorse a joint statement, which is made public.

Despite the apparent openness of some NCPs, NGOs in most countries feel that the process is cosmetic and that prior decisions about the cases have been taken behind closed doors. This means that there is no real opportunity to engage in a proper debate about the issues. Too often decisions seemed to have been made as a result of special pleading by the companies, or tinkering with the procedures, or, as is discussed below, by re-interpreting the Guidelines. While adhering governments rejected the proposal that the Investment Committee should act as a second instance, where NCP decisions on the substance of a case could be reviewed, some appeals mechanism at the national level is needed if confidence in the fairness of the proceedings is to be restored.

### 3. Interpretation of the Guidelines

Divergences in the interpretation given to the Guidelines are undermining their usefulness as a global instrument. Some NCPs are attempting to block complaints that relate to supply chain issues from even being considered, this trend is particularly common in Germany, the USA and The Netherlands. NGOs are disturbed at the way an alleged absence of an investment nexus is being used quite shamelessly to protect the interest of a few unscrupulous companies. In its most recent report, RAID provides a comprehensive critique of this approach:<sup>4</sup>

"Any limitation of the applicability of the 'supply-chain' provision on the grounds that trade relationships are outside the scope of the *Guidelines* represents a partial interpretation. The OECD's Working Party on the Declaration (WPD), following a meeting on the scope of the *Guidelines*, instructed the Secretariat to prepare a background paper on this issue."<sup>5</sup>

Firstly, while the *Guidelines* form part of the OECD Declaration on International Investment and Multinational Enterprises, the latter does not define investment. The *Guidelines* recognize that MNEs encompass a broad range of business arrangements and organisational forms in which strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.<sup>6</sup> The WPD background paper asserts: “In this context, definitions of business activities such as investment may be quite broad. This suggests that there may be room for flexibility in assessing multinational enterprises’ influence and the presence of an investment relationship in the supply chain, depending on the specific circumstances.”<sup>7</sup>

Secondly, the way in which the *Guidelines* are formulated militates against their narrow application to investment activities *per se*: 1) a number of international standards – *inter alia*, the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Copenhagen Declaration for Social Development – are cited which are relevant to the application of the *Guidelines*.<sup>8</sup> These cover a broad range of relationships and areas of conduct. Several OECD instruments are also referenced in this regard.<sup>9</sup> 2) The *Guidelines* are recognized as complementing and reinforcing private efforts to define and implement business conduct.<sup>10</sup> To cite one example, the International Chamber of Commerce’s (ICCs) rules of conduct and corporate practices manual on fighting bribery contain recommendations that are relevant to both trade and investment.<sup>11</sup> They adopt a broad view of the business transactions to which the rules apply.

Thirdly, the text of the *Guidelines* gives explicit recognition to the trading dimension of the activities of MNEs whereby “their trade and investment activities contribute to the efficient use of capital, technology and human resources”;<sup>12</sup> and to the promotion of sustainable development “when trade and investment are conducted in a context of open, competitive and appropriately regulated markets”.<sup>13</sup>

#### **4. Follow-Up to the work of the UN Panel of Experts on the Democratic Republic of Congo**

Finally some progress is being made in examining the allegations against OECD companies accused by the DRC Panel of violating the *Guidelines*. After a seemingly interminable wrangle between CIME, OECD governments, companies and the UN Security Council, dossiers on 11 companies alleged to have violated the OECD *Guidelines* were finally sent in October 2003 to NCPs in Belgium, Germany and the UK for investigation. Dossiers on a further two cases were sent to NCPs for monitoring. Months have gone by while

governments have flatly asserted that NCPs have no investigative function, which if taken at face value, would make the demand for the UN to hand over the cases to the NCPs meaningless. NCPs have done little but complain about the lack of evidence often ignoring publicly available sources of information that could substantiate the UN Panel's claims. The persistence of judges in Belgium appears to be paying off, and criminal investigations are underway concerning a number of individuals and companies named in the Panel's reports. To its credit the Belgian NCP has stated that it is conducting a preliminary assessment into the Panel's allegations against a number of companies. But in other countries it has been quite unclear on what grounds NCPs, like the Finnish and British, have intervened. Only the Belgians have stated that they are treating the companies under the specific instance procedure. While there is room for flexibility in the procedural guidance, that does not mean that individual NCPs are at liberty to improvise. At the very least they should justify to their peers and the public the reasons for their actions. Failure to do so brings the whole process into disrepute. NCPs may believe that this arbitrary approach enables them to shield those companies they believe to have been unfairly accused. But they are mistaken. It is in nobody's interest, and certainly not in the interests of responsible companies, to leave these matters unresolved. Paradoxically, expediency will generate more distrust and the questions raised by the UN Panel will remain. The UK NCP's statement on De Beers has been dismissed in the trade journals because it evaded carrying out an honest examination of supply chain responsibility. Likewise, the Dutch NCP's statement about Chemie Pharmacie Holland, which seemingly cleared the company on the investment nexus technicality, may have the opposite effect and merely fuel suspicions that it was engaged in a dubious enterprise with little regard for the impact of coltan mining on the impoverished and wretched population of the Eastern DRC.

## 5. Update on the Activities of OECD WATCH

Over the past year, a lot of effort has gone into consolidating OECD WATCH's international membership base, drawing up a mission statement, fundraising and improving outreach, mainly through its website, which was inaugurated in March 2004. The positive results of a feasibility study conducted by SOMO into establishing an OECD WATCH network was discussed at a meeting in Amsterdam with members of the Coordinating Committee in December 2003. The booklet by Friends of the Earth (Netherlands) "A Toolkit for the OECD Guidelines for Multinational Enterprises" has been widely disseminated and is available in several languages, including French, Spanish and Indonesian. Friends of the Earth (US) have recently brought out a guide in Russian. IRENE is currently finalising arrangements with OECD WATCH partners in Africa, Asia and Latin America

to host and run training workshops on the Guidelines supported by funds from the Dutch Government.

In February 2004, with the help of the Australian NCP, the Brotherhood of St Laurence (BSL), a member of OECD WATCH's Consultative Committee, secured a meeting with Veronique Ingram, the Chair of the OECD Steering Group on the Draft Principles of Corporate Governance. BSL/OECD WATCH prepared a submission outlining NGO concerns about the narrow focus of the revised text and the need to use the opportunity of the review to enhance the synergies with other instruments such as the OECD Guidelines.

OECD WATCH members have engaged in promotional activities about the Guidelines at the World Social Forum in Mbumbai, at the WTO Symposium in Geneva, at a meeting in the Belgian Senate and at the UN Commission of Human Rights in Geneva. Members usually act as a coordinator providing information and advice on a regular basis to NGOs (in both OECD and developing countries), to members of parliament, the media and even to companies. RAID/OECD WATCH organised a successful high level meeting at Chatham House (the Royal Institute for International Affairs) in London in March 2004 to discuss follow up to the UN Panel of Experts Investigating the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo. Marinus Sikkel, the Chair of the Investment Committee, participated and a number of other NCPs attended. In Latin America, OECD WATCH's partners Red Puentes (including Fundacion El Otro) have had meetings with the Argentinean NCP to try to raise the visibility of the Guidelines.

## **6. Recommendations**

- Procedures for specific instances should be revised with the assistance of national experts in human rights law or arbitration. This would help improve the speed, efficiency and fairness of the procedures.
- Governments should take care that to uphold the integrity of the specific instance procedure. At present companies have much greater access to the NCP. It is essential that new rules should be drawn up governing the contacts that NCPs (or others working with the NCP) may have with companies that are the subject of specific instances.
- There is a need to establish some form of national appeals process whereby complainants (or other parties) might request a review of the decisions made by NCPs on specific instances. The review mechanism might be entrusted to a parliamentary committee, an ombudsman or an advisory group. The current situation is not satisfactory.
- NCPs should consider including either in their Statements or in annexes to their statements the results of their investigation into existing rules and

regulations governing different aspects of corporate behaviour, such as, for example, information on Securities' Laws. In this way all parties would benefit from this research.

- All NCPs should hold public meetings with stakeholders, including NGOs and the media, at least once a year. Although there has been a significant improvement in the NCP reports, very few NCPs sought comments from NGOs.

*Patricia Feeney, Rights and Accountability in Development*

## Notes

1. OECD Watch is an international network of NGO's 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.
2. OECD "Promoting Corporate Responsibility: The OECD Guidelines for Multinational Enterprises", Article by the OECD Secretary-General, May 2004, will appear in a book on Corporate Social Responsibility to be published by the International Bar Association and Kluwer Law International.
3. OECD Secretary-General, May 2004.
4. RAID, Unanswered questions: companies, conflict and the Democratic Republic of Congo, Oxford June 2004; Supplement, The Scope of the Guidelines, pp. 91-93.
5. Working Party on the Declaration, "Background Paper on the scope of the Guidelines", 1.3. Reproduced in OECD Guidelines for Multinational Enterprises: 2003 Annual Meeting of National Contact Points, Report of the Chair, pp. 25- 28.
6. OECD Guidelines for Multinational Enterprises, *op. cit.*, Preface, paragraph 2.
7. "Background paper on the scope of the Guidelines", *op. cit.*, I.3.
8. OECD Guidelines for Multinational Enterprises, Preface, paragraph 8.
9. *Ibid.*, Preface, paragraph 9. Listed are: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.
10. OECD Guidelines for Multinational Enterprises, Preface, paragraph 7.
11. "Background paper on the scope of the Guidelines", *op. cit.*, I.2.
12. Guidelines, Preface, paragraph 4.
13. *Ibid.*, paragraph 5.

## PART II

# **Roundtable on Corporate Responsibility: Encouraging the Positive Contribution of Business to Environment Through the OECD Guidelines for Multinational Enterprises**



## Acknowledgements

The National Contact Points and the OECD Committee on International Investment and Multinational Enterprises wish to thank all of those who invested their time and resources in order to participate in the Roundtable on Corporate Responsibility held in conjunction with the third annual meeting of the National Contact Points. Their names appear below.

The Roundtable participants included representatives from business, labour and non-governmental organisations.

### Co-Chairs:

*Ms. Sofia Calltorp*, Department for International Trade Policy, Swedish Ministry for Foreign Affairs, Sweden.

*Mr. Phil Callaghan*, Sustainable Trade and Investment Team, Environmental Protection International Division, Department for Environment, Food and Rural Affairs, United Kingdom.

Opening remarks: *Mr. Kiyotaka Akasaka*, Deputy Secretary General, OECD.

### Speakers:

*Mrs. Cecilia Brighi*, Health and Safety Environmental Department, Confédération Italienne des Syndicats des Travailleurs (CISL), Italy.

*Mr. Bjorn Erikson*, Working Life and Industrial Policy Department, Norwegian Confederation of Trade Unions (LO-N), Norway.

*Mr. Guy Ethier*, Vice President, Environment, Health and Safety Department, Umicore, Belgium.

*Ms. Norine Kennedy*, Vice President, Environmental Affairs, US Council for International Business, United States.

*Mr. Mokhethi Moshoeshoe*, Director, African Institute of Corporate Citizenship, South Africa.

*Mr. Stephen Porter*, Managing Attorney, Center for International Environment Law (CIEL), Switzerland.

*Mr. Cornelis Van Der Lugt*, Programme Officer, Division of Technology, Industry and Economics, U.N. Environment Programme, France.

*Ms. Halina Ward*, Director, Corporate Responsibility for Environment and Development, IIED (International Institute for Environment and Development), United Kingdom.

*Ms. Claudia Wöhler*, Federation of German Industries (BDI), Germany.

## **Summary of the Roundtable Discussion**

The OECD Roundtable on Corporate Responsibility is held in June every year in conjunction with the annual meeting of the National Contact Points (NCPs). The 2004 Roundtable invited leading specialists on corporate environmental performance to discuss how the OECD Guidelines for Multinational Enterprises can help promote companies' positive contribution to the environment. It focused on how the Guidelines' specific recommendations relate to a growing array of corporate tools, standards and operational guidance that already exist to help corporate managers enhance their environmental performance<sup>1</sup>.

The Roundtable was co-chaired by Sofia Calltorp of the Swedish NCP and Ministry of Foreign Affairs, and Phil Callaghan, Head of the United Kingdom's Sustainable Trade and Investment Team, Department for Environment, Food and Rural Affairs. NCPs and delegates to the Environment Policy Committee attended the Roundtable, which was held under the Chatham House rule<sup>2</sup> to allow for a candid and constructive discussion.

During the Roundtable, representatives of the business, labour and NGO communities were invited to present their views on four topics:

- Recent developments in business practices toward the environment.
- Dealing with environmental risk.
- Corporate contributions to environmental policy.
- Specific instances with environmental contents.

This summary is organised in five sections. The first section – “Environment and the Guidelines” – raises some basic issues regarding the role of corporate responsibility for the environment and the contribution of the OECD Guidelines. This is followed by four sections covering the topics listed above.

## **Environment and the Guidelines**

In his opening address, Deputy Secretary-General Kiyotaka Akasaka noted the relevance of the Roundtable for one of OECD's key priorities: the achievement of sustainable development. He stressed that the business sector is one of the key players in this process, and that one way the business sector can make a contribution is by implementing the OECD Guidelines for Multinational Enterprises. He expressed his hopes that the Roundtable would

help enterprises better understand the Guidelines so they can put them into practice.

The 2002 World Summit on Sustainable Development called on governments to promote, among other goals, corporate environmental and social responsibility as an important way to enhance poverty reduction and development. Mr. Akasaka commended the Investment Committee and the Environmental Policy Committee for responding to these demands. He noted that OECD Guidelines have become one of the world's foremost corporate responsibility instruments.

The Guidelines' Chapter V is directly aimed at enterprises' environmental performance. Broadly speaking, the environment chapter provides recommendations in the following areas: environmental management systems; communication and stakeholder involvement; life-cycle assessment; precautionary approaches; risk prevention and mitigation; continuous improvement; education and training; and contributing to public policy. However, the Guidelines go beyond this. Several general recommendations, and specific recommendations principally aimed at areas other than the environment, can have important environmental implications.

Indeed, many participants mentioned that one of the advantages of the Guidelines is their broad coverage and the interrelations between their individual recommendations. They can act as an important bridge between environmental and social concerns – for instance as serious environmental damage often involves human rights issues *vis-à-vis* stakeholders or local communities. The reference to supply chains in the General Policies of the Guidelines is also important in the environmental context. The Guidelines could thus be seen as an integrating framework for a range of corporate responsibility issues. An NGO representative argued that the business sector itself is split in its perceptions of the exact nature of environmental responsibility. Companies in the most developed economies increasingly mix their environmental practices – especially when operating in developing countries – with broader social and human rights concerns. The domestic companies of developing countries tend to focus more narrowly on health and safety issues.

The discussions touched upon several general and implementation oriented aspects of the Guidelines. However, the remainder of this summary focuses on the discussions of the Guidelines' environmental application.

## **Corporate environmental practices and the Guidelines' environment chapter**

A large number of tools have emerged to assist companies in enhancing their environmental management. Some of these tools have been developed

within the firms themselves (e.g. environmental management systems); others have developed externally to the firm (e.g. accounting and auditing tools; reporting standards; sectoral or industry performance standards). Many multinational enterprises have taken a proactive stance toward implementing such tools, recognising reputation and efficiency benefits from being environmentally responsible. They face an economic incentive to obtain resource savings and to undertake the technological innovation that often goes hand in hand with environmental improvement. Participants noted that many of the case examples of corporate environmental enhancement mentioned in the Background Report derive from companies' everyday efforts to enhance management practices.

Corporate environmental tools propose ways in which managers can develop and implement an enterprise's environmental policies and objectives. They often do not provide guidance concerning the levels of aspiration that these policies and objective should reflect. A business representative observed that Guidelines do not set absolute performance standards, but rather to encourage companies at all levels of advancement to implement environmental management systems (EMS) and engage in a process of continual improvement. The speaker recommended that companies take an interest in EMSs options that are internationally accepted such as the evolving ISO14000 series of standards. Also, several participants opined that the proper role for the Guidelines in the environmental context could be seen as a framework for ongoing improvements to such instruments.

The remainder of the discussion in this session focused on the issues of corporate tools for dealing with environmental concerns, environmental reporting, the special challenges for small and medium-sized enterprises, health and safety, and the experiences made so far by NCPs with specific instances related to the Guidelines' environment chapter.

## **Reporting**

Environmental reporting is important in at least three contexts that are in practice often interrelated. First, there is a company-internal need for managerial information. Environment progress reporting is not a stand-alone exercise. It is an intrinsic part of the environment and overall corporate management process.

Second, information dissemination is an element in promotional or marketing strategies. Insofar as companies see their environmental performance as a competition parameter, they have an obvious interest in undertaking progress reporting. In addition, as mentioned by an NGO, when companies wish to move toward environmental strategies involving the

ultimate consumers (e.g. the “Sustainable Consumption” framework) there is an even greater need to share environmental information with the public.

Third, reporting is often a prerequisite for stakeholder involvement. More and more companies engage in forward-looking reporting, such as the *ex ante* publication of performance targets. These are in many cases used as a basis for consultations with stakeholders and local communities. A NGO representative noted that this is one point where the purposes of good reporting interrelate: an important outcome of stakeholder consultations is to provide enterprise managers with aspirational information that can be used for their environment strategy formulation.

Several participants noted the existence of several “off the shelf” tools for environmental reporting. These include the Global Reporting Initiative’s (GRI) Sustainability Reporting Guidelines, which have an important environmental element. Another information tool is AccountAbility’s AA1000 Assurance Standards, the applicability of which is not limited to environment and sustainability reporting. Also, the ISO 14063 standard (a new member of the ISO 14000 family) will provide helpful guidance on environmental communication from next year.

