



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

**CORPORATE  
RESPONSIBILITY  
IN THE DEVELOPING WORLD**



**OECD** 

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**2005**



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2005 Edition



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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LE RESPONSABILITÉ DES ENTREPRISES DANS LE MONDE EN VOIE DE DÉVELOPPEMENT

2005

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## Foreword

To many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct by these 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 fifth in a series, describes what governments have done to live up to this commitment over the period June 2004-June 2005. It shows that in five years, the Guidelines have consolidated their position as one of the world's principal instruments in the field of corporate responsibility. Recent developments include:

- Increased use for mediation on concrete issues of business ethics. 106 requests to provide such mediation have been received from trade unions, NGOs and businesses; 72 of these have been actively taken up by National Contact Points.
- Governments use the Guidelines for interaction with business on corporate responsibility issues. For example, 22 of the 39 adhering governments use the Guidelines in the context of export credits or investment guarantees or in trade and investment promotion campaigns. A number of countries are using their embassy networks to promote and implement the Guidelines.
- Increased interest among developing countries. The Guidelines are an integral part of OECD co-operation with non-members. China, India, South Africa and others have expressed interest in further co-operation with the OECD on corporate responsibility and the Guidelines.

The publication also provides an overview of corporate responsibility in the developing world. It shows that many developing countries have officially adhered to the multilateral instruments underpinning the concepts and principles of the OECD Guidelines. It also documents growing engagement by non-OECD business communities in many areas of corporate responsibility – some are leaders in the field. These findings suggest that a solid basis exists for using the Guidelines to build mutual trust between the OECD and non-OECD regions.

## Note by the Editor

*The 2005 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) – government offices who are responsible for encouraging observance of the Guidelines – and the Investment Committee.*

*The material for this publication was prepared by Kathryn Gordon, Senior Economist, and Pamela Duffin, Communications Officer, in the Investment Division, Directorate for Financial and Enterprise Affairs.*

# Table of Contents

## Part I

### Meeting of National Contact Points – An Overview of Guidelines-related Activities

<b>Summary Report of the Chair of the Meeting on the Activities of NCPS.</b>	<b>9</b>
I. Introduction and background .....	10
II. Institutional arrangements .....	11
III. Information and promotion .....	12
IV. Specific instances .....	22
V. Swiss request for clarification .....	26
VI. Investments in weak governance zones and DRC follow-up .....	26
VII. Follow-up on issues raised at earlier meetings .....	30
VIII. Progress to date and considerations for future action .....	32
Annex IA.1. Structure of the National Contact Points .....	37
Annex IA.2. Contact Details for National Contact Points .....	47
Annex IA.3. Specific Instances Considered by National Contact Points to Date .....	54
Annex IA.4. Archive of Documents .....	67
Annex IA.5. Joint OECD-UN Document on the UN Global Compact and the OECD Guidelines .....	84
Annex IA.6. Investments in Weak Governance Zones – Summary of Consultations .....	93
Annex IA.7. Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises .....	109
<b>Consultations – Contributions by Business, Trade Unions and Non-governmental Organisations .....</b>	<b>111</b>
BIAC submission to the Annual OECD Roundtable on Corporate Responsibility .....	113
TUAC Submission .....	118
Annex. TUAC Questionnaire on the Functioning of National Contact Points (NCPs) .....	124
OECD WATCH Submission .....	125

*Part II***Roundtable on Corporate Responsibility:  
The OECD Guidelines and Developing Countries – Building Trust**

Acknowledgements .....	143
<b>Summary of the Roundtable Discussion .....</b>	<b>145</b>
<b>Corporate Responsibility Practices of Emerging Market Companies – A fact finding study .....</b>	<b>157</b>
<b>Multilateral Influences on the OECD Guidelines for Multinational Enterprises .....</b>	<b>185</b>
<i>Annex.</i> <b>Information Sources about Multilateral Instruments cited               in the Guidelines .....</b>	<b>198</b>
<i>Appendix A.</i> <b>Declaration on International Investment                   and Multinational Enterprises .....</b>	<b>201</b>
<i>Appendix B.</i> <b>The OECD Guidelines for Multinational Enterprises:                   Text and Implementation Procedures .....</b>	<b>204</b>



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 2005 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 fifth 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-government organisations will provide further inputs on Guidelines implementation. The 2005 Roundtable on Corporate Responsibility focused on the OECD Guidelines and developing countries.

The present report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2004-June 2005 period. It is based on individual NCP reports<sup>1</sup> and on other information receiving during the reporting period. The report is divided into eight sections. These include: institutional arrangements (Section II); information and promotion (Section III); specific instances (Section IV). Section V describes the Investment Committee’s response to a request for clarification by the Swiss NCP on a specific instance that contained no “international element”. Section VI describes work on investments in weak governance zones and 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 VII describes how Guidelines institutions have followed up on some of the issues raised during earlier Annual NCP meetings and Corporate Responsibility Roundtables. Section VIII summarises progress to date and proposes some considerations for future action.