A business representative noted that while these are considered as high-quality instruments their implementation calls for a large investment of time and money. As relatively few consumers and other stakeholders are interested in environment performance reports *per se*, some enterprises may find they have to justify the investment. A NGO representative argued that enterprises should be aware of a need to integrate with society as a whole and that environmental reporting involves a large number of stakeholders. Focusing on limited “target groups” could run counter to the objective of involving the public.

One participant informed of recent developments underlining the relationship between the Guidelines and the issue of performance reporting. An indicative table has been drawn up by the Global Reporting Initiative, demonstrating how the Sustainability Reporting Guidelines can be used to report on the implementation of the OECD Guidelines for Multinational Enterprises. The OECD Investment Committee has indicated that it finds this table a useful tool, among others, and has included it on the Guidelines website [[www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)].

### **Small and medium-sized enterprises**

There was broad agreement among participants that encouraging small and medium-sized enterprises (SME) to implement environmental procedures and management systems will be an important challenge. Since, in the words of a business representative, environment management systems in their

simplest form involve little more than a target, a reporting mechanism, streamlined managerial practices and a commitment to continuous improvements, even relatively small companies can easily embrace them. However, there appears to be an information gap, with the owners and managers of many SMEs insufficiently aware of the benefits, and limited costs, of environmental management.

An NCP said that, according to its national experience, it is relatively easy to engage SMEs in a constructive dialogue about environmental issues. Among other things, small companies mostly operate in proximity of the environmental impact of their activities and are therefore motivated, even in the absence of elaborate formal obligations, to deal with the issues. However, it is more difficult to engage these enterprises on the basis of the Guidelines, which are perceived as being on too high a level of aspiration and somewhat too far from the commercial reality they face. In the words of a business representative, SMEs tend to look at the “demands” put to them and disqualify themselves.

A trade union representative argued that, as the shared values represented by the Guidelines are thought to apply to all enterprises, there is no need for different contents for different enterprise sizes. Rather, the question is how to make the SME response more effective. There would seem to be a need for awareness campaigns and technical assistance to the smaller enterprises. The question is whether other actors, for instance local authorities, could also play a role in providing environmental support services to SMEs.

Two participants informed about recent initiatives to assist SMEs with improving their environmental practices. UNEP and the Wuppertal Institute have developed a training package “The Effective Entrepreneur” targeted at small enterprises. It takes the form of a calendar-cum-guidebook, which each month introduces a new element of environmental management, eventually ending with formal environment reporting. GRI is in the process of producing a user’s guide for SMEs. It is also developing a number of special software tools to assist the reporting by small or unsophisticated companies by lowering transaction costs.

### **Health and safety issues**

The health and safety issue figures prominently in the environment chapter of the Guidelines, which includes recommendations on impact assessments and precaution as applied to health and safety, as well as the handling of hazardous materials. It is perhaps less clear what this implies for the relevance of the more specialised tools for occupational health and safety in the context of corporate environmental management.



Trade union representatives argued that the issue of occupational health and safety cannot be separated from the environment. In consequence, the involvement of employees, including through trade unions, is an essential element of sound corporate environmental practices. One example is the occupational health and safety-related work of ILO, which have been undertaken jointly by employers, governments and trade unions.

A specially invited expert provided details about ILO's activities. In the area of chemical safety the ILO Convention on the Prevention of Major Industrial Accidents addresses environment among other issues. The ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) is the only instrument adopted by an international organisation and negotiated by a tripartite committee of experts. ILO-OSH 2001 provides for the development of tailored guidelines for special target groups such as SMEs. In the area of reporting, a health and safety protocol is being developed for GRI Reporting Guidelines, which calls for the application of ILO-OSH 2001.

## Dealing with environmental risk

Managing risks to avoid damage to the environment and human health is key to sound environmental management. Preventing, mitigating and controlling environmental and health damage related to a company's operations is one aspect of this, as covered by the recommendations in the Guidelines' Chapter V, Point 5. Moreover, special challenges arise in situations of scientific uncertainty. Several instruments adopted by national authorities enunciate a "precautionary approach", but except for the Guidelines (Chapter V, Point 4) none of these is explicitly addressed to enterprises. The Guidelines recommend that enterprises act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible damages resulting from their activities.

Many participants at the Roundtable noted that, whereas the question of where to draw the line between government and corporate responsibility is an important cross-cutting issue, it is, particularly pertinent in the context of risk management. As a corporate representative said, few, if any activities are risk-less and so it is unrealistic to expect companies to shun all environmental risks. This is one reason why companies cannot be left alone managing risk; there needs to be a degree of involvement on the part of government and civil society to discuss *inter alia* what constitutes acceptable risk levels.

An NCP observed that national authorities' approach to managing risk differs greatly across countries, so it may be unrealistic to expect businesses to come up with a common approach. What is important, according to this argument, is to find the most efficient approach by adequately balancing government intervention and voluntary approaches within each country. On

the other hand, in all countries companies are in a better position than members of the public to know the risk of their activities so a strong case can be made for undertaking company-driven consultative processes. An NGO representative argued that this particularly applies when MNEs operate in developing countries, where companies may have more resources available to address risks than host country authorities.

### ***Environmental risk management in general***

An NGO representative argued that whilst the OECD Guidelines and other corporate responsibility instruments may have a considerable impact on companies' approach to risk management, other motivating factors could be even more important. Notably, the corporate sector has a direct economic interest in avoiding liability. The concept of liability covers not only legal liability, and the financial liability that sometimes flows there from, but also social liability such as the risk to corporate reputation.

A speaker from the business sector stressed the importance of considering all of the economic impacts of environmental risk management. The economics costs of, say, not pursuing an activity should be weighted against environmental risks. Failure to do so could lead to higher prices that consumers are often not ready to pay, not even for the sake of environmental protection. This point was questioned by a representative of an international organisation, who considered that better risk handling usually goes hand in hand with more efficient management, in which case there may be no burden for consumers to bear.

An NGO representative, acknowledging that corporate behaviour in this area may hinge on consumers' willingness to pay, suggested that outcomes may vary considerably between developed and developing countries. However, argued she, the concept of corporate responsibility itself implies that companies are willing to be proactive in improving environmental performance, and not just rely on consumer behaviour. However, governments could assist progress in this area by educating consumers better and promote sustainable consumption.

A trade union representative mentioned the issue of a company's responsibility to inform not only consumers but also the general public about the risks of their activities and products. For example, many substances and production processes that are considered as dangerous in OECD countries are routinely used in developing countries – a problem that could arguably be overcome through better information. Several speakers from different sectors also emphasised the need for broad-based stakeholder involvement in risk management. While environmental risk is the responsibility of governments and business, the population has a right to be protected and informed. This

also highlights the importance of environmental reporting, which needs to be informative and reliable.

A business representative observed that risk management is often seen as involving a choice between two options, namely prevention or compensation. She argued that in reality there are many more alleys to be explored, including cooperative approaches. An NGO representative agreed with business speakers that enterprises need a certain flexibility in their choice of risk management procedures, but opined that leaving the decisions entirely to business is not a good solution either. Several participants found that the proper role for governments is to establish a framework for risk management within which a degree of flexibility is provided.

### **Precaution**

Precaution, as referred to in the Guidelines, implies that companies do not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise damage. Several speakers observed that the Guidelines' recommendation of precautionary approaches to enterprises is a challenge, since a traditional role sharing has been for regulators to apply precaution, subject to a consultative process with enterprises and members of the public. A business representative noted that there is no internationally accepted precautionary approach, and there are many interpretations of what constitutes acceptable environmental risk – particularly when taken in conjunction with other societal priorities and local conditions. It would therefore seem essential that countries institute and enforce appropriate laws that embody scientific approaches as well as their citizens' risk tolerance.

Speakers from NGOs and trade unions highlighted that it is crucial not only to have a plan to address risks, but also the adequate structure in place to reach continuous improvement. Precaution needs to be incorporated in everyday management. Many companies have put in place systems to address emergency situations, which involve prevention, preparedness and control. Such systems have to involve other stakeholders. A business representative argued that, when companies have an environmental management system in place, as recommended by the Guidelines, they will in most cases have gone a long way in terms of applying precaution.

An NGO representative warned that there is a need to balance the advantages and drawbacks of precaution. Lack of precaution and foresight may lead to a company's liability for the consequences of damages, may affect its reputation and have huge economic impacts. On the other hand, excessive precaution may stifle innovation and lead to lost business opportunities. Finding the right balance is difficult, and decisions are often controversial.

This applies equally to international trade, where exporters from one country can be affected by measures taken out of precaution in another country.

An important issue in the context of precaution is the role of science. The concept of sound science is a relative one, and so is the notion of scientific certainty. Also, there is not just “one science” – different scientific reports on one issue can come to different conclusions. In some cases, even a minority scientific view can justify acting with precaution. An NGO representative said that as scientific research is often financed by industry its findings may be biased. There have been recent, highly publicised cases of research-intensive firms apparently having hidden the results of scientific research which might have had negative implications for themselves. Some participants argued that, if risk management is to involve a broad range of stakeholders then there is a role for governments to ensure that all relevant scientific information is available to the public.

## **Corporate contributions to environmental policy**

The Guidelines recommend that enterprises engage in stakeholder communication and consultation (Chapter V, Point 2). Chapter V, Point 8 of the Guidelines calls upon enterprises to contribute to this process, “for example, by means of partnerships and initiatives that will enhance environmental awareness and protection”. The two issues are in practice interrelated, because partnerships between different stakeholders are an integral part of the policy-making process in many countries. In general, the development of environmentally meaningful and economically efficient public policy hinges upon the successful engagement of a wide segment of the population.

### **Positive business contributions to environmental policy development**

The positive involvement of the business community in the development of environmental policy in many cases is now well recognised and policy makers frequently solicit contributions to help them lay the informational basis for policy development. There was a broad consensus among business representatives at the Roundtable that:

- Business contributions help to develop the most effective environmental policy solutions and at the same time help to ensure that business has full ownership of environmental regulation. On top of this, they often contribute to environmental enhancement in non-OECD countries through their standards, technologies and environmental management.
- Business involvement should be positive and proactive with an objective to raising environmental standards and exceeding existing environmental requirements. In some cases companies have developed codes of conduct that stipulate using the highest standards in any country of operation.

- All business operations are ultimately local and context dependent. There is therefore no “one-size-fits-all” approach to stakeholder involvement, which needs to be developed on a case-by-case basis, taking due account of the specific context, and namely confidentiality and cost considerations.

NGO representatives noted that, while the Guidelines do encourage enterprises to contribute to the development of public policy, the General Policies chapter of the Guidelines sets some boundaries to that engagement. This section of the Guidelines recommends that companies “refrain from seeking or accepting exemptions not contemplated in statutory or regulatory frameworks related to environment, health, safety, labour, taxation, financial incentives, or other issues”. It also says that companies should “abstain from any improper involvement in local political activities”. In other words, one could argue that corporate contributions to environmental policy making is helpful when motivated by genuine environmental concerns, but not necessarily so in the context of lobbying and petitioning for narrow company interests. In this context it was suggested that enterprises could make more frequent formal contributions to the public policy process, rather than acting behind the scene.

An NGO representative argued that, according to the Guidelines, it should not be the objective, or the outcome, of business involvement in policy development to fuel a “race to the bottom” or “regulatory chill”. The example of stabilisation clauses to protect investors from rent seeking by the host country was mentioned as a legal tool that could potentially have such an effect. Another NGO representative argued that some large MNEs negotiate exemptions from environmental regulations in developing countries. Two NCPs responded they are not aware of concrete cases, but that they considered such behaviour as unacceptable – even if, as appears often to be the case, it is the host government itself that offers exemptions as an investment incentive. Business representatives argued that this issue needs to be placed in the greater context of avoiding and condemning public sector corruption, of which companies are commonly the victims rather than the initiators.

A trade union representative noted that civil society has recourse to implementation procedures for the Guidelines if they are aware of companies accepting environmental policy derogations. However, that requires that NGOs work efficiently, and this may not always be the case, especially in developing countries. One NGO representative suggested that a greater effort should go into capacity building among civil society organisations in developing countries.

### **Stakeholder involvement and partnerships**

Business representatives pointed out that companies can most effectively communicate with stakeholders through their actual behaviour and the use of best practices on the road to sustainable development. The reporting of enterprise performance is therefore a key tool in communicating with various stakeholders and making contributions to the policy process. Many companies produce plant-level as well as overall sustainability reports that allow them to address policy issues at both the local and the overall levels, sometimes in partnership with other relevant stakeholders.

Due to their multinational structure, MNEs are in a unique position to transcend geographical boundaries. With regards to corporate contributions to policymaking, this could be particularly relevant when multilateral agreements between States are being discussed. As examples of active business contributions in this area a participant mentioned the Montreal Protocol on Ozone Depleting Substances and the mechanisms established under the Climate Change Convention and the Kyoto Protocol.

The usefulness of partnerships with the purpose of providing business inputs into the public policy process is mentioned in the Guidelines. Voluntary approaches involving private-private or public-private partnerships were mentioned as a useful means to establish dialogue, but a business representative said that the problem of “free-riders” (companies benefiting from these processes without being willing to contribute to them) is a major obstacle to their implementation. A business sector representative stressed the importance of voluntary covenants, such as “Responsible Care” in the chemicals sector, as a way for enterprises to interact with the public and establish performance benchmarks for themselves.

Some participants pointed to a need to be particularly careful when picking partners for stakeholder involvement. Intergenerational issues are a central consideration on the sustainable development agenda, and if enterprises interact with stakeholder groups that have only existing players’ interests at heart, this dimension could be lost.

### **Specific instances with an environmental content**

Most of the specific instances brought before the NCPs so far have focused on labour, social and human rights concerns. An NGO representative informed that there has been an environmental component to about 10 of the specific instances brought by NGOs in recent years. Most of these instances have not yet been brought to a conclusion. Others have been concluded without reference to the environmental *enjeu* of the specific instance<sup>3</sup>.

An NCP reported on a specific instance which was brought before it in 2002 by two NGOs. The specific instance regarded, among other things, a

multinational enterprise's aquaculture activities on its national territory. The NCP first undertook information gathering drawing on the enterprise in question, the NCP's own resources and the relevant government agencies; next organised a roundtable involving NGOs, the enterprise and state agencies.

The NGO contention had been that the enterprise had not implemented the Environment Chapter, Point 5 of the Guidelines, by failing to apply a precautionary approach. The concrete grounds for the complaint were the contamination of the water around the aquaculture with algae, some of which are toxic. In addition, the NGOs asserted that the company, while complying with national regulations, had not carried out an "adequate" environmental impact assessment. The enterprise argued, based on reports by various agencies, that the algae bloom was due to several causes; that it had undertaken monitoring of water and seabed to take precautionary action; and that the algae bloom occurred already prior to its investment in the area.

The NCP observed that its government is constitutionally required to safeguard the environment, that national law establishes requirements to environmental impact assessments and that specific environmental regulation of aquaculture is in place. The NCP considered technical reports on the environmental damage in the area of the company's investment. It concluded that pollution levels did not exceed the limits sanctioned by national law and environmental regulation. The case is still pending due to the fact that a new piece of legislation was enacted in December 2003 which tightens environmental requirements in the aquaculture sector. The recommendation of the NCP was to await the implementation of this law, commission a second report from the national fisheries services and organise a new round of consultations.

A business representative commented that voluntary standards do not exist in a vacuum; they are built on a foundation of laws and enforcement. They are preconditioned by the implementation of environmental rules and standards set by national governments. A NGO representative observed that compliance with national law is the minimum that MNEs need to achieve, but that the Guidelines are about accepted international standards. If companies strive toward high environmental standards, as many of them claim to do, then there is a wealth of benchmarks other than mere compliance against which one can measure corporate performance. The NCP responded that, regardless of the level of aspiration, there is a need to establish upfront whether there is compliance with national law. In its experience, the involvement of a large number of state agencies may make this process more complicated. Another NCP observed that additional problems arise when specific instances are brought forward related to operations in countries not

adhering to the Guidelines, which have, in some cases, national legislation that falls short of the Guidelines.

A NGO representative mentioned that specific instances mostly regard situations that have already deteriorated, and considered that it might be better if NCPs assumed a more proactive and preventive role. Also, in cases involving the operations of companies in developing countries there is often a resource problem or an information gap between NCPs and the foreign-invested enterprise. For specific instances to work, there could be a need for NCPs to go “on the ground” in developing countries.

## Notes

1. Documentation used at the Roundtable included an issues paper, a fact finding study of the environmental practices of the enterprises listed on the FTSE All-World Developed stock index, and a Background Report surveying tools and environmental practices available to enterprises wishing to implement the OECD Guidelines.
2. The Chatham House rule states that “participants are free to use the information received, but neither the identity nor the affiliation of the speakers, nor that of any other participant, may be revealed.”
3. This was the case with a specific instance involving, among other things, the environmental consequences of a European company’s operations in a West African country. The specific instance ended on the issue of customer-client relationships, without proceedings being issued about the main environmental contents of the case.



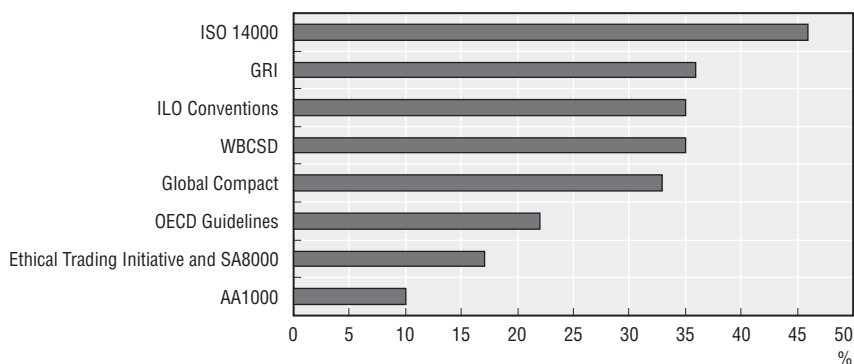
## **An Overview of Corporate Environmental Management Practices\***

\* This analysis was prepared by Hans Christiansen, Investment Division, Directorate for Financial and Enterprise Affairs, in co-operation with EIRIS, Ltd. Special thanks are due to Esther Garcia, previously of EIRIS's Research Department.

## 1. Introduction

A recent study indicated that the OECD Guidelines for Multinational Enterprises have a considerable impact on the actions of multinational enterprises (MNEs)<sup>1</sup>. Respondents in 107 large international enterprises were asked to identify, without prompting, which standards, coalitions or forums were proving to be the most influential on practice at their companies. 22 per cent pointed to the OECD Guidelines as having been “influential” (Figure 1). Also relevant to the present report, the same study indicated that among all the elements of corporate responsibility environmental management generally receive the greatest amount of attention among enterprises, in terms of both resource allocation and top-management attention.

Figure 1. **Impact of multi-sector standards and forums on multinational enterprises**



Source: PELC and Ethical Corporation (2003).

The values represented by the OECD Guidelines are shared beyond the enterprises that report that the Guidelines *per se* have been influential. While few companies will be “accidental users” of management tools such as the ISO 14000 series and AA1000, large segments of the business sector have undertaken efforts at environmental improvement and put in place management practices that are consistent with the Environment Chapter of the Guidelines.

The purpose of the present study is to provide an overview of the extent to which companies around the globe have adopted some of the

environmental practices that are enumerated in the background report for the 2004 Roundtable on Corporate Responsibility (henceforth the “Background Report”). It provides internationally comparable information on the development and adoption of advanced environmental management practices. In doing so it draws on an earlier study, “Corporate Environmental Management Practices in European, Japanese and non-member Asian Firms” that appeared in OECD (2001), *Corporate Responsibility – Private Initiatives and Public Goals*. In many respects it represents an updating and broadening of the analysis of this publication. In particular, it examines the environmental management practices of companies in Europe, North America and the Asia-Pacific region.

The structure reflects a simplified adaptation of the main elements of environmental management procedures proposed in the Background Report, in the sense that environmental management techniques are assumed to develop in three steps. The first step is the issuance of an environmental policy statement. At more advanced levels of environmental practices, companies put in place formal management systems to control the environmental impacts of their operations. Finally, a commitment to environmental performance reporting is integrated into most companies’ environmental management systems, but it is in practice often one of the last elements to be put into place. Sections III through V reflect these three steps, and deal with the issues of environmental policy statements, management systems and reporting in succession. It must, however, be recognised that this model of implementation is not universally supported. For example, some companies (notably in the United States) prefer to integrate environmental policy on a more encompassing corporate basis.

Section VI briefly addresses the question of occupational health and safety systems, which as mentioned earlier, appear as part of a broader societal health and safety commitment in parts of the Environment Chapter of the Guidelines (it also figures in the Employment and Labour section).

## 2. Data and methodology

This section reports on the environmental management practices of the 1509 enterprises listed in FTSE All-World Developed index as of 10 September 2003. The data was compiled by the non-profit organisation Ethical Investment Research Services Ltd. (EIRIS). Based in the United Kingdom, EIRIS provides company information on social, environmental and ethical issues to the socially responsible investment community<sup>2</sup> (e.g. specialised mutual funds, pension funds, etc.) EIRIS’ database was updated over the summer 2003 and represents the state of affairs in September 2003.

The three major economic regions of the world have broadly equal representation in the index. However, there is necessarily a certain country bias within the three regions. The United Kingdom is for instance the country with the biggest presence in Europe (118 companies out of 498). This is even more significant in the cases of Japan (320 companies out of a total of 493 in Asia-Pacific) and the United States (437 companies out of 518 in North America). Moreover, since “large” enterprises in some areas are larger than in others, the equal balancing of the sample among the main regions actually implies that the average company size varies significantly from one region to the next. On top of this, the focus on the large FTSE-listed companies necessarily discards taking into account the environmental practices of small and medium-sized enterprises. As a whole, the data set therefore provides a good snapshot of “large internationally-oriented” enterprises, but it cannot claim to be representative of the respective national business communities.

The country attribution of companies (many of which are listed on multiple exchanges) is done on the basis of “primary listing” so that each enterprise is counted as having only one nationality. The remainder of the article makes extensive use of EIRIS’ categorisation of companies according to their environmental impact. Industry sectors have been classified in “high environmental impact”, “medium environmental impact” and “low environmental impact” sectors. A documentation of these categories is found in the Annex. A sectoral and national breakdown of the companies in the samples can be found in Table 1.

The database contains information on environment management systems that is found in company annual reports, environment reports, websites and other materials made publicly available by companies. The EIRIS database also draws on other public information sources such as the EMAS register. It must therefore be recognised that it is possible that some indicators exist for a particular company, but the company does not publish and it is not available from other public sources. In that case the database does not include it. For more detail, see EIRIS (1999), *Corporate Environmental Policy, Management and Reporting*.

Finally, a few further methodological caveats need to be highlighted. First, the study makes extensive use of geographic breakdowns by main areas. Insofar as, for cultural and historic reasons, corporate governance practices have tended to converge within these regions this makes good sense. In practice, no region is truly homogenous (notably not Asia-Pacific) and one should be careful not to infer general regional corporate environmental practices. Second, and related to a point made in the previous section, the presence or absence of environmental “tools” such as environmental policy statements, management systems and reporting mechanisms may serve as a useful indicator of companies’ efforts at improving their environmental

Table 1. **Companies in FTSE All-World Developed Index, by nationality and sector**

	High environmental impact	Medium environmental impact	Low environmental impact	Total
<b>Europe</b>	<b>224</b>	<b>196</b>	<b>78</b>	<b>498</b>
Austria	13	7	2	22
Belgium	8	6	3	17
Denmark	8	10	2	20
Finland	4	2	2	8
France	22	16	7	45
Germany	21	12	3	36
Greece	31	22	15	68
Italy	9	23	5	37
Ireland	3	6	0	9
Luxembourg	0	0	1	1
Netherlands	8	8	2	18
Norway	9	7	4	20
Portugal	5	3	2	10
Spain	12	6	3	21
Sweden	9	13	6	28
Switzerland	11	7	2	20
UK	51	48	19	118
<b>Asia-Pacific</b>	<b>223</b>	<b>217</b>	<b>53</b>	<b>493</b>
Australia	31	22	8	61
Japan	156	132	32	320
New Zealand	8	11	3	22
Hong Kong (China)	17	30	5	52
Singapore	11	22	5	38
<b>North America</b>	<b>183</b>	<b>231</b>	<b>104</b>	<b>518</b>
Canada	39	32	10	81
United States	144	199	94	437
<b>Total</b>	<b>630</b>	<b>644</b>	<b>235</b>	<b>1 509</b>

Source: OECD Investment Division/EIRIS.

performance. However, given the possibility of alternative corporate approaches, it is not possible to infer from these tools' absence that little or no effort is being undertaken. Third, while there is no reason to assume that companies are reporting false information about their environmental practices, it is risky to draw conclusion about the "greenness" of a company on the basis of the extent of its reporting and the sophistication of its environmental management tools alone.

### 3. Environmental policy statements

As mentioned in an earlier chapter an environmental policy statement (EPS) is a statement by an organisation of its intentions and principles in relation to its overall environmental performance. The statement provides a framework for action and for setting of the organisation's environmental objectives and targets.<sup>3</sup> A high, and apparently increasing, share of companies in the industrialised economies publishes environmental policy statements. By September 2003 58 per cent of all companies in the sample had issued statements that meet certain "minimum requirements" – according to EIRIS' definitions. The "minimum requirements" imply either a commitment to public reporting, a commitment to monitoring or audits, a commitment to use targets, a reference to allocation of managerial responsibility or a reference to all EIRIS' "key issues". The latter will vary depending on the industry sector the company belongs to and may include: suppliers, contractors, resources and materials, energy use and efficiency, emissions to water, emissions to air, transport, waste minimisation/reduction/disposal and recycling, packaging, product and/or stewardship/design, social impact, noise, neighbourly concerns, visual blight, employee training, green housekeeping, sustainability and industry specific issues.

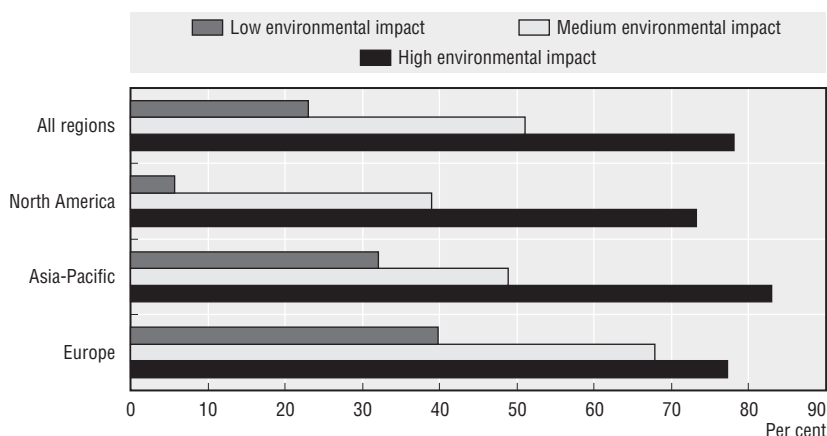
Among the three main regions in the index, businesses in Europe appear more likely to issue environmental policy statements than those in other regions. 69 per cent of the European companies in the sample have published statements, compared with 62 per cent in the Asia-Pacific region and 44 per cent in North America. At the national level, the United Kingdom had the highest share of all (92 per cent), followed by Germany (91 per cent), Switzerland (85 per cent) and Netherlands (83 per cent). Within the Asia-Pacific region, 77 per cent of all Japanese companies issued environmental policy statements. Australia and New Zealand have comparable shares (although fewer of these score well according to the EIRIS assessment methodology). This contrasts with shares beneath 20 per cent in Hong Kong (China) and Singapore. This is in part due to the nature of their economies, with fewer primary industries and a higher concentration of low impact activities such as finance, IT, property investment. It has also been attributed by some observers to a relatively low level of pressure from civil society organisations, investors and customers in these regions.

These observations need to be assessed against the background of considerable sectoral differences in corporate issuance of environmental policy statements. First and foremost, the publishing of statements involves costs. It absorbs management time and entails direct expenses for design, publication and dissemination. It is therefore reasonable to expect that enterprises for which the environment is a major strategic or risk

management issue will be more likely to assume such expenses. One group of companies in this category are those that operate in the high environmental impact sectors. Another one includes enterprises that operate in a social or political context (including pressure from governments and civil society) that makes them particularly keen to be seen to undertake efforts to this effect. Another issue relates to national differences in legal environments that may make companies more or less willing to volunteer standards of behaviour against which third parties can assess their actions.

When looking at the high environmental impact sectors alone it does appear that there are hardly any geographic differences (Figure 2). 78 per cent of all companies in these sectors publish policy statements, and none of three major regions is far from this average. Asia-Pacific has 83 per cent of the area's companies publishing environmental policy statements, followed by Europe (77 per cent) and North America (73 per cent). The countries with the highest national shares are the United Kingdom and Finland where 100 per cent of the enterprises in high environmental impact sectors publish policy statements, but several other countries (*e.g.* Australia and Japan, both at 94 per cent) also record very high rates.

Figure 2. **Share of enterprises that publish environmental policy statements**



Source: OECD/EIRIS.

It is also noticeable that medium impact companies in Europe have much higher rates than companies in Asia-Pacific and North America. This is thought to be due to the increasing pressure that such companies operating within the EU are facing. Frequently quoted examples include the Waste Electronic and Electrical Equipment (WEEE) Directive for the electronics/electrical equipment sector and public expectations that companies in the

financial sector take into account voluntary initiatives such as the UNEP Finance Initiative or The Equator principles.

The propensity for companies in the low environmental impact sectors to issue environmental policy statements differs sharply. 40 per cent of the European companies in the sample have published statements. By contrast, only 6 per cent of the North American enterprises in these sectors have chosen to do this.

### 3.1. The content of environmental policy statements

Perhaps a more important question than whether a company has an environmental policy statement is the content of that statement. The EIRIS database allows identifying the main elements of an environmental policy statement. Hence, it is possible to identify whether the policy statement makes specific reference commitment to comply with the law; commitment to exceed legal requirements; or commitment to best practice, among other elements (Table 2). It may at first glance seem tautological to include compliance with the law in environmental policy statements, since the whole concept of corporate responsibility would make little sense in the absence of a willingness to comply with legal obligations. However, by including legal compliance explicitly in the policy statement those individuals who are responsible for the implementation of the statement also become personally associated with the company's legal obligations in this respect.

Table 2. **Contents of environmental policy statements, all sectors**  
Percentage share of those enterprises that publish EPS

	Nature of commitment		
	Comply with relevant laws	Exceed legal requirements	Adhere to best practices
<b>Europe</b>	<b>92</b>	<b>37</b>	<b>12</b>
<i>of which:</i>			
France	86	34	11
Germany	91	45	27
United Kingdom	100	43	6
<b>Asia-Pacific</b>	<b>97</b>	<b>74</b>	<b>19</b>
<i>of which:</i>			
Japan	98	83	21
Australia	98	38	5
<b>North America</b>	<b>94</b>	<b>47</b>	<b>4</b>
<i>of which:</i>			
United States	94	52	2
Canada	93	28	13
<b>Total</b>	<b>95</b>	<b>53</b>	<b>12</b>

Source: OECD Investment Division/EIRIS.



Table 2 indicates that environmental policy statements almost invariably include a commitment to comply with the law (95 per cent of all companies), and that there are very limited geographic differences in this respect – although this does not take into account the difference between best practices and minimal legal requirements across the regions. The share of companies that announce their commitment to adhere to best practices in the Asian-Pacific region (19 per cent) is higher than in Europe (12 per cent) and North America (4 per cent).

An interesting, but also potentially confusing, indicator regards companies' commitments to operate on higher standards than legally required. It appears that companies in the Asia-Pacific region generally opt for a higher level of ambition than is the case in other areas. 74 per cent of Asia-Pacific companies mention the exceeding of legal requirements in their policy statements, compared with 47 per cent in North America and 37 per cent in Europe. However, this indicator can provide only part of a larger story. A commitment to operate above required standards does indicate an environmental effort on the part of individual companies, but comparisons between countries are clouded by different legal requirements across jurisdictions. Companies domiciled in countries with particularly high legal requirements have limited incentives to volunteer to exceed these, whereas internationally active companies domiciled in countries with relatively low legal standards will find it easier, and in some cases feel under a certain pressure, to operate above requirements.

Detailed national and sectoral data show that the “levels of ambition” of policy statements vary little across environmental impact sectors. Within individual countries, the shares of high, medium and low impact companies that aspire to exceeding legal requirements and implement best practices are broadly the same. Conversely, even within geographic regions there are important national differences. For instance, regarding the exceeding of legal requirements Japanese companies' policy statements are in a class of their own, with 83 per cent of the issued statements committed to doing this. Other countries with a high share in this regard (above 50 per cent) are the United States and Italy.

Another important indicator is the number of enterprises that allocate the responsibility for their environmental policy statements to the board level, and hence are perceived to attach a high level of managerial interest to them. According to the available figures there is a strong tendency for companies to allocate the responsibility for statements to board members (89 per cent of the companies that have policy statements do so). The Asia-Pacific region comes out at the top with almost 95 per cent of the companies allocating responsibility to their boards, whereas a comparatively lower, but still significant, share of 83 per cent of European companies does this.

Companies also differ with respect to the intra-firm coverage of their environmental policy statements, notably whether the statement covers the entire business group. This is a particularly pertinent question where multinational conglomerates are concerned, as the issue of corporate responsibility can become controversial if applied differently according to nationality of operations. EIRIS' database does not allow for an analysis of the trans-nationality issue. However, the overall figures show that where a company has issued a policy statement, as a general rule, the whole group is covered. In 2003 this was the case for 88 per cent of the companies with policy statements. However, there are certain geographic differences. In North America virtually all of the relevant companies (98 per cent) extended their policy statements to the entire group. In the Europe 88 per cent and in the Asia-Pacific region 78 per cent of the surveyed enterprises did this.

### **3.2. Additional voluntary approaches**

Finally, a large number of companies have signed up to voluntary environmental initiatives. In most enterprises the choice to subscribe to a shared code of conduct coincides with publishing environmental policy statements of their own, but this does not necessarily have to be the case. The explicit endorsement of a given code of conduct can be done *en lieu* of formulating a tailored company policy, or it can serve as a supplement to such a policy. Table 3 illustrates the participation by companies in either of four such voluntary initiatives, namely the International Chamber of Commerce's (ICC) *Business Charter for Sustainable Development*, the Coalition for Environmentally Responsible Economies' (CERES) *Corporate Environmental Reporting Requirements*, UNEP's *Finance Initiative* and the chemical industry's *Responsible Care*.

A similar trend is observed as in the case of environmental policy statements. First, there is a relatively strong tendency for high environmental impact sectors to adopt voluntary environmental initiatives. As for the low environmental impact sectors their involvement with such initiatives is very low, which seems to indicate that they see little need to make announcements over and beyond a normal policy statement. Second, the tendency for North American companies to be less active than European ones is visible in Table 3 as well, although not more so than in the case of environmental policy statements.