Overall, this year’s report suggests that adhering governments have strengthened promotional efforts in an effort to raise further the instrument’s visibility and influence. Existing promotional programmes were expanded and new programmes and activities were established. These included: 1) promotion targeting the financial and mining sectors; 2) establishing alliances with universities and business schools; 3) seminars for expatriate managers; 4) CSR events in China, Colombia and Ethiopia; and 5) television coverage of a specific instance and of the functioning of NCPs.

The NCPs' reports suggest that many adhering governments have deepened their use of the Guidelines in the context of a "whole of government" approach to corporate responsibility. They have expanded promotion with and through embassy networks, export credit and investment guarantee programmes and other specialised agencies and Ministries. Taken together, the NCP reports on promotion attest to the ongoing vigour of adhering countries' commitment to the Guidelines.<sup>2</sup>

NCPs continue their consideration of specific instances. One hundred six requests to consider specific instances have been brought to NCPs since the June 2000 Review, of which 71 were taken up by NCPs. Twenty-eight of these are still under consideration while 43 specific instances have been concluded.

NCPs and the OECD Investment Committee, which has oversight responsibility for the Guidelines, have continued to explore and refine the procedures for using this unique facility. The Committee examined two procedural issues: 1) specific instances that have no "international element"; and 2) parallel legal proceedings. During this examination the Committee has sought to safeguard the effectiveness and credibility of the Guidelines by enhancing their value added relative to other national, regional, sectoral and international initiatives.

This year's individual NCP reports show that NCPs are cooperating extensively among themselves in organising and reflecting on the handling of specific instances. Active dialogue among NCPs has taken place on procedures, information sharing and on further discussions of follow up to the UN Expert Panel reports. Finally, some of the reports note the difficulties encountered when trying to consider specific instances in non-adhering countries.

## II. Institutional arrangements

The NCP reports show that institutional arrangements were largely stable over the June 2004-2005 reporting period. Romania became the 39th adherent to the OECD Declaration in April 2005. All thirty nine NCPs have reported on their institutional arrangements. Overall, the structure of NCPs can be summarised as follows:

- 21 NCPs are single government departments;
- 7 NCPs are multiple government departments;
- 9 NCPs are tripartite (many of these also involve multiple government departments); 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 promotional activities described in the individual NCP reports.

#### **III.a. Selected promotional activities**

Developments and innovations in promotion include:

- *Promotion of the Guidelines with the financial sector.* The Australian NCP presented the Guidelines to the Australian Stock Exchange Corporate Governance Council, which comprises representatives from 21 business groups from various background and has recently developed and implemented a voluntary framework for corporate governance.
- *Training of trade and investment promotion staff.* Canada's Trade Commissioner Service includes corporate responsibility as an important aspect of its promotional activities. Training material has been developed to illustrate to trade and investment promotion staff how the promotion of corporate responsibility (including the Guidelines) can be integrated into the delivery of the core services provided to Canadian companies operating abroad.
- *Canadian embassy engagement on CSR issues in the Americas.* Canadian embassies in the Americas are particularly focused on incorporating relevant corporate responsibility material (including references to the Guidelines) in the briefings they give to their Canadian clients. They also communicate the Government of Canada's commitments in this area through workshops in host countries. For example, in February 2004, the Canadian Embassy in Colombia organised a corporate responsibility forum in Bogotá in conjunction with the Canada-Colombia Chamber of Commerce which was attended by over 100 people.
- *Promotional events in Chile.* In December 2004, the Chilean NCP organised a promotional event with union leaders in Chile's agro-export sector. In May 2005, a seminar was jointly organised with the National Environment Commission, the OECD and the Economic Commission for Latin America and the Caribbean on Chile's environmental policies. The Guidelines were promoted at these seminars.
- *Televised discussion in Denmark.* The Danish NCP has made an effort to raise public awareness of the Guidelines through the media. One of the Danish

specific instances and the functioning of the Danish NCP were discussed on in the television programme “Deadline” in April 2005.

- *Promotion in Latin America by the European Commission.* In April 2005, the European Commission Delegates organised two regional workshops on “Sustainable Development and Regional Trade Agreements in Argentina (an adhering country) and Costa Rica. This was an opportunity to explain how investment liberalisation can be supported by responsibility business practices, to present the Guidelines and to explain that they have been signed by a number of non-member countries and are referred to in the EU-Chile agreement.
- *Corporate Social Responsibility Finland Programme.* Under this programme, meetings were organised to discuss the following topics: 1) general ethical investment and management by Finnish pension funds; 2) ISO initiative on “Guidance on Social Responsibility”; 3) WWF Finland Green Office Programme; and 4) stocktaking of CSR Principles in the Finnish public procurement.
- *Co-promotion of the Guidelines and binding anti-corruption instruments.* The Hungarian NCP is using training events for officials of Hungary’s Investment Promotion and Trade Development Agency and diplomats working for Hungarian Embassies to promote the Guidelines. The events focus on the OECD Anti-Bribery Convention and the EU’s Criminal Law Convention on Corruption, but are also used as to promote awareness of Hungary’s commitments under the “Combating Bribery” chapter of the Guidelines.
- *Promotional events in Italy.* The Italian NCP has launched a major promotional campaign. During the reporting period, this included mailing 3 000 copies of brochures to all multinational enterprises operating in Italy (both Italian and foreign). It also set up information stands at three separate events designed to promote the public services activities. It also sponsored, in partnership with the Eni Enrico Mattei Foundation, a cycle of three seminars designed to deepen understanding of the contents of the Guidelines (particularly those aspects linked to human rights, environmental sustainability, bribery and innovation). This initiative aims to create an Italian network of experts to improve the diffusion and implementation of the Guidelines and, more generally, of corporate responsibility principles.
- *Seminars for expatriate business people.* The Japanese NCP organised seminars to explain the OECD Guidelines and the OECD Convention against Bribery in International Business Transactions to Japanese managers based in Thailand, Malaysia, Philippines, China and Vietnam.
- *Promotion by the Mexican NCP in the context of the 10th anniversary of OECD membership.* In order to mark this event, the Mexican NCP organised a Roundtable on the Guidelines in Mexico City in November 2004. The NCP also attended a conference organised in Montevideo, Uruguay on Perspectives on