As regards the individual initiatives, the acceptance of Responsible Care, which targets the chemical industry, is unsurprisingly limited to the high environmental impact sectors. UNEP's Finance initiative, on the other hand, focuses largely on banks and insurance companies, which are categorised as being of medium environmental impact. Signatories to the remaining two

Table 3. **Signatories to voluntary initiatives**<sup>1</sup>  
Percentage share of group total

	Impact sector			Total
	High environmental impact	Medium environmental impact	Low environmental impact	
<b>Europe</b>	<b>39</b>	<b>33</b>	<b>5</b>	<b>31</b>
<i>of which:</i>				
France	32	44	14	33
Germany	86	67	33	75
United Kingdom	43	27	0	30
<b>Asia-Pacific</b>	<b>23</b>	<b>11</b>	<b>13</b>	<b>17</b>
<i>of which:</i>				
Japan	31	15	16	23
Australia	10	9	25	11
<b>North America</b>	<b>24</b>	<b>9</b>	<b>0</b>	<b>13</b>
<i>of which:</i>				
United States	26	8	0	12
Canada	15	19	0	15
<b>Total</b>	<b>29</b>	<b>17</b>	<b>5</b>	<b>20</b>

1. Includes UNEP FI, Responsible Care, ICC and Ceres.

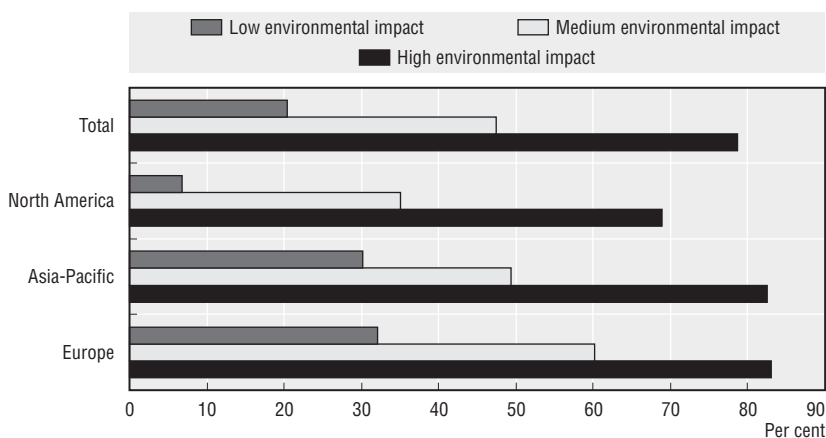
Source: OECD Investment Division/EIRIS.

standards, which do in principle apply equally to all categories of companies, are largely found in the high impact sectors.

#### 4. Environmental management systems

The implementation of environmental management systems follows largely the same sectoral and national patterns as the issuance of environmental policy statements. Businesses in Europe appear somewhat more likely to implement management systems than is the case in North America and the Asia-Pacific region. In September 2003, 66 per cent of all European companies listed on the FTSE All-World Developed index had implemented EMSs, compared with 62 per cent in Asia-Pacific and 41 per cent in North America. The individual countries with the highest share of environmental management systems in place are United Kingdom and Germany (both with 86 per cent), followed by France (82 per cent). The lowest rates of implementation within the sample are found in Singapore (18 per cent), Hong Kong (China) (19 per cent) and Greece (23 per cent).

As was also the case with environmental policy statements, the geographic differences diminish when looking only at companies in the high environmental impact sectors (Figure 3). Within these sectors, the share of enterprises with EMSs in Europe and Asia-Pacific is identical (83 per cent), and

Figure 3. **Share of enterprises that have implemented EMS**

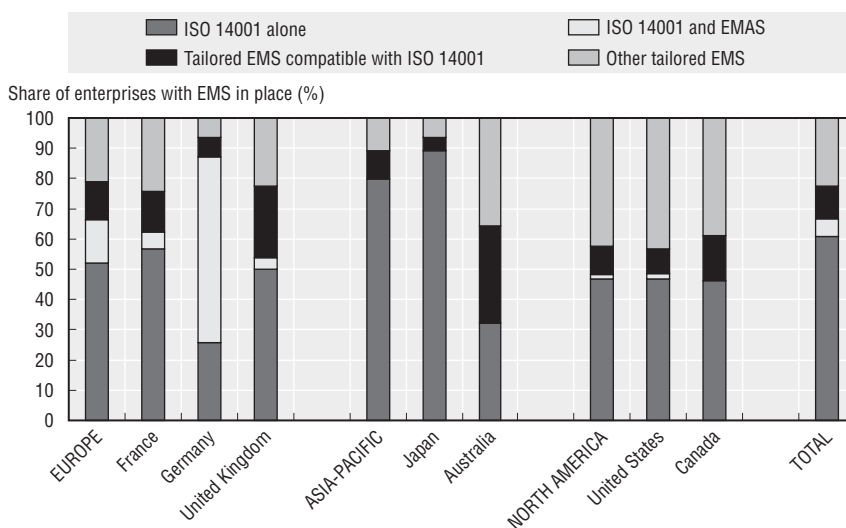
Source: OECD Investment Division/EIRIS.

the share in North America is moderately lower (69 per cent). In three European countries, namely United Kingdom, Germany and Finland, all companies in the high impact sectors have implemented environmental management systems.

#### 4.1. *Types of environmental management systems*

As also mentioned in the Background Report, some enterprises opt for self-designed EMSs that are tailored to the individual company requirements and problems. Others use or adapt environment management standards. The advantages of tailor-made management systems on the one hand and standardised systems on the other have been discussed in relation with other areas of management, and there appear to be similar discrepancies with regards to EMSs. Standards may enhance the credibility of enterprises' environmental measures if the management standards are widely accepted, and standardised systems provide quick and relatively inexpensive access to advanced management techniques. On the other hand, a potential drawback of standardised systems is that they may not be entirely suited to individual company needs.

Among the companies that have EMSs in place, two thirds have either an ISO 14001 certification of their system (either covering the whole company or part of it) or have implemented the ISO standard as part of an EMAS certification (Figure 4). The remainder of the EMSs are tailored to individual enterprises. Some of these, while not ISO 14001 certified, could, in the estimation of EIRIS, have been so had the company wished it. The criteria on which this assessment is based is whether all the "key elements" of ISO

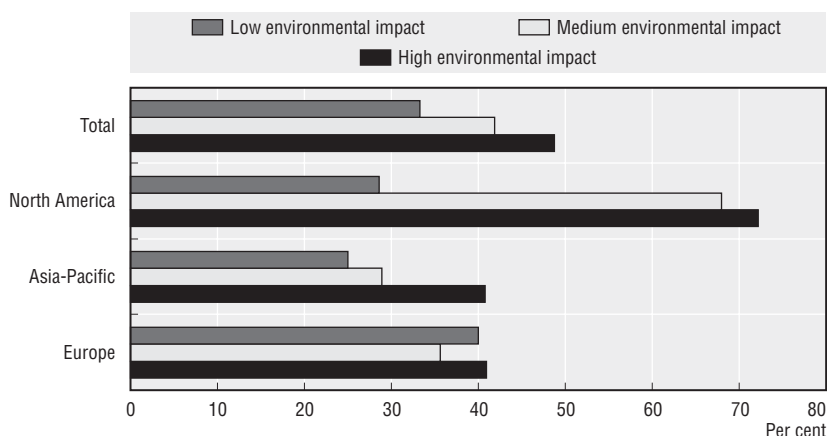
Figure 4. **Main types of Environment Management Statements**

Source: OECD Investment Division/EIRIS.

14001 are met by the non-certified company, i.e. evidence of environmental review, objectives and targets, auditing system, procedures in place and management review. Results show that 11 per cent of EMSs are non-ISO certified EMSs systems that appear to be “ISO compatible” and 23 per cent are tailored systems that do not meet the ISO 14001 criteria.

Again, the geographic differences are considerable. Asia-Pacific has by far the highest share of EMSs with ISO 14001 certification (80 per cent of all companies), and Japan (89 per cent) has the highest share of any individual country. Perhaps unsurprisingly, the EMAS scheme is predominantly subscribed to by European enterprises, 14 per cent of which have implemented this system. By far the largest acceptance of EMAS is found in Germany where 61 per cent of the companies have put the scheme in place. In Austria and Belgium (second and third rank) the share is around one third. The few North American companies that have adopted EMAS are apparently multinationals with a large corporate presence in Europe. Finally, North American companies stand out both by having an internationally high share of tailored EMSs (52 per cent).

The degree of coverage of environmental management systems varies from company to company. In North America there is a tendency for those companies that adopt EMSs to implement them across their business group, especially in the high and medium environmental impact sectors (Figure 5). In Europe and the Asia-Pacific region only around one third of the companies

Figure 5. **Share of enterprises where EMS covers whole group**

Source: OECD Investment Division/EIRIS.

with EMSs applied them throughout. Conversely, the share of companies that have implemented EMSs is only a comparatively limited part (less than a third) of their business group is 32 per cent in Europe, 23 per cent in the Asia-Pacific region and 10 per cent in North America. However, these figures must be interpreted with some caution. While the coverage of ISO 14001 and EMAS is well documented owing to the need for certification, the coverage of tailored EMSs is necessarily based on a degree of judgement. Moreover, as assessments rely on public available information, uncertainties are compounded where corporate reporting is not particularly comprehensive.

## 4.2. Environmental auditing

Various tools have been developed to assist companies in implementing their EMSs, including Environmental Impact Assessment, Environmental Accounting and Auditing and Life Cycle Assessment. These tools may be employed for assessing and monitoring environmental impacts (impact assessment is mandatory in many countries), setting a course of action and providing means of communication. For instance, auditing is an important tool for assuring company managers of the accuracy of information and at the same time contributing to the external credibility of companies' environmental commitment.

As mentioned earlier, to obtain ISO 14001 certification of its EMS, a company needs to undertake a degree of internal monitoring and auditing, but not all companies have certified EMSs and not all of those that do extend this commitment to the level of full-blown environmental audits. According to EIRIS' database, 72 per cent of those enterprises that had EMSs in place in 2003

undertake environmental auditing. The tendency to do so is lowest among European companies (58 per cent) and highest in the Asia-Pacific region (84 per cent). The higher incidence in Asia-Pacific (above all Japan) than in Europe is thought to be partly linked with the fact that the Japanese business sector has a high share of high and medium impact sectors where environmental auditing appears more relevant.

Companies that have committed themselves to a high standard of environmental management often want to guard themselves against being tainted by possible shortfalls in the environmental performance of their suppliers and contractors. Supply chain auditing has therefore emerged, providing corporate buyers with comprehensive environmental information on the products, components or materials they produce. Supply chain auditing can transmit pressure and an impetus to change among small and medium-sized companies.<sup>4</sup>

A relatively limited 14 per cent of the companies that have implemented EMSs engage in environmental supply chain audits. However, the national differences are very large. No less than 31 per cent of the North American enterprises (38 per cent in the case of the United States) undertake supply chain audits, compared with 16 per cent in Europe and 1 per cent in the Asia-Pacific region. This could reflect the relative importance of issues in certain countries, i.e. social issues and supply chain issues have gained wide acceptance in the United States. In Japan, corporate social responsibility is mainly centred on environmental issues rather than social issues.<sup>5</sup>

The sectoral patterns are also interesting. Contrary to almost any other indicator of corporate environmental efforts, the share of enterprises that engage in environmental audits is actually lower in the high environmental impact sectors than elsewhere (high impact: 11 per cent; medium impact: 20 per cent; low impact: 15 per cent). Companies operating within the high environmental impact sectors, on the other hand, tend to devote their resources instead to their own intra-firm environmental performance.

### **4.3. The broader context of Environment Management Statements**

Supplementary evidence of the use of EMS by companies was provided by a recent OECD study, surveying a total of 4,176 enterprises in Canada, France, Germany, Hungary, Japan, Norway and the United States.<sup>6</sup> The survey covers more ground than FTSE All-World Developed index in the sense that a large number of small and medium-sized enterprises are included. At the same time it is biased relative to the data used in all other sections of the present part of the report, owing both to the limited number of countries and national differences in company response rates (varying from 9 to 35 per cent).

The survey sheds light on, among other things, the degree to which companies integrate their environmental management systems with other corporate governance and management tools. Respondents were requested to indicate the extent to which they had introduced different “advanced management practices” (i.e. full-cost accounting, total quality management, etc.), and to rate the extent to which these were integrated with environmental management on a scale from 1 to 3 (see Table 4). This will allow for an assessment of the “value added” provided by environmental management relative to other management practices (i.e. does environmental accounting contribute to improved environmental performance in different areas beyond the contribution arising from the application of full-cost accounting?) It appears that a high share of respondents have integrated their EMS with quality management and, which is important in the context of the Environment Chapter of the OECD Guidelines, with health and safety management systems. It should also be noted that full-cost (or activity-based) accounting is both the least prevalent and least integrated.

**Table 4. Relationship between Environmental Management and General Management**

	Share of respondents using such tools	Degree of Integration (Scale from 1 (not integrated) to 3 (fully integrated))
Quality Management System	75%	2.15
Health and Safety Management	60%	2.14
Full-Cost Accounting	39%	1.51
Management Accounting	56%	1.62
Process/Job Control System	48%	1.67
Inventory/Materials Requirement Planning	54%	1.69

Source: OECD Environment Directorate.

Table 5 provides some information on the relative importance of some of the relationships between environmental management systems and the characteristics of the facility and its market. For ease of understanding, many of the “independent” variables have been reclassified into discrete variables with two classes, and Chi-square tests undertaken to determine whether the different factors are associated with statistically significant differences in the mean of facilities with EMS’s in place. (Caution is, however, called for in interpreting the results: the relationship among several of the factors in Table 5 is complex, and bivariate analysis can provide only a part of the picture.)

It does appear that there is a statistically significant relationship between facility size (positive), whether the facility is part of a multi-facility firm



(positive), profitability (positive), whether the firm primarily sells to final consumers (negative), whether the market is international (positive), whether the head office is overseas (positive), the presence of a quality management system (positive) and whether regulatory incentives were provided to introduce an EMS (positive). However, the self-reported change in sales does not have a statistically significant influence.

**Table 5. Relationship between environmental management systems and selected facility characteristics**

		% with EMS	Pr (X2)
Size	< 250 employees	24.58	
	> 250 employees	55.47	0.000
Multi-facility	No	27.61	
	Yes	38.82	0.000
Change in Sales	Negative	33.75	
	Positive (or flat)	32.43	0.449
Profitability	Negative	26.34	
	Positive (or even)	34.52	0.000
Primary Customers	Final consumers	24.93	
	Other	34.09	0.001
Market Scope	Local/National	27.39	
	Regional/Global	39.31	0.000
Head Office	Domestic	30.70	
	Foreign	51.35	0.000
Quality Mgmt System	No	13.57	
	Yes	40.42	0.000
Government Incentives	No	28.75	
	Yes	50.12	0.000

Source: OECD Environment Directorate.

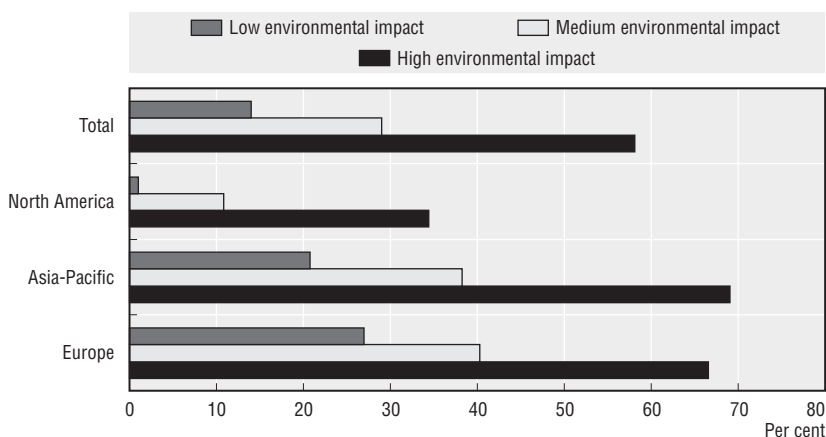
## 5. Environmental performance reporting

An increasing number of enterprises publish information on the environmental impact of their activities. However, in the absence of internationally agreed reporting standards, the content of such reports ranges from rudimentary pieces of information to full-scale sustainable development reporting.<sup>7</sup> For the purposes of this study, environmental reporting refers to the practice of making information on environmental performance available to the public, whether in a stand-alone environmental report or included in the company's annual report.

A study undertaken by OECD in 2001 concluded that the area of environmental performance reporting is “the least common of the three environmental practices considered”.<sup>8</sup> This is still the case, albeit apparently

to a lesser degree. In 2003, 39 per cent of the companies listed in FTSE All-World Developed Index engaged in environmental performance reporting. Broadly the same share (around 50 per cent) of the companies in Europe and Asia-Pacific undertook performance reporting, whereas in North America a more limited 17 per cent of the enterprises did so. As is the case with most other indicators of corporate environmental performance, the take-up rates are much higher in the high environmental impact sectors than elsewhere (Figure 6). Around two thirds of the companies operating in high impact sectors in both Europe and Asia-Pacific undertake environmental performance reporting. In North America one third of the enterprises in this sector do this.

**Figure 6. Share of enterprises that undertake environmental performance reporting**



Source: OECD Investment Division/EIRIS.

In respect of environmental performance reporting individual countries differ significantly more than is the case with the two other classes of indicators analysed above. The countries in which performance reporting by enterprises is the most pervasive are Germany (86 per cent), United Kingdom (71 per cent) and Japan (69 per cent). Moreover, in three countries every single high environmental impact company undertakes environmental performance reporting, namely Germany, Finland and Norway. In Ireland and Greece no company within EIRIS' sample issues performance reports and in Singapore only 3 per cent (that is, one company) does so.

### **5.1. The contents of environmental performance reports**

There are few widely accepted standards to help enterprises decide which information should be included in their environmental performance

reports. In the absence of an agreed standard for environmental reporting, enterprises make their own choices as regards the scope and depth of their reporting. Four indicators of differences between the contents and scope of existing environmental performance reports are presented in Table 4: the publishing of quantitative data; whether performance is compared with targets, whether the report is verified by a third party; and whether the report includes environmental cost accounting.

If an enterprise's environmental performance report is to be comparable with those of other companies (and with the enterprise's own past) it is essential that quantitative information be made not only public but also that data is presented in a comparable way, i.e. reporting on same indicators, same units and presenting accurate data. The vast majority of the companies that issue performance reports do include at least some such data (91 per cent of total).<sup>9</sup> In North America and the Asia-Pacific region this is the case for around 95 per cent of the enterprises, whereby European companies are a bit less likely to do so (85 per cent). The high environmental impact sectors in almost all countries are more likely to publish quantitative information – which is perhaps unsurprising insofar as they are the biggest corporate producers of pollutants and hence have more to report about. 93 per cent of the high-impact companies issue quantitative information, compared with 81 per cent of the enterprises in low environmental impact sectors.

Many companies include in their environmental performance reports the kind of information that makes it easier for stakeholders, authorities and members of civil society to monitor their progress toward implementing higher environmental standards. One example is the practice of publishing performance targets alongside with quantitative information and undertaking a comparison of actual data with past targets. Table 6 indicates that 67 per cent of enterprises' performance reports include a comparison of performance and targets. The Asia-Pacific region stands out in this respect with 86 per cent of companies engaging in this practice. In Europe and North America, the share is closer to 50 per cent.

Third-party independent verification is used by a number of enterprises as a way of underpinning the credibility of environmental performance reports. Verification also provides the top management of the organisation with a level of comfort that its reporting system is adequate. Verification is generally conducted by qualified external parties that are independent from the data collection and report production process. Overall, 34 per cent of the companies issuing performance reports rely on third-party verification of those reports' contents (Table 6). Doing so is significantly more widespread in Europe (46 per cent) than in the Asia-Pacific region (29 per cent) and North America (11 per cent). In one nation this practice is far more common than

**Table 6. Nature of companies' environmental performance reports**  
(percentage share of companies that issue environmental performance reports)

	Publish quantitative data	Compare performance with targets	Rely on third-party verification	Environmental cost accounting
<b>Europe</b>	<b>85</b>	<b>56</b>	<b>46</b>	<b>43</b>
<i>of which:</i>				
France	92	44	36	32
Germany	94	71	29	48
United Kingdom	89	73	44	35
<b>Asia-Pacific</b>	<b>97</b>	<b>86</b>	<b>29</b>	<b>30</b>
<i>of which:</i>				
Japan	100	90	29	29
Australia	85	85	46	85
<b>North America</b>	<b>94</b>	<b>45</b>	<b>11</b>	<b>21</b>
<i>of which:</i>				
United States	93	38	10	10
Canada	100	67	14	57
<b>Total</b>	<b>91</b>	<b>67</b>	<b>34</b>	<b>34</b>

Source: OECD Investment Division/EIRIS

anywhere, namely Italy where no less than 91 per cent of the companies rely on third party verification of their environmental performance reports.

One may ask why third party verification has not gained wider acceptance. Some have attributed this to the loss of credibility in the verification process following corporate scandals in the past. The fact that there is no internationally recognised assurance standard has also played a role. The AA1000 Assurance Standard has been taken up by some companies, but it is still too early to assess the success of the initiative.

An interesting development over the last years has been a tendency for companies to highlight the economic value of their environmental efforts and the business integration of their environmental management systems. One of the visible results has been a co-evolution of environmental performance reporting with environmental cost accounting – that is accounting for the financial and non-financial costs and benefits of pursuing a company's environmental policies. In 2003, about one third of the companies listed on FTSE All-World Developed Index published environmental cost accounting data as part of their performance reporting. In Europe, 43 per cent of the companies that issue environmental performance reports included cost accounting into those reports, compared with 30 per cent in the Asia-Pacific region and 21 per cent in North America.

## 6. Occupational health and safety

As is the case with environmental management systems, occupational health and safety systems come in two shapes, namely off-the-shelf standards and systems tailored to individual enterprises. However, a comprehensive occupational and safety system will commonly include the following elements: i) the formulation of an occupational health and safety policy; ii) the identification of risks and legal requirements; iii) objectives, targets and programmes that ensure continual improvement; iv) management activities to control occupational health and safety risks; v) monitoring of the system's performance; and vi) continual reviews, evaluation and improvement of the system.

The development of standardised occupational health and safety systems is more recent than the environmental standards. In 1996, British Standards Institute launched the world's first standard, the "BS 8800: Guide to Occupational Health and Safety Management Systems", which was later, drawing also on existing ISO 14001 standards, further developed into "OHSAS 18001: Occupational Health and Safety Assessment Series: Specification". In parallel developments ILO developed its Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) and the UK Health and Safety Executive formulated its own standard "HSG 65: Successful Health and Safety Management". No commonly accepted industry standard has emerged so far, and the three are considered in most practical contexts as being operationally equivalent.<sup>10</sup>

### 6.1. Evidence of the implementation of occupational health and safety systems

Owing to the relatively recent development of standardised tools, only a limited number of companies in most countries have so far implemented them, while many others continue to rely on their own tailored solutions. For this reason EIRIS limits itself to examining the "evidence of a health and safety system" among the companies listed in the FTSE All-World Developed index. The findings are classified as providing "clear evidence", "some evidence" or "little or no evidence" by means of the following four criteria: i) a senior company official is named as responsible for occupational health and safety; ii) the company has received significant awards from an independent standard-setting body; iii) clear details of health and safety training programmes are provided; iv) detailed quantitative data is provided illustrating changes to performance or allowing sectoral comparisons. Where either i), ii) and iii) are fulfilled, or i) and iv), a company is classified as having provided clear evidence. Where at least one of the four elements is fulfilled, a company is classified as having provided some evidence.

Some caution is called for here. The data on occupational health and safety systems is of a somewhat more judgmental nature than the ones surveyed in previous sections, so sweeping conclusions should be avoided. Moreover, no sectoral breakdown of the data is available, which makes an accurate interpretation even more difficult. For instance, one may speculate that companies in the heavy industries and other high environmental impact sectors tend to be under greater pressure to put in place occupational health and safety measures.

It appears from Table 7 that just under half of the companies in the sample display at least some evidence of having an occupational health and safety system in place. Of the 20 per cent that provide clear evidence, the majority is found in Europe where a third of the enterprises are in this category. The highest percentage of clear evidence is found in the United Kingdom (56 per cent), the Netherlands (55 per cent) and France (49 per cent). According to this indicator, the lowest incidence of health and safety systems is found among Asian enterprises. In Singapore, Japan and Hong Kong (China) only 3, 5 and 11 per cent of the companies displayed clear evidence of having an occupational health and safety system. More than two thirds in the Asia-Pacific region show little or no evidence of having implemented such systems.

**Table 7. Evidence of the presence of an occupational health and safety system**  
(percentage share, by country or region)

	Clear evidence	Some evidence	Little or no evidence
<b>Europe</b>	<b>34</b>	<b>31</b>	<b>35</b>
<i>of which:</i>			
France	49	33	18
Germany	22	46	32
United Kingdom	56	32	11
<b>Asia-Pacific</b>	<b>9</b>	<b>23</b>	<b>67</b>
<i>of which:</i>			
Japan	5	26	69
Australia	30	21	49
<b>North America</b>	<b>15</b>	<b>25</b>	<b>60</b>
<i>of which:</i>			
United States	16	25	60
Canada	12	27	60
<b>Total</b>	<b>20</b>	<b>26</b>	<b>54</b>

Source: OECD Investment Division/EIRIS.

## 7. Summary

In summary, some of the main observations about companies' approach to environmental performance that can be derived from the survey results are the following:

- **Environmental policy statements:**

- ❖ 58 per cent of the surveyed companies **publish** environmental policy statements. The highest propensity to do so is found in Europe (69 per cent), followed by the Asia-Pacific region (62 per cent) and North America (44 per cent).
- ❖ These differences derive largely from a tendency to issue policy statements among companies outside the high environmental impact sectors. Within the high impact sectors 78 per cent of all enterprises publish policy statements, a share that varies little across major regions. However, in the low impact sectors 40 per cent of the companies in Europe issued policy statements, compared with 6 per cent in North America.
- ❖ The **contents** of environmental policy statements vary geographically (but less so across sectors). Almost all policy statements (95 per cent) include a commitment to comply with the law, but in addition 74 per cent of the Asian-Pacific enterprises are committed to operate above legal requirements – a share much higher than in Europe (37 per cent) and North America (47 per cent).
- ❖ Companies also differ with respect to the **coverage** of their environmental policy statements. In North America 98 per cent of all policy statements covered the entire business group of the issuing company. The same was the case for 88 per cent of the European policy statements and 78 per cent of the Asian-Pacific ones.
- ❖ The sign up to **voluntary** environmental initiatives follows a similar trend as the issuance of policy statements. One third of all enterprises are signatories to any of such initiatives, most of which operate in the high environmental impact sectors. The acceptance of such initiatives is somewhat higher in Europe than elsewhere.

- **Environmental management systems:**

- ❖ The tendency to **implement** environmental management systems displays similar trends as the issuance of policy statements. European enterprises are more likely to do so (66 per cent), followed by Asia-Pacific (62 per cent) and North America (41 per cent).
- ❖ Environmental management systems are far more prevalent among companies operating in the high environment impact sectors. In both Europe and Asia-Pacific 83 per cent of all enterprises in these sectors had EMSs in place, and the share in North America (69 per cent) was only slightly lower.

- ❖ Regarding the **types** of environmental management systems, ISO 14001 appears to have emerged as the shared standard across the globe. Companies with EMSs fall into three main categories: those that have obtained ISO certification; those that have not, but whose systems are ISO compatible; and those with tailored systems that are generally not compatible with ISO.
- ❖ Two thirds of all environmental management systems are either ISO certified or follow another standard that encompasses ISO 14001. The acceptance of ISO 14001 is by far the highest in Asia-Pacific with 80 per cent ISO certification, followed by Europe (66 per cent) and North America (48 per cent).
- ❖ The share of EMSs that are not ISO certified and, according to EIRIS' assessment, are not ISO compatible is 8 per cent in Asia-Pacific, 23 per cent in Europe and 43 per cent in North America.
- ❖ 72 per cent of companies with environmental management systems engage in environmental **auditing**. The share is highest in Asia-Pacific (84 per cent), followed by North America (80 per cent) and Europe (58 per cent).
- ❖ Supply chain audits are particularly widespread among North American companies. 31 per cent of North American companies with EMSs in place engage in this practice, compared with 16 per cent in Europe and 1 per cent in the Asia-Pacific region.
- **Environmental performance reporting:**
  - ❖ Environmental performance **reporting** is less common than the other practices considered in this report, *inter alia* owing to the fact that environmental reporting is relatively new compared to policies and management systems (and registration is difficult as there is still no certification standard for reporting). A total 39 per cent of the companies in the sample undertake performance reporting. In Europe and Asia-Pacific the share is 50 per cent, in North America it is 17 per cent.
  - ❖ The **scope** of reporting varies greatly in the absence of an internationally agreed standard. Most of the reporting companies (91 per cent) publish quantitative, allowing comparisons of performance intra-industry and over time. The share is comparatively low in Europe (85 per cent), whereas in Asia-Pacific and North America virtually every company includes such data in its reporting.
  - ❖ 67 per cent of performance reports include comparisons of companies' environmental performance relative to previous targets. This practice is particularly widespread in Asia-Pacific where 86 per cent of the reporting companies publish such.



- ❖ Around a third of the environmental performance reports are subject to third-party **verification** of their content. 46 per cent of the reporting companies in Europe have independent entities verify their performance reports, compared with 30 per cent in the Asia-Pacific region and 21 per cent in North America.
- **Occupational health and safety:**
  - ❖ Occupational health and safety systems are traditionally less standardised than environmental tools. However, the ISO-compatible standard OHSAS 18001 appears to be gaining widespread acceptance.
  - ❖ EIRIS cites 20 per cent of the companies in the sample as displaying “clear evidence” of having an occupational health and safety system in place. The geographic differences are significant. 34 per cent of the European enterprises fall into this category, compared with 15 per cent in North America and 9 per cent in the Asia-Pacific region.

## Notes

1. PELC and Ethical Corporation Magazine (2003), “Race to the Top: Attracting and Enabling Global Sustainable Business”, study commissioned by the World Bank and IFC.
2. It should be noted that a similar function to that of EIRIS is performed by SAM Indexes GmbH on the basis of the Dow Jones Sustainability Indexes. Outside the OECD area, work was underway in the first half of 2004 toward establishing the Johannesburg stock exchange socially responsible investment index based on FTSE/JSE All Share Index.
3. International Organisation for Standardisation’s website at [www.iso.ch](http://www.iso.ch).
4. Business Council for Sustainable Development (2002), “Progress toward Sustainable Development: a review of business initiatives”, paper presented at the World Summit on Sustainable Development, Johannesburg 2002.
5. Statement by Good Bankers, Japan.
6. “Environmental Policy Tools and Firm-Level Management”, Environmental Policy Committee, unpublished.
7. One Sustainability reporting Framework, the Global Reporting Initiative, was recognised by the UN World Summit on Sustainable Development. It is presently used by over 400 companies and other organisations.
8. OECD (2001), *op cit*.
9. EIRIS excludes companies that have included quantitative data but considered not to be “material”. This would, for example, be the case of an oil and gas company reporting on all main issues except for a key one: CO<sub>2</sub> emissions.
10. A useful overview of the corporate health and safety issues was provided by the United Kingdom’s Health and Safety Executive in its publication “Health and Safety Indicators for Institutional Investors”: [www.hse.gov.uk/aboutus/hsc/meetings/2002/280502/papers/c82b.pdf](http://www.hse.gov.uk/aboutus/hsc/meetings/2002/280502/papers/c82b.pdf).

## ANNEX

### *EIRIS classification of environmental impact sectors*

The principle underlying the classification system is that a sector's overall environmental impacts should be assessed in relation to its size. The basic indicator used is a ratio of environmental damage to economic significance. For each sector, direct impacts relating to climate change, air pollution, water pollution, waste and water consumption were reviewed. Impacts arising indirectly through upstream (supply chain) or downstream (product life cycle) were also considered, mainly in qualitative terms.

Each sector was profiled in terms of its impacts (high, medium or low) on the above issues (see attached table). Where quantitative data exists the criteria for high, medium or low grades for each issue are based on an absolute ratio. For example, sectors which contribute a higher proportion of the national CO<sub>2</sub> emissions than economic value added in the UK are graded at least medium in this area, and where the CO<sub>2</sub> contribution is more than double the economic significance they are graded as high.

The overall classification depends on the number of issues where the sector has been found to have a high or medium impact.

#### **Data sources**

Gross Value Added (GVA) was used as a measure of economic significance, while a wide range of environmental datasets are also considered. These include information sourced from the UK's Office of National Statistics, the US Toxic Release Inventory, NETGEN, NGOs and from corporate reporting.

#### **Relationship with FTSE Global Classification System**

Although the list of sectors examined by EIRIS is loosely based on FTSE sectors, it aims to group companies with similar activities rather than

economic links. As with the FTSE sectors, these classifications are not set in stone and may evolve over time. A particular company may be placed in one or more sectors, and is classified as high, medium or low according to the highest impact classification associated with at least 15 per cent of its activities. For example, a telecoms company with 15 per cent of its turnover arising from high impact activities such as chemical manufacture and construction would be classified as high impact.

## Definitions

*High, medium and low impact classifications* – companies may be involved in one or more of the business sector below. Where more than 15 per cent of a company's turnover derives from high impact or medium impact sectors, the company is classified as high or medium impact accordingly. If the company only has significant activities in low impact sectors then it is classified as low impact.

High impact	Medium impact	Low impact
Agriculture	DIY and building supplies	Information technology
Air transport	Electronic and electrical equipment	Media
Airports	Energy and fuel distribution	Leisure not elsewhere classified (gyms and gaming)
Building materials (includes quarrying)	Engineering and machinery	Consumer / mortgage finance
Chemicals and pharmaceuticals	Financials not elsewhere classified	Property investors
Construction	Hotels, catering and facilities management	Research and development
Fast food chains	Manufacturers not elsewhere classified	Support services
Food, beverages and tobacco	Ports	Telecoms
Forestry and paper	Printing and newspaper publishing	Wholesale distribution
Major systems engineering	Property developers	
Mining and metals	Public transport	
Oil and gas	Retailers not elsewhere classified	
Pest control	Vehicle hire	
Power generation		
Road distribution and shipping		
Supermarkets		
Vehicle Manufacture		
Waste		
Water		

## **Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches\***

\* This report provides a summary of the background report which was prepared for the Roundtable. The background report will be published under the title “Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches”, OECD 2005 (forthcoming).