the Guidelines for Multinational Enterprise (organised by TUAC and the FES-Proyecto Regional Sindical).

- *CSR Knowledge and Information Centre.* The Netherlands Ministry of Economic Affairs launched this centre – called MVO Nederland – in November 2004. Apart from providing information on general CSR policies and guidelines, MVO Nederland will collect and distribute CSR specific country information with a focus on emerging markets.
- *Intra-governmental promotion in New Zealand.* The New Zealand NCP has distributed information about the Guidelines to all government agencies. It has also met with other government organisations and encouraged them to use the Guidelines in future government activities.
- *Major international conference sponsored by Sweden.* In cooperation with the World Bank, SIDA, International Business Leaders Forum, the International Institute for Environment and Development, the Swedish Minister for Development Cooperation hosted a conference in which the Guidelines were presented along with other major corporate responsibility initiatives.
- *Promotion in China.* In November 2004, the Embassy of Sweden in Beijing – in cooperation with the Ministry for Foreign Affairs, local Chinese Authorities and Swedish and Chinese companies – organised a workshop on “the Business Case for CSR”. Information on the Guidelines was provided to the 100 participants.
- *Turkish request for help from domestic Guidelines partners.* The Turkish NCP requested the help of Turkish business organisations that are members of BIAC, trade union members of TUAC and a Turkish NGO in promoting ethical values in Turkish business life and in raising awareness of the Guidelines. The Turkish report states: “All parties accepted to give their full support and since then the NCP has got direct contact with all.”
- *Promoting the Guidelines with human rights lawyers.* The UK NCP presented the Guidelines to a human rights training course run by the Matrix Chamber (barristers specialising in human rights law).
- *Whole of government promotion of the Guidelines.* The US NCP report notes widespread use and promotion of the Guidelines. Promotional activities include: 1) training of Foreign Service diplomatic, economic and commercial officers; 2) training of Foreign Commercial Service Officers by the Department of Commerce; provision of information to applicants to the Export-Import financing programmes in support of business activities abroad; cooperation with the US Government Accountability Office; American ambassador to the OECD’s statement in the President’s Export Council Fall 2004 Report on Corporate Stewardship.



- *Promotion by the Investment Committee Chair.* The Investment Committee Chair actively promoted the Guidelines over the reporting period. He presented the Guidelines at the major international conference in Stockholm organized by the Swedish government (see above) and in Brussels. His Brussels presentation on may be found at the following address: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines). In March 2005, the Chair sent a letter to the Extractive Industry Transparency Initiative expressing the “OECD’s support for the general principles of transparency and accountability underpinning the Extractive Industries Transparency Initiative”. The text of this letter may be found in Annex A.4, Document 1.

Other promotional activities during the reporting period included:

- Outreach to companies via contacts or presentations to individual companies or to business associations (Argentina, Australia, Belgium, Brazil, Canada, Chile, Estonia, France, Hungary, Italy, Japan, Korea, Lithuania, Mexico, Netherlands, Portugal, United Kingdom, United States).
- Consultations and organisation of meetings with national partners (Argentina, Australia, Brazil, Canada, Chile, Denmark, Estonia, France, Germany, Ireland, Italy, Japan, Korea, Lithuania, Mexico, Netherlands, Portugal, United Kingdom, United States). In November 2004, the Argentine NCP organised a promotional meeting for “society at large” that featured speeches from business, trade union and NGO.
- Newsletters, articles in the press or other promotion through the media (Belgium, Denmark, Korea, Portugal, Slovak Republic, Sweden)
- Participation in conferences organised by non-governmental actors (Argentina, France, Italy, Portugal, Slovak Republic, Spain, United States). The Guidelines featured prominently in a speech delivered by a US Department of State Representative at the Intertek Conference on Corporate Social Responsibility in New York City. The Spanish NCP participated in a corporate responsibility day for SMEs that was organised by the Valencia Chamber of Commerce.
- Cooperation and promotion with think tanks, universities and other institutions of higher education (Australia, Finland, Germany, Italy, Mexico, Slovak Republic, Spain, Turkey United States). Italy and United States made presentations on the Guidelines to graduate schools of business. The Italian NCP collaborated with the University of Bari in the Puglia region in planning a seminar on *The Sensitive Enterprises: A Strategy for Globalisation*. The Spanish NCP promoted the Guidelines at a University of Alcalá event on the “Social function of companies”.
- Development of promotional material and mailings (Brazil, Germany, Israel, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Portugal, Turkey). The

Lithuanian NCP has published “European Works Councils: 33 questions and answers. OECD Guidelines for Multinational Enterprises”.

- Web site development (Australia, Finland, Hungary, Italy, Lithuania, Mexico, New Zealand, Switzerland)

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

- Promotion with and training of embassy and consular staff (Australia, Canada, Germany, Hungary, Korea, Poland, Spain, Sweden, United States, United Kingdom). The Australian NCP briefs senior officials in person prior to them taking up postings and incorporates information on the Guidelines into information packs provided to all Australian Government officials taking overseas postings.
- Trade and Investment Promotion missions or activities (Canada, European Commission, Korea, Netherlands, Poland). In April, 2005, a Swedish Ambassador promoted the Guidelines during a trip to Ghana with a Swedish business delegation.
- Other inter-governmental promotion (Australia, Canada, European Commission, Finland, France, Germany, Italy, Mexico, Netherlands, Poland, Spain, United Kingdom, United States). The Italian NCP organised with the support of the Lombardia Region, the Chamber of Commerce of Milan and several business association, a training course addressed to employees of public utility agencies that was designed to raise awareness of the Guidelines. The United States NCP cooperated with the US Government Accountability Office on a report entitled “Federal Government Involvement in Corporate Social Responsibility.
- Promotion through overseas development agencies (Canada, Sweden, Switzerland).
- Answering questions from or promotion with Parliaments, Ombudsmen or other government bodies (Canada, European Commission, Finland, Mexico). The Canadian NCP was asked to appear before the Parliamentary Sub-Committee on Human Rights and International Development in May 2005. The Sub-Committee was seeking information about the Guidelines and the role of NCPs in the context of their hearings on the operations of a Canadian mining company in the Philippines.

### **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 appropriate expression in credit and investment promotion or guarantee programmes. Table I.1 summarises the links that have been established between the Guidelines and such programmes.

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

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Foreign Investment Review Board, a non-statutory body that advises the Australian Government on the administration of Australia's foreign investment policy, and the Invest Australia, Australia's investment promotion agency, Web sites provide information on the Guidelines and links to the Australian NCP Web site.
Canada	Export Credits	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.
Chile	FDI	The Foreign Investment Committee (CIE in Spanish) is the Agency that the state of Chile uses in its dealings with those who elect to use (the Foreign Investment Decree 600) as the legal mechanism to bring Direct Investment into the country. The Foreign Investment Committee helps to position Chile as an attractive destination for foreign investment and international business.
Czech Republic	Investment promotion	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.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP Web site.
Greece	Investment promotion	The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.
Finland	Export promotion	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.
France	Export credits and investment guarantees	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> ").
Germany	Investment guarantees	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.
Israel	Investment Promotion Centre	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.
Japan	Trade-investment Promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, METI Japan. Japan established a Web site with the intention to further strengthen a network ( <a href="http://www.TICADExchange.org">www.TICADExchange.org</a> ) between Asia and Africa to facilitate the exchange of trade and investment. The Japanese NCP plans to link the TICAD Exchange Web site to the texts of the Guidelines.

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

Latvia	Investment promotion	Information on Latvian NCP and Guidelines are available electronically on the website of Latvian Investment and Development Agency.
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.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ)
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.
Switzerland	Export credits and investment guarantees	Switzerland's Export Credit Agency (ERG) and Investment Risk Guarantee Agency (IRG) both promote corporate responsibility principles. On their websites, they provide information regarding the Guidelines and their implementation mechanism.
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 Web site 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 in ECGD's Case Impact Analysis Process document. "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.

Twenty-one NCPs report that such links exist. The main changes in Table I.1 relative to last year's report are the addition of an entry for Switzerland and a restructuring of the Japanese entry.

Three national developments are noteworthy in relation to export credit and investment programmes.

- First, the UK reports that the Export Credit Guarantees Department (ECGD) is to “examine compliance against the environment, employment, combating bribery and transparency chapters.”
- Second, Canada reports that Export Development Canada co-organised a short course on “Managing Social and Environmental Risk in the Mineral Exploration Sector”. This was delivered as a side event prior to the annual convention of the Prospectors and Developers Association of Canada, held in March 2005. The course attracted over 50 participants representing mining companies of various sizes, NGOs and consultants, all of whom received a copy of the Guidelines brochure.
- Third, for several years now, the Netherlands has asked companies requesting government support for their international commercial activities “to fulfil certain CSR-related conditions”. (See Netherlands entry in Table I.1.) The Netherlands report states: “Recently, there has been an evaluation of the manner in which the agencies responsible for the implementation of the support instruments are applying this framework in practice. This evaluation included a stocktaking of the experiences of companies and civil society organisations. In general, the framework works quite satisfactorily, but some practices aspects (related to the clarity and transparency of the framework) have to be improved. In two years time, the effects of this framework on CSR performance (related to supported projects outside the OECD area) will be examined more thoroughly.”