Sound environmental management is an important part of sustainable development. It is increasingly seen as both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. The OECD Guidelines for Multinational Enterprises (“the Guidelines”) therefore recommend that managers of enterprises give appropriate attention to environmental issues within their business strategies and day-to-day operations. The Guidelines are recognised as one of the world’s foremost corporate voluntary codes of conduct. Their ten chapters cover a broad range of corporate activities, several of which relevant to companies’ environmental performance.

The Environment Chapter of the Guidelines encourages multinational enterprises to raise their environmental performance through improved internal environmental management and better contingency planning for environmental impacts. This publication summarises some of the options and corporate tools available to enterprises that wish to put this recommendation into practice.

Further information and the full text of the Guidelines is available on the OECD Guidelines website: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

## **Corporate Responsibility and the Environment: The Business Case and the Challenges**

Most enterprises find it in their own interest to minimise aspects of their activity that may have negative impacts on the environment. In addition to their personal ethical considerations, company owners have to consider the interests of stakeholders. In many countries, society expects that companies take steps to safeguard the environment over and above legal compliance. Corporate responsibility may cost time and money, but studies have consistently found that environmental enhancement goes hand in hand with above-average growth and earnings. Some of the benefits that enterprises have obtained are:

- *Improved business performance.* The use of environmental management tools leads to better overall business management, including improvements in operational efficiency and productivity. These include waste minimisation

and pollution prevention; a reduction in the number of accidents; lower clean-up costs; and reduced liability. In technologically advanced enterprises, improved business performance also has a long-term dimension. Environmental efforts are often coupled with the search for new technologies, which may increase profitability through “front-runner” benefits.

- *Gaining market access.* Some companies have chosen to implement environmental tools (especially those verified by a certified third party) so as to enhance their access to a particular market where enterprises are expected to operate according to certain environmental standards. In addition, a growing number of large MNEs require their suppliers to have a certified environmental management system (EMS).
- *Signalling to and communicating with stakeholders.* The implementation of environmental tools provides “reputational benefits” by communicating to customers, clients, investors and civil society a commitment to good practice. It can also be used to improve relationships with government regulators, by providing assurance that the company is making a serious effort to meet compliance or to go beyond compliance commitments.

However, to reap these benefits enterprises need to overcome obstacles, ranging from direct costs to organisational problems. Some of the most frequent challenges are:

- *Perception of environmental tools as a cost centre, rather than a revenue-enhancer.* Companies need to convince managers and employees that environmental efforts are a net benefit rather than a net cost.
- *Management and employee inertia and inexperience and company culture.* The implementation of environmental tools is an innovation in business management. As with all innovations, it can be slowed by organisational inertia and inexperience. A positive “learning culture” can be of major help; some companies are more adaptable and more able to innovate than others. The structure of management responsibilities can also play a role – not least the degree to which the responsibility for the environmental efforts is integrated with other core objectives.
- *Isolation of environmental departments from the rest of the business.* Implementing environmental tools often needs to overcome the traditional compartmentalisation of the management structure. Environmental management practices are rarely successful unless environmental managers are in a position to influence other key departments within an enterprise.

One way for enterprises to enhance their environmental performance is to implement the OECD Guidelines for Multinational Enterprises. The

Guidelines' Environment Chapter consists of a set of recommendations, which are spelled out in the following sections.

A company wishing to implement these recommendations will need to translate them into concrete managerial approaches. In doing so, it may choose to implement one or more of a growing number of off-the-shelf environmental management tools, reporting and information codes and sectoral guidelines and recommendations, or it may choose to develop tailored approaches to suit its specific needs. The remainder of this report summarises some of the more prominent tools and highlights examples of concrete enterprise experiences. It has eight subsections, each of which focuses on corporate approaches supporting the recommendations in the Guidelines' Environment Chapter.

## 1. Environmental Management Systems

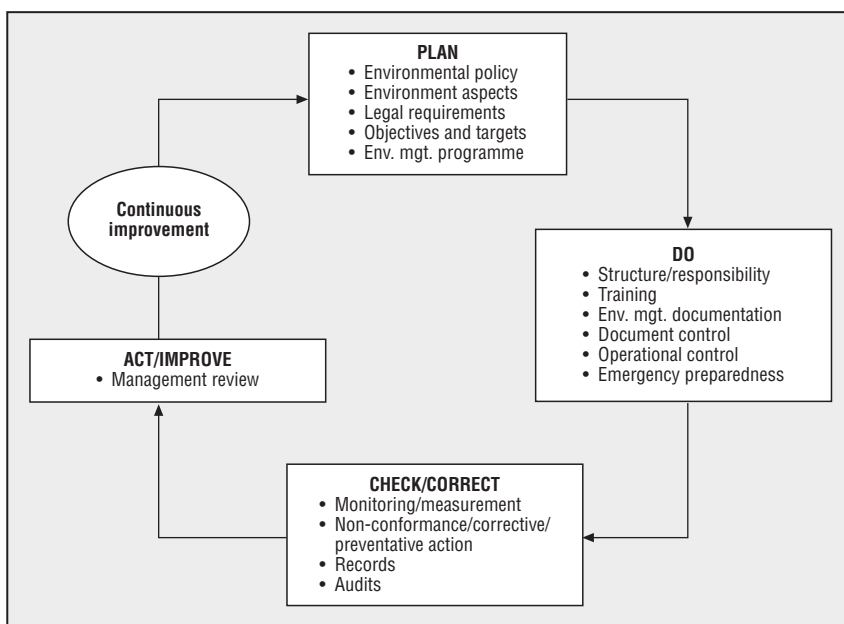
*[Enterprises should]*

*Establish and maintain a system of environmental management appropriate to the enterprise, including:*

- a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;*
- b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and*
- c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.*

The broad aim of an environmental management system (EMS) is to help an organisation achieve its environmental goals through consistent control of its operations, just as internal accounting controls provide intrinsic assurances that financial management systems are functioning well. Whatever the specific goals, the assumption behind the implementation of an EMS is that better environmental management will improve overall business performance.

An EMS is not based on the adoption of uniform standards or benchmarks. Rather, each organisation tailors the starting point, design and content of its EMS to serve its own aspirations, business goals, capacities and experience. However, there is a growing consensus that an EMS should normally encompass key elements, often referred to as "Plan-Do-Check-Improve" (Figure 1, below). These are: undertake an initial *environmental review*; define an *environmental policy*; develop an *environmental action plan*

Figure 1. **The EMS Method: Plan-Do-Check-Improve**

Source: UNEP, Department of Trade, Industry and Economics, Production and Consumption Branch.

and define environmental *responsibilities*; develop internal information and training courses; audit the environmental management system and conduct an environmental management review.

### **Tools and approaches**

Companies have many operationally distinct types of EMS from which to choose. In practice most EMSs fall into two broad categories: “externally certified” and “performance driven”. The former are designed *inter alia* with a view to compliance with the requirements for certification. The latter are tailored to fit the particular operational requirements of the implementing company, typically with the specific purpose of giving this company a competitive edge. Finally, sector-specific EMSs are also emerging as a way to further drive performance gains, by developing templates designed to address specific industry environmental impacts.

#### ● **Externally certified EMS**

- ❖ **ISO 14001.** Developed under the auspices of the International Organisation for Standardisation (ISO), ISO 14001 is the main international standard for the design and content of an EMS. It is part of the ISO 14000 “family”, a set of generic tools for developing, implementing, maintaining



and evaluating environmental policies and objectives. The family contains standards for environmental management systems, environmental auditing, environmental performance, evaluation, environmental labelling and life-cycle assessment.

- ❖ **EMAS.** The European Union's Eco-Management and Audit Scheme (EMAS) is a management tool for companies and other organisations operating in the European Union and the European Economic Area. EMAS provides an opportunity for companies to receive an external "seal of approval" associated with EMAS registration. To receive this, a company must meet six requirements: conduct an *environment review* of its activities; establish an *environmental management system*; carry out an *environmental audit*; provide an *environmental performance statement*; verify most of the above with an accredited EMAS verifier; and *make publicly available* the environmental review, EMS, audit procedure and environmental performance statement.
- ❖ The environmental management systems required by EMAS to fulfil the second requirement are no different from those needed for ISO 14001. However, two EMAS requirements – the provision of an environmental performance statement and making information publicly available – are not required by ISO 14001.
- **Performance-based EMS**
  - ❖ **External Value EMS.** A tailored EMS is ideally integrated with core business practices, including strategic planning and investment, financial management, product development and marketing with the full support of senior management. Performance-based EMSs are not an antithesis to ISO-based systems; ISO 14001 in many cases acts as the foundation for a performance-driven EMS.
  - ❖ Attempts at standardisation of tailored systems are ongoing. In the US, the Multi-State Working Group on Environmental Performance (MSWG) has developed guidelines for a performance-based "External Value EMS". The aim of the External Value EMS is to increase stakeholder assurance that the implementation of an EMS delivers the hoped-for performance gains. It emphasises and provides guidance on three key components: achievement and maintenance of legal compliance with environmental, health and safety regulations; involvement of external stakeholders; and transparency of external communications.
- **Sector-specific environmental management**
  - ❖ **Responsible Care.** One of the best known sector-specific EMSs is the Responsible Care initiative by the global chemical industry. Responsible Care is implemented in 47 countries by the members of the International Council of Chemical Associations (ICCA). The Guiding Principles of

Responsible Care include “continuous progress toward the vision of no accidents, injuries or harm to the environment” and to “publicly report our global health, safety and environmental performance” In the originating vision, members of Responsible Care were guided by six Codes of Conduct and 106 management practices, covering Community Awareness and Response; Distribution; Employee Health and Safety; Pollution Prevention; Process Safety; and Product Stewardship.

- ❖ In an attempt to move beyond the Codes to a performance-based EMS, the American Chemistry Council developed *Responsible Care 14001*, a Responsible Care Management System (RCMS). Rather than being a Code of Conduct, the RCMS is based on: benchmarked best practices of leading private sector companies; initiatives developed through the Global Environmental Management Initiative, ISO and other bodies; and requirements of national regulatory authorities.
- ❖ **Financial sector initiatives.** An early activity in this area was UNEP’s *Financial Institutions Initiative*. This engages a broad range of financial institutions in a constructive dialogue about the link between economic development, environmental protection and sustainable development. The Initiative promotes the integration of environmental considerations into all aspects of the financial sector’s operations and services. A secondary objective is to foster private sector investment in environmentally sound technologies and services
- ❖ In June 2003, ten leading banks from seven countries adopted the “Equator Principles”, a voluntary set of guidelines developed by these banks for managing social and environmental issues related to the financing of development projects. The principles apply to project financing in all industry sectors, including mining, oil and gas, and forestry

Useful links:

International Organisation for Standardisation, [www.iso.org/iso/en/iso9000-14000/iso14000/iso14000index.html](http://www.iso.org/iso/en/iso9000-14000/iso14000/iso14000index.html).

European Commission, Environment Directorate, <http://europa.eu.int/comm/environment/emas/>.

American Chemistry Council, [www.americanchemistry.com/rc.nsf/secondaryprofilesid/lsgs-4dnmdz](http://www.americanchemistry.com/rc.nsf/secondaryprofilesid/lsgs-4dnmdz).

UNEP Finance Initiative, [www.unepfi.net/](http://www.unepfi.net/).

## 2. Public Information and Stakeholder Consultation

*[Enterprises should]*

*Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*

- a) Provide the public and employees with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and*
- b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprises and by their implementation.*

Information about the activities of enterprises and associated environmental impacts is an important vehicle for building public confidence. This is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders so as to promote a climate of long-term trust and understanding of environmental issues of mutual interest.

### **Information strategies**

One of the most fundamental questions facing corporate decision-makers is whether to disseminate information regarding their enterprise's environmental performance as a whole, or about the environmental impact of individual products and activities. Examples of the two are listed below.

### ***Toward enterprise standards for public information?***

So far no standard for how much and what kind of information an enterprise should disseminate has won common acceptance. Recent initiatives aimed at establishing such standards are described below.

- **Global Reporting Initiative.** The Global Reporting Initiative (GRI) has as its mission "to develop and disseminate globally applicable Sustainability Reporting Guidelines." GRI has since embraced a "triple bottom line" approach, incorporating environmental, social and economic reporting. The 2002 Sustainability Reporting Guidelines constitute an information reporting framework, providing both reporting principles and specific content requirements to guide companies and other organisations in preparing publicly available sustainability reports. A GRI-consistent report includes five core components: *vision and strategy* of the reporting organisation; *profile* of the reporting organisation (e.g. structure and

operations); a description of *governance structure and management systems*; the *GRI content index* (a table identifying where the information required by the Guidelines is located); and *performance indicators* – measures of the effect of the reporting organisation divided into integrated, economic, environmental, and social performance indicators.

- **AA1000.** The UK professional group AccountAbility recently released the AA1000 Assurance Standard, which provides guidelines for the verification of published company reports, including (but not limited to) environmental or sustainability reporting. AA1000 provides a framework intended to guide good practice not only for company reports but for environmental communication more broadly. The Standard is based on a commitment to the practice of “inclusivity” – that is, an organisation’s i) commitment to *identify and understand* its social, environmental and economic performance and impact, and the associated views of its stakeholders; ii) commitment to *consider and coherently respond* (whether negatively or positively) to the aspirations and needs of its stakeholders in its policies and practices; and iii) commitment to *provide an account* to its stakeholders for its decision actions and impacts.
- **ISO 14063.** ISO’s 14063 draft standard recognises that companies’ motivation and preferred directions may differ more in the case of communication than in management systems. Once adopted, this environmental communications guidance standard will not prescribe the manner in which an organisation communicates its environmental information, but will offer guidance on what should be considered in developing an environmental communication programme and provides sources of information on how each consideration has been addressed by others.

### **Product information: Ecolabels**

Environmental labelling (“ecolabelling”) allows companies to communicate their environmental commitments directly to consumers. As with all public information tools, ecolabelling programmes must be credible. This has two implications. On the one hand, labels need to be based on meaningful and scientifically sound criteria. On the other, enterprises must avoid misleading claims that undermine consumer trust. To build trust, environmental criteria for certification must be robust, and verification and monitoring must be reliable and consistent.

A prominent standardised approach is the **ISO 14020** series. This addresses a range of approaches to voluntary environmental labels and declarations, including self-declared environmental claims, ecolabels (seals of approval) and quantified environmental information about products and

services. In this context, ISO has defined three types of labelling: *Type I* is a voluntary multiple-criteria-based third-party programme that awards a licence that authorises the use of environmental labels; *Type II* covers environmental claims made, without independent third-party certification, by manufacturers, importers, distributors, retailers or anyone else likely to benefit from such a claim; *Type III* (not formally an ISO standard) identifies elements and issues for consideration when making declarations of product information based on Life Cycle Inventory data.

### **Stakeholder consultation**

Effective consultation with stakeholders implies an expectation that company managers not only divulge and receive information, but that the former stand ready to act upon the information they receive. There are many ways in which companies can consult with and engage their stakeholders. These can be broadly clustered into two groups: those where enterprises limit themselves to soliciting the inputs of stakeholders, and those that include an ongoing interactive process. Most companies that have engaged in stakeholder consultations seem to agree that the success of the process hinges on the setting out of clearly defined goals, and on a careful and inclusive procedure for selecting the participants. Stakeholder dialogue needs to be active.

Efforts at developing commonly agreed standards for stakeholder engagement are still in their infancy – even more so than is the case for information policies. However the **AA1000** also proposes guidelines for stakeholder engagement. These apply a three-pronged approach. They: i) define the aims of stakeholder engagement in the context of AA1000; ii) describe a number of methods of stakeholder engagement; and iii) describe techniques and provide advice to support the good practice of the methods defined above.

Finally, one way in which companies have consulted with and responded to stakeholders is via partnerships with civil society and/or governments. In the past, companies partnered with NGOs and other civil society groups primarily as sponsors. In the past decade, a new form of “strategic partnership” has emerged that involves internal, core company operations.

#### Useful links:

International Organisation for Standardisation, [www.iso.org/iso/en/iso9000-14000/iso14000/iso14000index.html](http://www.iso.org/iso/en/iso9000-14000/iso14000/iso14000index.html).

Global Reporting Initiative, [www.globalreporting.org/](http://www.globalreporting.org/).

AccountAbility, [www.accountability.org.uk/aa1000/](http://www.accountability.org.uk/aa1000/).

### Case study: Involving stakeholders in “ethical investment” decisions

The Co-operative Bank, based in the UK, offers its customers a broad array of personal and business financial services. The Bank’s logo proclaims that it is “Customer Led, Ethically Guided”.

In 1997, the Co-operative Bank announced a “Partnership Approach” to its core business strategy, based on the ethos of serving and engaging stakeholders. In this approach, the Bank commits itself to serve the interests of all partners involved in the bank’s activities: shareholders, customers, staff, suppliers, local communities, national and international society, as well as “past and future generations of co-operators”.