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

The Netherlands’ Coordinating Minister for CSR hosted a European Conference on Corporate Social Responsibility, Competing for a Sustainable Future. During this conference, held under the Dutch EU presidency, ministers from several departments expressed their commitment to CSR initiatives and the Guidelines.

The Swedish Minister for Trade and Industry participated in a corporate responsibility panel at the OECD Forum in May 2005 and published a letter in the *Financial Times*.

In Switzerland, speeches by Ministers or other high level officials of the Swiss government have been used as on an occasion for promoting the Guidelines (for example, at the “World Economic Forum 2005” and, in February 2005, at the award ceremonies for the best corporate sustainable development reports).

In December 2004, the UK Secretary of State for Trade and Industry wrote to the Chief Executive Officers of FTSE 100 companies to promote the Guidelines. A copy of the Guidelines brochure was included with each letter.

The March 2005 Report of the Commission on Africa – entitled *Our Common Interest* – attracted considerable interest in international policy making circles and the media. The Commission for Africa was established in February 2004 by the UK Prime Minister, Tony Blair. The independent commission – made of 17 commissioners, the majority from Africa – was asked to produce a coherent set of recommendations for the G8, EU and other wealthy countries as well as for African countries on the steps required to accelerate progress towards a strong and prosperous Africa. These were outlined in the CFA's report.<sup>3</sup> The report makes numerous references to the *OECD Guidelines for Multinational Enterprises* in its sections on conflict, corruption and poverty reduction. References to the Guidelines in the Report are presented in Annex A.4, document 2.

### **III.e. Promotion with the United Nations and other international organisations**

*Addis Ababa conference.* More than 90 participants representing African business, civil society and labour organisations, international organisations and governments, gathered in Addis Ababa on 7-8 March for “Alliance for Integrity – Government and Business Roles in Enhancing African Standards of Living”. About 70 of the participants were Africa-based – they included representatives from business, business associations, state-owned enterprises, trade unions, civil society, national governments and regional organisations. Co-organized by the OECD Investment Secretariat, the UN Global Compact, the New Partnership for Africa's Development (NEPAD) and Transparency International, the conference took place at the facilities of the Economic Commission for Africa (ECA). The final agenda and summary of this event can be found at [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment).

The main objective of the two-day conference was to strengthen alliances between business, civil society, governments and international organisations to fight corruption and foster positive environments for investment and job creation. The event also provided African inputs into the Investment Committee's follow up on the UN Security Council's process on “illegal exploitation of natural resources in the Democratic of Congo” (see Section VI below).

*Joint report on the UN Global Compact and the OECD Guidelines.* At its December, 2005 meeting, the Investment Committee heard a presentation from Georg Kell, Executive Director of the UN Global Compact and had discussions with him. The Committee agreed that there is scope for exploring synergies between the Global Compact and the OECD Guidelines and asked the Secretariat to work with the UN Global Compact on the development of a joint public document explaining the similarities and the differences between the two instruments. This document was discussed at the April 2005 Investment Committee and approved for publication. It is reproduced as Annex A.5 of this document.<sup>4</sup>

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

The OECD Forum in May 2005 – held in conjunction with the OECD Ministerial meeting – included a corporate responsibility session arranged by the Public Affairs and Communications Directorate at which the Guidelines were discussed. The 2004 Global Forum on International Investment in New Delhi, organised in collaboration with the government of India, was also used as an occasion to promote the Guidelines. (The German NCP delivered a presentation about “Promoting Corporate Responsibility – Defining the Roles of Governments and Business”.) The Secretariat informed the participants in the 25-26 May NEPAD-OECD Investment Policy Roundtable in Entebbe of the OECD Guidelines process.

The OECD Secretariat accepted invitations to promote the Guidelines at roughly 20 meetings over the period. Selected promotional events attended and activities undertaken include:

- A meeting sponsored by the UN Global Compact in New York in which the promotion of the Compact’s 10th principle (anti-corruption) was discussed.
- An international conference in Yaoundé, Cameroon sponsored by the Francophone Union of Internal Auditors. An official of the OECD Office of the Auditor-General presented the OECD Guidelines and described in general terms the Committee’s work on weak governance zones. The official also described the work of internal auditors in such zones, and the contribution of the internal auditing profession as a key “link in the chain” for promoting business integrity.
- Stockholm conference on ISO Guidance document on corporate social responsibility. The Secretariat was asked to address a series of questions relating to the theme: would an ISO business ethics standard be a useful tool for business?
- Presentation of Guidelines and corporate responsibility work to 15 officials from the Thai Ministry of Labour who were on an official visit to the OECD.
- Tri-National Conference on the Labour Dimension of Corporate Responsibility sponsored by the Labour Programme of Human Resources and Skills Development Canada in Ottawa.
- Conferences on: 1) business in conflict organised by SwissPeace event in Geneva; 2) environmental health organised by the Institute of Medicine of the National Academy of Sciences in Washington DC; 3) labour codes of conduct organised by the Observatoire sur la Responsabilité Sociétale des Entreprises in Paris, France; and 4) eastern Democratic Republic of Congo organised by the OECD Development Assistance Committee in Berne, Switzerland.