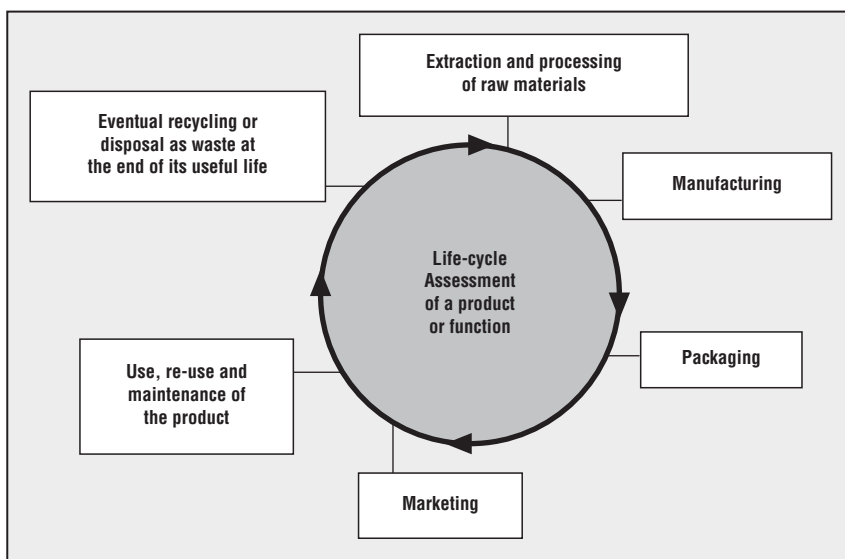
According to Bank research, “ethically motivated customers” (those attracted by the ecological and ethical branding) are likely to buy more than one financial service, to recommend the Bank, and to be more satisfied with the services they receive. Overall, the Bank estimated that its ethical and ecological policies drew one in three new customers in 2001, accounting for about 20% of profitability. Another benefit appears to be employee morale. In 2001, the Bank was rated for the second consecutive year as one of the *Sunday Times*’ 100 Best Companies to Work For in the UK, compiled on the basis of staff feedback. Staff turnover is well below the industry average.

## 3. Life Cycle Assessment

*[Enterprises should]*

*Assess, and address in decision-making, the foreseeable environmental, health, and safety- related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

Environmental life-cycle assessment is a tool for systematic evaluation of the environmental aspects of a product or service through its entire life cycle. A product’s life cycle starts when raw materials are extracted, followed by manufacturing, transport and use, and ends with waste management including recycling and final disposal. There are emissions and consumption of resources at every stage of the life cycle. Life-cycle assessment (LCA) starts with life-cycle thinking – an understanding that the environmental impacts of the entire life cycle of products and services need to be addressed (Figure 2).

Figure 2. **Components of Life Cycle Thinking**

### **Tools and approaches**

There are many ways to implement an LCA, depending on the needs, aspirations and capacities of the company or organisation undertaking it. One of the key operational decisions concerns the scope of the assessment (*i.e.* what environmental impacts will be examined). Another concerns the interpretation of the assessment (*i.e.* which environmental impacts will be prioritised for action). Based thereupon, companies will wish to develop concrete corporate strategies, some elements of which could be:

- *Benchmarks.* Alternative materials, products, processes and activities would be compared within the company; resource use and pollution would be compared with other companies in the same sector.
- *Suppliers.* Suppliers consistent with company strategies need to be identified and/or trained.
- *Research and development.* LCA can be used to determine research priorities.
- *Training.* Staff responsible for reducing environmental burdens associated with the company's products, processes and activities would have to be trained.

In putting LCA strategies into practice companies have at their disposal a small number of existing tools and best practices. Some of the best known of these are:

- **ISO 14040.** The ISO has developed an international standard for LCA as part of its 14000 Environmental Management series. ISO 14040 outlines and provides guidance for a four-step LCA process:
  - ❖ *Goal and scope definition.* The product or service to be assessed is defined, a functional basis for comparison is chosen and the required level of detail is defined.
  - ❖ *Inventory of extractions and emissions.* The energy sources and raw materials used, the emissions of pollutants and different types of land use are quantified for each process, then combined in the process flow chart and related to the functional basis
  - ❖ *Impact assessment.* The effects of the resource use and emissions are grouped and quantified into a limited number of impact categories that may then be weighted for importance.
  - ❖ *Interpretation.* The results are presented, and the need and opportunities to reduce the impact of the product or service on the environment are systematically evaluated.
- **Life Cycle Initiative.** UNEP and the Society for Environmental Toxicology and Chemistry (SETAC) are collaborating in the Life Cycle Initiative (LCI) – a standardised approach to global “best practice” for LCA. LCI aims to build on the ISO 14040 standards, the objective being to develop and disseminate practical tools for evaluating the opportunities, risks, and trade-offs associated with products and services over their entire life cycle. Specific aims of LCI include the exchange of information on the conditions for successful application of LCA and life-cycle thinking, as well as about the interface between LCA and other tools. Most importantly, given the obstacles identified above, the LCI aims to provide guidance on the use of LCA data and methods.
- **Design for Environment.** Design for Environment (DfE) is the systematic integration of environmental considerations into product and process design. DfE is an umbrella term for a variety of engineering and other techniques, and uses a LCA as the information base from which to develop cost-effective design innovations that reduce resource use, pollution, and/or waste. DfE’s prime objective is to design products and services that minimise environmental impact throughout the product life cycle. In the DfE process, designers may look at the source, composition and toxicity of raw materials; the energy and resources required to manufacture the product; and how the product can be recycled or reused at the end of its life. Balanced with other product considerations – such as quality, price,



producability, and functionality – eco-designed (or DfE) products are then sold as environmentally and economically viable alternatives to traditional products. The ISO 14062 standard describes concepts and current practices relating to the integration of environmental aspects into product design and development.

### **Case study: Using LCA to reduce environmental impacts**

3M manufactures a wide range of products from display and graphics, electronics and telecommunications, health care to industrial products. It launched a formal LCA initiative, the Life Cycle Management System (LCM). 3M chose a *qualitative* approach to LCA: the tool was designed to identify risks and opportunities, particularly during the use/disposal phase of product life. To implement this tool, 3M created an “LCM Screen” that allows managers to identify the environmental, health, and safety opportunities and risks through the stages of the product’s life cycle.

Recent achievements accomplished through LCA include the development of new film, labels, and adhesive. For example, 3M developed new film that is manufactured with 80% less solvent and with less waste. Trim waste is recycled as a raw material back into the process. Also, working with plastics suppliers and a European-based global manufacturer, 3M Europe created new labels that reduce customers’ costs for raw materials, labour, and disposal. Compatible labels make plastic recycling easier and more profitable. Appliance manufacturers can now recycle product cases and meet the EU Directive on waste electrical and electronic equipment.

Useful links:

United Nations Environment Programme, [www.uneptie.org/pc/sustain/lcinitiative/](http://www.uneptie.org/pc/sustain/lcinitiative/).

US Environmental Protection Agency, [www.epa.gov/dfe/](http://www.epa.gov/dfe/).

## **4. Exercising Precaution**

*[Enterprises should]:*

*Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*

Governments and enterprises are changing the way in which they look at environmental risk. It is increasingly perceived that it is not enough to repair environmental damage, but rather that environmental damage, especially when it is irreversible, should be prevented. While governments are ultimately responsible for the health and welfare of their citizens and the environment, they have increasingly acted to assign a larger burden of liability for specific acts of harm to the private sector. This is in part an outgrowth of the perception that private gains should not be obtained at the cost of the public interest, and in part a recognition that government cannot compensate for specific acts of harm.

The basic premise of the Guidelines is that enterprises should act as soon as possible, and in a proactive way, to avoid (for example) serious or irreversible environmental damage resulting from their activities. Precaution can be described as anticipating environmental harm by taking measures, as appropriate, to avoid it, or by choosing the least environmentally harmful activity. This notion of precaution is based upon the assumption that in certain cases scientific certainty, to the extent it is obtainable with regard to environmental issues, may be achieved too late to provide effective responses to environmental threats.

For enterprises, precaution is in part a function of how they operate in an everyday setting, and in part how they implement national regulatory requirements. Enterprises may need to exercise precaution in situations where two factors occur: the existence of a *risk* (i.e. where potentially hazardous effects deriving from an action, product or process have been identified) and *lack of scientific certainty* on the effects of such action, product or process on human health and the environment, or on the extent of the potential damage.

### **Tools and approaches**

Risk analysis plays an important role in the decision-making process, particularly in situations of scientific uncertainty, and is an integral part of many companies' business. There is as yet no single internationally agreed operational standard for *environmental risk analysis*, although many international agreements and processes are based on it. Risk analysis can be defined as a process consisting of three components: risk assessment, risk management and risk communication.

**Risk assessment.** Environmental risk assessment consists in identifying and evaluating each step of a process – from the origins of a hazard to its final consequences for a given system. It is an essential element for deciding whether and how risk needs to be avoided, reduced or accepted. Before a risk can be assessed it must be characterised. Risk characterisation consists of the qualitative and, wherever possible, quantitative determination, including attendant uncertainties, of the probability of occurrence of known and potential adverse

effects of an agent, product, process or situation under defined exposure conditions. Among the main tools for risk assessment are *environmental impact assessment*; *life-cycle assessment (LCA)*, and *research and peer review*.

**Risk management.** Risk management organises options to deal with a risk. Experts see the risk management process primarily as providing an integrated approach to solving health and environmental problems; to ensure that the risk management and economic decisions rely on the best scientific evidence and are made in the context of operational alternatives; to focus on collaboration, communication and negotiation among relevant stakeholders, to produce decisions more likely to be successful than those made without early stakeholder involvement; and to accommodate critical information that may emerge at any time. Tools for risk management include *environmental management systems*, *environmental audits* and *environmental standards*.

### **Case study: Varying risk communication on similar projects**

When Elm Energy, a subsidiary of a US company, decided to site a facility for incineration of rubber tires in the UK, it engaged with towns in two locations.

In town A, Elm Energy developed a comprehensive risk communication programme, including a letter to over 600 local citizens, an information caravan, a permanent pollution monitoring scheme at the local council, use of a local resident for public relations tasks, and engagement with a locally active environmental organisation. Elm Energy did not formally poll local residents for their perception of the environmental risk of the plant, but it was favourably viewed by the local business community, local politicians and the press.

In contrast, Elm Energy did little in town B to advance the idea of sitting a tire incinerator before it appeared in the local press. This caused immediate public hostility that Elm Energy did little to counter. In contrast to town A, there was no direct dialogue with local officials, NGOs or the public to convince them that the activity was safe. The company's staff did not participate in the one public meeting (organised by an environmental NGO) to discuss the issue. The media were also hostile to the plant and focused on risk issues such as dioxin emissions that had been advanced by the environmental organisation. The local political reaction was adverse, in part because elections were forthcoming and public hostility was well-advanced.

Researchers concluded that the public perception of risk was amplified where the company's risk communication failed. When the company took the initiative to communicate with local stakeholders, the project was given some credibility. When the company failed to engage, others became the main policy drivers, placing the company on the defensive from the start and amplifying the public perception of risks in the process.

*Risk communication.* One important concern for companies undertaking risk analysis is how that process will be publicly perceived. Practice shows that inadequate risk communication can have severe impacts on the sales of a product and even cause its removal from the market. Risk communication tools range from *hands-on work in relevant communities* to *corporate sustainability reporting*, and include *annual reports and labelling*.

Useful links:

OECD Environmental Health and Safety Programme, [www.oecd.org/ehs](http://www.oecd.org/ehs).

Codex Alimentarius, [www.codexalimentarius.net](http://www.codexalimentarius.net).

International Risk Governance Council, [www.irgc.org](http://www.irgc.org).

## 5. Emergency Prevention, Preparedness and Response

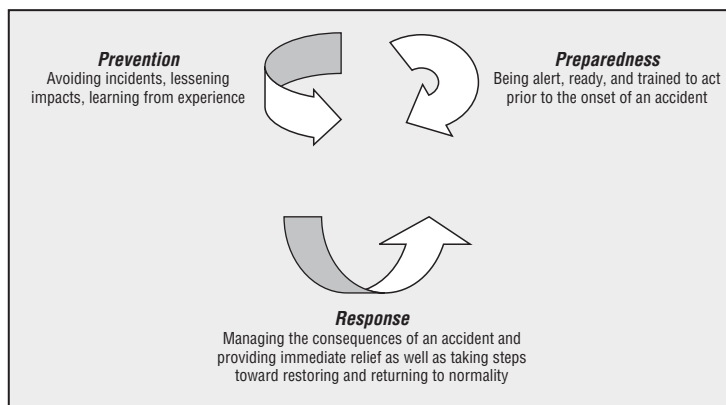
*[Enterprises should]:*

*“Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”*

Preventing, mitigating and controlling environmental and health damage by a company's operations is at the heart of sound environmental management. The Guidelines address what are commonly considered as the three core components of emergency management:

- *Prevention.* The minimisation of the likelihood that an accident will occur.
- *Preparedness and mitigation.* The mitigation of the consequences of accidents through emergency planning, land-use planning, and risk communication.
- *Response.* Limiting adverse consequences to health, environment and property in the event of an accident. The response includes actions needed to learn from the experiences of accidents and other unexpected events (follow-up) in order to reduce future incidents (prevention).

Traditionally, most of the responsibility in the area of emergency response fell to experts in government and industry. However, in recent years, the role of communities has become a more prominent component in the emergency planning and response process. As the case for corporate transparency gains ground, corporate environmental, health and safety reports increasingly include information about community involvement in environmental and emergency management. The involvement of

Figure 3. **Emergency Management Cycle**

communities and other stakeholders in accident prevention and response is likely to increase in the future.

### **Tools and approaches**

#### *Standardised approaches*

ISO 14001 specifies core requirements for establishing an environmental management system geared toward continual improvement. Enterprises have to establish and maintain procedures to identify potential for and respond to accidents and emergency situations, and for preventing and mitigating associated environmental impacts. The standard also requires that companies review (and revise where necessary) their emergency preparedness and response procedures (in particular following accidents or emergency situations) and periodically test such procedures where practicable. ISO 14001 also suggests that companies implement procedures for receiving, documenting and responding to information and requests from interested parties, including communication with public authorities regarding emergency planning.

In the event of an emergency or accident, workers are often the first exposed. One of the objectives of contingency plans is to ensure workers' health and safety in such situations. Environmental Management systems such as ISO 14001 provide general guidance on measures to take in cases of emergency or accidents. These can complement measures in OHS management tools, such as the *ILO Guidelines on occupational safety and health management systems ILO-OSH 2001* and *OHSAS 18001*.

### **Case study: Creating a Crisis Management System**

The BASF Group is a chemicals company with production in 38 countries and 93,000 employees worldwide. BASF has developed a comprehensive crisis management system that stretches from individual production facilities, the fire department, on-site medical services, environmental monitoring, and analysis to plant and work safety, all the way to corporate communications.

This strategy involves a crisis management team in corporate communications whose task it is to inform the public and the workforce about emergencies through news releases, flyers, the Internet and a telephone hotline – around the clock, 365 days a year. Additionally, BASF has established “Site Incident Management Teams” at all major national and international production sites. If required, teams of experts may be formed and dispatched to provide local support. At the highest level, a global “Crisis Management Support” unit is available at headquarters, in Germany.

The emergency response experts are also available around the clock through a global network of emergency contact numbers. BASF has also established “Emergency Control Centres” to provide direct support services in several key countries.

### ***Voluntary codes of conduct and other guidelines***

The International Chamber of Commerce (ICC) has included emergency preparedness and response among the 16 core principles of its Business Charter on Sustainable Development. The Coalition for Environmentally Responsible Enterprises (CERES) Principles require signatories of the Charter to strive to minimise the risks to employees and to the communities in which they operate “*through safe technologies, facilities, and operating procedures, and by being prepared for emergencies*”. Additionally, they are to inform in a timely manner anyone who may be affected by the conditions caused by [the] company that might endanger health, safety, or the environment, and commit to taking no action against employees for reporting dangerous incidents or conditions to management or to appropriate authorities.

### ***Sector-specific codes and guidelines***

Among sector-specific guidelines are those established under the OECD *Guiding Principles for Chemical Accident, Prevention, Preparedness and Response*. Other examples include *Responsible Care*, founded by the US chemicals industry, which offers several codes linked to emergency management, and the *Safety and Quality Assessment System*, a programme of the European Chemical Industry Council aimed at safer transport of chemicals.

**Useful links:**

European Commission “Chemical Accident Prevention, Preparedness and Response”, <http://europa.eu.int/comm/environment/seveso>.

US Environmental Protection Agency, “Chemical Emergency Preparedness and Prevention”, [www.epa.gov](http://www.epa.gov).

International Labour Organisation, ILO-OSH 2001, [www.ilo.org](http://www.ilo.org).

Responsible Care, [www.americanchemistry.org](http://www.americanchemistry.org).

## 6. Continuous Improvements in Environmental Performance

*[Enterprises should]*

*Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:*

- 1. Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;*
- 2. Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;*
- 3. Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and*
- 4. Research on ways of improving the environmental performance of the enterprise over the longer term.*

Multinational enterprises are permanent and continually adapting themselves to a changing socio-economic environment. This applies to all corporate activities, including their environmental management tools. For example, in a departure from previous “end-of-pipe” approaches to limiting pollution, companies have implemented more efficient preventive environmental techniques, affecting the different stages of their value chains. Improved brand and corporate reputation, risk reduction, improved access to finance, and value creation (i.e. development of “green products” for which a price premium can be obtained) are among the key considerations that motivate businesses in their efforts to improve environmental performance.

## Tools and approaches

The Guidelines address four categories of environmental improvements: process-related improvements, product-related improvements; consumer awareness; and research and development. A summary of available tools is presented below, most of which figure in different contexts in other parts of this report:

### Tools for process-related improvements:

- *Environmental management systems* are one (possibly the main) tool to achieve process-related improvements. The commitment to continual improvement of environmental performance is the main *raison d'être* of any mainstream EMS.
- *Environmental metrics* is another important approach increasingly used by companies. Recently, this idea has been applied in the environmental domain; companies are unlikely to achieve environmental improvements if they lack data about their performance in the first place. Companies also face expectations from financial and non-financial stakeholders that they quantify their environmental performance and inform the public. Useful tools for measuring environmental performance are indicators, benchmarking, and environmental management accounting (EMA). These tools are described in more detail in Section 1.

### Tools for product-and service-related improvements:

- *Products:*
  - ❖ *Life-cycle assessment* (see Section 3)
  - ❖ *Design for the environment* (or Eco-Design; see Section 3)
  - ❖ *Product stewardship* calls on those in the product life cycle – manufacturers, retailers, users, and those who dispose of products – to share responsibility for reducing the environmental impacts of products. Product stewardship usually requires manufacturer-centred action, covered under “Extended Producer Responsibility” laws gaining prominence in several European countries, Canada, and Asia. However, in the US “Extended Product Responsibility” is the concept that is taking hold.
  - ❖ *Take-back schemes* are a concrete example of product stewardship. Companies can take products back for recycling or remanufacturing, or establish themselves as a market for secondary materials collected by others. Through take-back schemes companies assume responsibility for their products by implementing and developing recollection, recycling, reusing, and remanufacturing programmes. In other cases, companies



may be in charge of safe disposal. Take-back schemes can bring economic benefits, since companies can save money through increases in efficiency and recovery of previously wasted materials.

### **Case study: A take-back scheme in the shoe industry**

Under this programme, Nike collects used and defective athletic shoes, grinds them up, and uses the resulting material in making synthetic athletic surfaces. Nike has established shoe collection programmes across the US through cooperative agreements with retailers and organisations such as the Institutional Recycling Network. To inform consumers, the Nike website offers information for dates and drop-off sites in different states.

The company produces three different types of material from the ground-up shoes: rubber from the outsole, used in making synthetic soccer, football, and baseball fields; foam from the mid-sole, used for synthetic basketball courts, tennis courts, and playground surfacing tiles; fabric from the shoes' upper, which becomes padding used under hardwood basketball floors.

The Reuse-a-Shoe Program, which accepts athletic shoes of any brand, helped the company recycle more than 15 million pairs of shoes in the last 10 years. The goal is to recycle two million pairs of post-consumer and defective shoes each year.

- **Services:**
  - ❖ ISO 14001 (see Section 1)
  - ❖ *Collaborative partnerships:* Another tool for improving the environmental performance of services is through collaborative partnerships i.e., developing partnerships with other organisations such as environmental groups, the government and other companies. For example, the United Parcel Service of America (UPS) developed a partnership with the Alliance for Environmental Innovation in the US that resulted in the creation of next-day-air-reusable envelopes.

### **Consumer awareness:**

- *Product-information tools:* One tool used by companies to raise consumer awareness is *eco-labelling* (see Section 2 for a more detailed description). There is evidence that if companies inform consumers about environmental performance, the latter may take this information into account. Otherwise, only a minority will seek this information. In order to increase the information available for consumers, companies have informed potential buyers about the environmental attributes of the product through ecolabels.

- *Company-information tools*: Another way to increase awareness among potential consumers is to provide easy-to-access and comparable information about the company's environmental conduct (e.g. through public databases). For example, Deloitte and Touche-Denmark, in conjunction with the Danish Consumer Information Center (DCI) – an organisation that informs consumers about issues relating to products and services – and various partner enterprises, has developed an ethical database. This provides consumers with electronic information not only about a company's products and services, but also about its actions on corporate responsibility – including environmental behaviour.

### **Research and development (R&D):**

- *Greening facilities and processes* is one improvement that requires research and development. For example, Seiko Epson from Japan has developed the concept of compact manufacturing; this allows the company to increase output without needing to build new facilities.
- *Development of new environmental management tools*: Another research activity for improving future environmental performance deals with innovation in environmental management. It addresses issues such as the tools a company will need to have in place in the near future to continually improve its environmental performance, and missing elements from the present toolkit.

Useful link:

World Business Council for Sustainable Development, [www.wbcsd.org](http://www.wbcsd.org).

## **7. Environmental Education and Training**

*[Enterprises should]*

*Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations and environmental technologies.*

The expectation that enterprises will provide environmentally-related training arises from two general objectives: “environmental health and safety” and “environmental management systems”. These themes are in practice closely related, but enterprises may choose to approach them in different

ways. First, in most OECD countries training employees to prevent and handle emergencies is mandatory. Under environmental and occupational health and safety regulations in most countries, employers must train their staff with the purpose of protecting their health and safety, as well as that of the local community. Second, training activities that relate to “more general environmental management areas” are mostly voluntary and focus on achieving both internal environmental goals and compliance with environmental legislation.

### **Tools and approaches**

Training workers to prevent and handle emergencies is usually mandatory. Such regulation in some cases specifies the *technical requirements* (e.g. safety issues) to be addressed in training, but do not specify how to design or develop, let alone deliver or evaluate training. There are also cases where companies decide to provide environmental education and training on a voluntary basis. This is particularly relevant for MNE operations in developing countries, where mandatory requirements may be less stringent.

Training also plays an important role in the implementation of environmental management systems, by raising staff awareness about conformance with EMS requirements, the environmental impacts of their activities, and their roles and responsibilities in the successful functioning of the EMS.

To comply with regulation and/or their voluntary commitments, companies can implement OHS management systems that are either tailor-made or follow off-the-shelf standards. Several standards specify the requirements for an occupational health and safety management system. The most prominent (and the only one to have been developed in a multi-stakeholder process) is *ILO-OSH 2001*. The industry standard *OHSAS 18001* is also in widespread use. These standards aim to assist companies in the implementation of occupational health and safety practices.

Another international standard, *ISO 14004*, offers guidance for companies that want to establish an EMS that conforms to the requirements of *ISO 14001*. *ISO 14004* suggests areas of training that the company might provide, such as raising awareness of the strategic importance of environmental management and of environmental issues more generally, as well as skills enhancement, and training to achieve compliance with environmental regulation.

### **Elements of a training programme**

The characteristics of training programmes depend on the characteristics and goals of the EMS of which they may be part. They typically have the

following elements: identification of employee training needs; development of a training plan to address defined needs; verification of conformance of training programmes to regulatory or organisational requirements; training of target employee groups; documentation of training received; and evaluation of training received.

### **Case study: Training for safer operational practices**

OHS training at Rio Tinto's mining operations in Canada seeks to "improve efficiency in the operations, prevent accidents, promote safe work practices, and to encourage environmental awareness". It forms part of a strategy to achieve the company's long-term goal of zero accidents. So far the established training programmes have offered over 75,000 hours of employee training (as of 2001).

In setting up the training programme, the company established an internal team of trainers and complemented it with external experts. The training activities focus on improving skills in safety and the environment, management, and industrial processes. Learning is facilitated by the use of instructional tools such as a rotary kiln (an industrial oven) simulator. Employees who wish to upgrade their academic training in their field of activity can take advantage of the financial aid programme for ongoing development. The training themes fall into three categories: technical (production and maintenance), general (industrial health, safety, personal health and environment) and safety management:

The company reports that, partly thanks to the training, it has reduced the number of lost-time accidents by 56%. Accidents numbered 20 in 2001, a drop from 46 in 2000.

### **Success factors for effective environmental training**

The Global Environmental Management Initiative (GEMI) proposes three success factors for effective environmental training:

- Training must be designed for a *specific audience*. In general, the audience should be as homogeneous as possible; hence identifying the needs for each group is a central issue. The training should be tailored to match the audience's skills and background (i.e. education, job assignments, position levels, experience).
- Trainers must establish *clear objectives* prior to the start of the training that would allow them to have measurable results. Training objectives usually need to be stated in terms of how the trainee's behaviour will be affected, such as "What should the participants be able to accomplish at the end of the training?"

- Training should be tailored according to the *corporate culture* (which can vary within the same company). Multinational enterprises also need to identify key cultural aspects of the country where the training is conducted.

### **Categories of potential trainees**

The following core categories of potential trainees within the company are suggested:

1. *Environmental managers and specialists.* Employees that have a direct responsibility for on-site environmental management such as recycling, waste management, pollution prevention, compliance with environmental regulation, and EMS more generally.
2. *Directors and senior managers.* This group includes managing directors, financial officers and marketing managers. While they do not play a direct role in implementing the EMS, some find that environmental issues impacts play a role in strategy (e.g. harming or enhancing reputation) and liability.
3. *General staff.* This group includes employees that are not in the categories above. They may or may not be aware of the company's environmental goals and programmes.

Training activities can also be offered to business partners such as suppliers, sub-contractors and contractors. Training can facilitate environmental improvement throughout the supply chain by helping suppliers gain knowledge and skills in the area of environmental management. Where it is not feasible for a company to conduct the training *per se*, an alternative strategy could be to follow ISO 14001's recommendation that companies should "*require that contractors working on its behalf are able to demonstrate that their employees have the requisite training*".

Useful link:

British Standards Institution, [www.bsi.org](http://www.bsi.org).

## **8. Contributing to the Development of Environmental Policy**

*[Enterprises should]*

*Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.*

Partnerships between various stakeholders have become an integral part of the policy-making process and contribute to developing sound public policy from both economic and environmental standpoints. The involvement of all stakeholders in policy discussions reduces the risk that some problems go unanticipated by regulators. By involving the business sector, policy-makers and regulators are better able to design policies to reflect business realities. This may result in better compliance. Conversely, policy changes without consultations with enterprises may lead to unsatisfactory results, insofar as companies may have little scope and incentive to go beyond minimum requirements. Finally, involving enterprises in policy discussions also allows policy-makers to apprise themselves of new technologies, and the feasibility of the changes that may be needed to achieve compliance.

Considering the broad ambit of environmental regulations and policies, business contribution in the latter is likely to impact on many other aspects of sound environmental management addressed by the Guidelines. Until a few decades ago, policy-makers in many countries showed little interest in gauging industry positions. Newer trends have opened up this process and have moved governments to consider how best to integrate business and other stakeholders into the policy-making process. Most OECD Governments are parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), which provides for the establishment of public participation mechanisms in the preparation of plans and programmes relating to the environment. The 2002 World Summit on Sustainable Development (WSSD) identified a number of multi-actor, voluntary agreements that would contribute towards achieving sustainable development. For these so-called "Type II Partnership Initiatives", like-minded governments, stakeholders, and inter-governmental organisations have agreed to tackle specific issues together.

### **Tools and approaches**

*References to partnerships in business codes of conduct:* Enterprise codes of conduct may call for a partnership role with governments, as well as other stakeholders in civil society. An increasing number of enterprises have listed this activity in their corporate environmental policy.

*Participation in government consultation processes:* Many governments offer an opportunity for the private sector to comment on legislative and regulatory proposals. Thus enterprises can provide constructive criticism, so that new policy or legal measures will be practicable and cognisant of business realities. Governments have also designed public comment and political dialogue mechanisms to solicit feedback on comprehensive proposals.

*National committees on sustainable development.* These bodies are created or sanctioned by national governments, generally drawing together members of government, business and civil society to define sustainable development within a particular national context. Many of these Committees are also responsible for implementing national commitments made at the 1992 Earth Summit in Rio de Janeiro, and at the 2002 WSSD in Johannesburg.

*Self-regulation and market-based instruments:* In addition to legislation and government regulation, governments have been using other instruments to improve enterprises' environmental performance. Business and industry leaders have been actively engaged in changing the "rules of the game" for policy, based on alternatives to the command and control method of regulation. These tools include *covenants*, agreed by governments and businesses, under which the latter are given an opportunity to meet general government environmental objectives through a scheme devised by business.

*Partnerships with government and local authorities:* The WSSD Plan of Implementation recommends to "*enhance partnerships between governmental and non-governmental actors...for the achievement of sustainable development at all levels*" Some enterprises have taken the initiative to enter into partnerships with local authorities in the policy-making sphere.

*Cooperative approaches among enterprises:* One way of establishing dialogue with governments is through *policy advocacy*. Others include *dialogue through industry associations*. Dialogue with industry associations sharing a common viewpoint can be more efficient for governments who may lack the resources to liaise with individual enterprises. Moreover, it lends more legitimacy to their concerns in the policy-making process.

*International processes:* Enterprises that have operations in multiple jurisdictions perceive the importance of attending international meetings since the results can impact regulatory systems in these jurisdictions. A number of international environmental treaty and policy development processes allow for participation of civil society representatives in meetings. In addition, independent organisations have been set up that facilitate government-business dialogue at the international level, *e.g.*, the Business and Industry Advisory Committee to the OECD (BIAC), which has been specifically set up to engage in dialogue with OECD governments, and the International Chamber of Commerce (ICC).

### **Case study: Dialogue between business and other civil society groups**

The New Directions Group (NDG), based in Alberta, Canada, has been working since 1990 developing NGO-business relations. The Group was initiated by three key Canadian figures from the corporate, NGO and academic communities. It provides a vehicle for debate, sharing of information and the search for common ground on environmental policy issues. Although the Group features established policies and procedures to guide discussions and activities, it essentially operates on an *ad hoc* basis. Members work towards a goal of consensus in discussions and decisions taken, but recognise that not all recommendations will be unanimously approved.

The NDG has reached consensus on two key issues that have led to policy statements concerning the management of toxic chemicals and the application and design of voluntary initiatives. The NDG prepared a report that was as a key input into many domestic policy processes. The principles and criteria developed eventually led to the Environmental Voluntary Agreements Policy Framework adopted by the Canadian Government and industry.

The NDG model has been adopted by others to address several sector-specific environment-development issues in Canada, such as the British Columbia understanding on protected areas and forest management, and the coalition of NGOs and industry associations to support endangered species legislation in Canada.

#### **Useful links:**

International Chamber of Commerce (ICC) , [www.iccwbo.org](http://www.iccwbo.org).

OECD Business and Industry Advisory Committee (BIAC), [www.biac.org](http://www.biac.org).

New Directions Group, [www.newdirectionsgroup.org](http://www.newdirectionsgroup.org).

Coalition of Environmentally Responsible Enterprises (CERES), [www.ceres.org](http://www.ceres.org).



## APPENDIX I

## *Declaration on International Investment and Multinational Enterprises*

27 June 2000

ADHERING GOVERNMENTS<sup>1</sup>

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries.
- That multinational enterprises play an important role in this investment process.
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations.
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments.

DECLARE:

**Guidelines  
for Multinational  
Enterprises**

- I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto,<sup>2</sup> having regard to the considerations and understandings that are set out in the Preface and are an integral part of them.,,

**National Treatment**

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as “Foreign-Controlled Enterprises”) treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as “National Treatment”).

2. That adhering governments will consider applying “National Treatment” in respect of countries other than adhering governments.

3. That adhering governments will endeavour to ensure that their territorial subdivisions apply “National Treatment”.

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

**Conflicting Requirements**

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto.<sup>3</sup>

**International Investment Incentives and Disincentives**

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment.

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called “measures”) providing official incentives and disincentives to international direct investment.

3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available.
- Consultation Procedures** V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council.
- Review** VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

## Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the Guidelines for Multinational Enterprises is reproduced in Annex II of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Website [www.oecd.org/daf/investment/](http://www.oecd.org/daf/investment/).

## APPENDIX II

*The OECD Guidelines  
for Multinational Enterprises:  
Text and Implementation Procedures*

Text

**Preface**

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational

forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what

constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

## **1. Concepts and Principles**

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good

practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

## **2. General Policies**

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.



9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

### 3. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.
3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.
4. Enterprises should also disclose material information on:
  1. The financial and operating results of the company;
  2. Company objectives;
  3. Major share ownership and voting rights;
  4. Members of the board and key executives, and their remuneration;
  5. Material foreseeable risk factors;
  6. Material issues regarding employees and other stakeholders;
  7. Governance structures and policies.
5. Enterprises are encouraged to communicate additional information that could include:
  - a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental

policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;

- b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;
- c) Information on relationships with employees and other stakeholders.

#### **4. Employment and Industrial Relations**

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1.
  - a) Respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
  - b) Contribute to the effective abolition of child labour;
  - c) Contribute to the elimination of all forms of forced or compulsory labour;
  - d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2.
  - a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
  - b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;
  - c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
4.
  - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
  - b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
7. In the context of *bona fide* negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

## 5. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
  - a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

- b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
  - c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
- 2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
  - a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
  - b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
- 3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
- 4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
- 5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
- 6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
  - a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
  - b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

- c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
  - d) Research on ways of improving the environmental performance of the enterprise over the longer term.
7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
  8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

## 6. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices

that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

## **7. Consumer Interests**

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

## **8. Science and Technology**

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.

3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

## 9. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
  - a) To fix prices;
  - b) To make rigged bids (collusive tenders);
  - c) To establish output restrictions or quotas; or
  - d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.
5. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
6. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
7. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

## 10. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in

which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.



## *Implementation Procedures*

### **Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises**

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

## **1. National Contact Points**

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Investment Committee.

## **2. The Investment Committee**

1. The Investment Committee (“the Committee”) shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.

7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

### **3. Review of the Decision**

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

## *Procedural Guidance*

### **1. National Contact Points**

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

#### **1.1. Institutional Arrangements**

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

#### **1.2. Information and Promotion**

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.

3. Respond to enquiries about the Guidelines from:

- a) Other National Contact Points;
- b) The business community, employee organisations, other non-governmental organisations and the public; and
- c) Governments of non-adhering countries.

### **1.3. Implementation in Specific Instances**

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
  - a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;
  - b) Consult the National Contact Point in the other country or countries concerned;
  - c) Seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;
  - d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
4. a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party

involved will remain confidential, unless that other party agrees to their disclosure.

- b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

#### **1.4. Reporting**

- 1. Each National Contact Point will report annually to the Committee.
- 2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

## **2. Investment Committee**

- 1. The Committee will discharge its responsibilities in an efficient and timely manner.
- 2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
- 3. The Committee will:
  - a) Consider the reports of NCPs.
  - b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
  - c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
  - d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
- 4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

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