## 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 company operations.

In order to improve its reporting on the handling of specific instances, the OECD Investment Committee agreed in April 2004 that an historical archive table should be included in subsequent annual reports on the Guidelines. The first version of this table appeared in the 2004 *Annual Report*. An updated version – reflecting individual NCP reports received to date – can be found in Annex A.3.

The German NCP was contacted by the management of “UN Global Compact Germany” and asked whether it could provide mediation for possible cases of non-observance with the Compact’s 10 principles. The German NCP welcomed this request and responded with a proposal for a two-step procedure: 1) the Global Compact should first try to address issues within its own reporting system; 2) if the results are not satisfactory, then the problem could be presented to the German NCP as a “specific instance” under the OECD Guidelines. The German NCP would use the Guidelines recommendations as the basis of its consideration in deciding whether to treat a request as “specific instance” and would follow the “Procedural Guidance” set forth in the June 2000 Council Decision. The management of UN Global Compact Germany has agreed and will put this proposal to the German Global Compact’s members.

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

Some 106 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCPs reports indicate the following numbers of specific instances have been filed: Argentina (1), Austria (2), Belgium (8), Brazil (4), Canada (7), Chile (1), Czech Republic (5), Denmark (2), Finland (1), France (12), Germany (6), Japan (4), Korea (3), Mexico (2), Netherlands (14), Norway (1), Poland (2), Portugal (1), Spain (2), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (7) and United States (16).

Annex A.3 shows that NCPs have actively taken up and considered 72 specific instances. Forty-four of these have been concluded, while 28 are “ongoing”. Forty-two of the 72 specific instances concerned activities in non-adhering countries. Most specific instances deal with Chapter IV recommendations (Employment and Industrial Relations), but there are signs that the range of issues considered has been expanding. Moreover, many



specific instances deal with more than one subject – Annex A.3 shows that a total of 98 different subject matters were considered. Accounted for in terms of corresponding Guidelines chapters, these were as follows: Preface (1); General policies (18); Disclosure (7); Employment and Industrial Relations (54); Environment (10); Bribery (1); Competition (2); and Taxation (1). Only the “Consumer Interests” and “Science and Technology” chapters of the Guidelines have not yet been the subject of specific instances. In 7 specific instances (all relating to the UN Expert Panel reports on the Democratic Republic of Congo), the subject was “not specified”.

One novel feature of specific instances first discussed at this year’s meeting is the bringing of requests to consider a specific instance by companies – three such requests have been made so far.

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

*Argentine specific instance.* In December 2004, the Argentine NCP received a request from a trade union regarding the Argentine subsidiary of a multinational enterprise. The submission cited Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations). The NCP accepted this request and discussed this issue at several meetings. The NCP is currently working in co-operation with officials from the Ministry of Labor on this specific instance.

*Companies request consideration of specific instances.* Austria has received what appears to be the first two requests to consider specific instances that have been brought by companies. The Austrian report notes that both of these cases concern business behaviour in non-adhering countries and both involve several Guidelines chapters. One of the cases was “ceded... by mutual agreement” to the NCP where the company was headquartered while the other was not pursued because it dealt with activities that did not have “the necessary character of an investment relation”.

*Canadian mining operation in Myanmar.* The Canadian NCP received a complaint in November 2002 from a Canadian labour union regarding the operations of a Canadian mining company in Myanmar which it has been pursuing as a specific instance. The complaint alleged non-observance of the Guidelines recommendations regarding forced labour and the right to organise. The union claimed that there were demonstrable links between the company’s joint mining venture with the Myanmar government and the mass conscription of forced labour. The company strongly denied these allegations in letters to the NCP in 2003 and 2004. While the NCP held a number of discussion and meetings with each party, separately, and offered to facilitate a dialogue between the two sides, it was unsuccessful in bringing them together to discuss their differences. The NCP has informed the parties that it has decided to discontinue its efforts to facilitate a dialogue between them. A

letter will be sent to the union and the company indicating that the NCP is bringing the specific instance procedure to a close.

*Further dialogue on Marine Harvest.* The 2004 Annual Report contains extensive information about this Chilean specific instance (which concerned labour and environmental management in aquaculture). This year, Chile reports: “The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded [in August 2004] with a dialogue involving participation of the parties to the instance and other actors. The parties agreed with the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP<sup>5</sup>. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.”

*Malaysian employees of a Danish owned enterprises.* In February 2002, a trade union organisation asked the Danish NCP to consider whether a company, Unomedical, had observed recommendation of Chapter IV, paragraph 1.a). The same question had been brought before the Malaysian courts, where it had been under consideration for “a very long time”. This had an impact on the NCPs consideration of the instance. Subsequently, the enterprise informed the NCP that it would adhere to the ruling of the Malaysian Supreme Court (which identified the trade union as the *bona fide* workers’ representative) and that it had begun negotiations on a collective agreement with the trade union. The NCP concluded its consideration of this matter in May 2005 when it informed the trade union of this result in a letter which was also sent to the company. Denmark’s report on this specific instance notes that it “illustrates the difficulties NCPs face when specific instances are considered in non-adhering countries, especially when there is a pending court case in this non-adhering country concerning the issue in question. In countries with a legal system which differs substantially from the OECD country in question this raises even more difficulties”.

*NCP exchanges of views on specific instances.* The Finnish and French NCPs have been discussing the handling of the Aspocomp SAS – Evreux case (see 2004 Annual Report on the Guidelines for more information about this specific instance).

*Nam Theun 2 hydroelectric project.* On 26 November 2004, the French NCP was asked to consider Electricité de France’s (EDF’s) conduct in relations to the development and operation of a hydroelectric project in Thailand (called Nam Theun 2). Friends of the Earth’s request concerned Chapter II recommendations on sustainable development and human rights, chapter V (Environment) and Chapter IX (Competition). While the NCP rejected the last part of the request (on competition), it decided to enlarge its consideration of the issue to include Chapter IV (Employment and Industrial Relations). Based on information

collected from NGOs, the consortium in Thailand (of which EDF is the principal shareholder), the World Bank and Asian Development Bank and consultations with experts from COFACE (the French export credit agency) and the French Development Agency, the NCP came to the conclusion that it could not attribute any non-observance of the Guidelines to EDF and that EDF had even taken on commitments that go beyond the recommendations of the Guidelines. The French NCP has nevertheless undertaken to monitor the company's implementation of its commitments to respect international environmental and social standards and has agreed to hold a series of meetings with the company in order to follow developments. The NCPs public statement on this specific instance appears in Annex A.4 as Archive Document 3.

*Conclusion of German/Mexican specific instance.* The Mexican and German reports describe the conclusion of a specific instance dealing with the labour management practices of the Mexican subsidiary (Eukzadi) of a German tire manufacturer (Continental Tire). The specific instance was brought by a German NGO on behalf of a Mexican labour union. The Mexican NCP had lead responsibility for this specific instance. It met with representatives from the trade union as well as representatives of the company. It also contacted the Ministry of Labour in order to exchange views regarding the application of Mexican labour law and its interaction with the Guidelines. The German NCP notes that, in trying to offer its "good services" on this case, it provided several occasions for talks between the Mexican trade unionists, representatives of the German company and Mexico's ambassador in Berlin. The trade union and the company reached an agreement in December 2004. According to that agreement, the Company sold the El Salto plant to Grupo Industrial El Salto, a 50/50 joint venture company formed by the trade union and a company, Llanty Systems. The Company agreed to provide technical assistance for a period of 6 months and raw material required for the manufacturing process. In addition, the Company agreed to buy 500 000 tires annually from that plant. The trade union agreed to withdraw all lawsuits and claims against the company and release Continental and Eukzadi from any liabilities related to the plant's closure.

*Lack of an international dimension.* The United States NCP was asked to consider a specific instance whose circumstances bore on issues resembling those raised in the Swiss request for clarification (see next section of this report). The US report says: "After completing its initial assessment, the US NCP concluded... that the circumstances did not warrant further involvement by the US NCP. This instance, involved the provisions of Chapter IV on Employment and Industrial Relations, the issues raised related to the actions of a US-owned firm in the United States. The US-owned firm was acknowledged by the party raising the issue to be providing services exclusively within the United States and did not appear to be a multinational enterprise."

## V. Swiss request for clarification

In a letter to the Chair of the Investment Committee on July 9, 2004, the National Contact Point (NCP) from Switzerland requested a clarification from the Investment Committee. The request concerns the appropriate handling of a specific instance raised by a Swiss trade union regarding the conduct of a Swiss multinational enterprise in Switzerland (the full text of this letter appears as Archive document 5 in Annex A.4).

The Swiss NCP's letter contains the following text:

*The Swiss NCP was contacted by a Swiss trade union that considered that a certain multinational enterprise headquartered in Switzerland did not, in its dealings with one of its subsidiaries, which is also based in Switzerland, adhere to certain recommendations set forth in the Guidelines – namely, Chapter IV (“Employment and Industrial Relations”), and more specifically §1(a) in respect of collective bargaining.*

*In the union's opinion, the Guidelines are an expression of the universal values of the countries adhering thereto. In particular, reference is made to Chapter 1 (“Concepts and Principles”) §§2 and 4, which stipulate respectively that “Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines “wherever they operate” and that “The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises” [emphasis added]. It follows from this, in the union's view, which the Swiss NCP should also take up specific instances relating to a Swiss enterprise's behaviour vis-à-vis its Swiss subsidiary, i.e. instances having no international element.*

The Swiss NCP presented the request to the September 2004 meeting of the Investment Committee, which asked its Working Party to take up this matter in December.

A background paper on this matter was discussed at the December, 2004 meeting of the Investment Committee. Bilateral consultations with BIAC, TUAC and NGOs were held on the basis of a revised version of the background paper. A draft letter was presented to the April 2005 Working Party which amended the draft and sent it to the Investment Committee. After further amendments, the Committee invited the Chair to send the amended reply to the Swiss NCP, which he did on April 19, 2005. This letter is presented as document 6 in Annex A.4.

## VI. Investments in weak governance zones and DRC follow-up

Follow-up on the UN Expert Panel Report on illegal exploitation of natural resources in the Democratic Republic of Congo and on the generic question of conducting business with integrity in weak governance zones has taken place in the Investment Committee and in individual NCPS.<sup>6</sup>

### **VI.a. Investment Committee follow-up**

In its earlier work on corporate responsibility, the Committee has stressed the importance of an appropriate allocation of roles between the public and business sectors. In some investment environments, public authorities are unwilling or unable to protect rights (including property rights) and to provide basic public services (e.g. social programmes, infrastructure development and prudential surveillance). These “government failures” lead to broader failures in political, economic and civic institutions that lie at the heart of the problems encountered in “weak governance zones”.

The OECD Investment Committee’s most recent work on weak governance zones is an extension of its long-standing engagement on the issues posed by investments in these difficult environments. The work advances the Committee’s goal of promoting policy environments that attract investment flows and support sustainable growth and development. The work began with the Investment Committee’s consideration, in 2001, of the broad range of issues posed by OECD-based multinational enterprises’ investments in Myanmar (see 2002 Annual Report on the Guidelines, section V.a).

The Committee’s most recent work on weak governance follows up on issues raised by the United Nations Expert Panel Reports on Illegal Exploitation of Natural Resources in the Democratic Republic of Congo (DRC). It also responds to the call made in the 2002 Africa Action Plan of the G8 Summit in Kananaskis that the OECD Guidelines be used to intensify support for NEPAD “for adoption and implementation of effective measures to combat bribery and embezzlement”.<sup>7</sup>

Investments in weak governance zones pose many ethics issues (e.g. management of security forces, combating bribery). Drawing on the OECD *Guidelines for Multinational Enterprises* and the recognised strengths of the OECD in the integrity area, the Committee agreed to focus the current project on those issues about which the OECD integrity instruments can shed light. These instruments include the *OECD Guidelines for Multinational Enterprises*, the *Corporate Governance Principles*, the *Guidelines for Corporate Governance of State-Owned Enterprises*, the *Guidelines for Managing Conflict of Interest in the Public Sector*, the *Convention and Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions* and *Best Practices on Budget Transparency*.

During the June 2004-June 2005 reporting period, the Committee considered a paper that identified generic challenges that emerge from investments in weak governance zones, based on a case study of investments by OECD companies in the Democratic Republic of Congo. The main purpose of this paper was to generate the list of issues that were to be considered during consultations on investments in weak governance zones. These questions covered such areas

as: 1) the role of international investors in weak governance host societies – is it different than in stronger governance host societies?; 2) should small and/or unlisted companies should be held to the same performance, management and reporting standards as large companies?; and 3) what integrity challenges should businesses look out for when conducting business with weak governance state-owned enterprises.

Three sets of consultations were held: 1) an expert consultation in Paris in December 2004; 2) a Web-based consultation in early 2005;<sup>8</sup> and 3) a conference involving over 90 people in Addis Ababa held on March 14-15, 2005. A summary of the consultations appears in Annex A.6.

At its April 2005 meeting the Investment Committee agreed that, at its September 2005 meeting, it should consider a shorter document setting forth a practical and non-prescriptive checklist of questions which investors might wish to consider as a tool for managing reputational risk associated with investments in weak governance zones. This tool will draw on the OECD Guidelines for Multinational Enterprises as well as other OECD instruments provided that their status and intended purposes are reflected.

### **VI.b. Follow up by NCPs**

In addition to this generic work, 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 during the reporting period:

- *Belgium.* In November 2004, 4 requests to consider specific instances were introduced by NGOs regarding the activities of companies in the DRC. Two of these will be considered in the course of 2005. With respect to the other cases, the Belgian NCP has decided that it will not consider specific instances relating to companies that are also the subject of judicial procedures in Belgium. Accordingly, five “dossiers” introduced by the Expert Panel have been put aside until the outcome of Belgian judicial procedures is known — these include two of the companies mentioned in the NGO’s request.
- *Canada.* One Canadian company was listed in the Expert Panel’s October 2003 report among “Pending Cases with Governments”. The NCP has been following up with this company. There was further communication between NGOs and the NCP in late 2004 and early 2005 and the company responded to the NCPs follow-up activities with a letter in April 2005. The letter indicated that the company had not performed any work in the DRC since 1997 and that they had officially halted all activities in the DRC as of 4 June 2004. Further NCP follow-up will be with a view to promoting the Guidelines with the company. As a specific instance procedure, the NCP considers this case to be finalised.

- *Finland*. Finland reports that the Finnish and US NCPs have been exchanging views on a US-based company and its Finnish subsidiary with reference to the deletion of the companies from the final Report of the UN Panel.
- *France*. The French NCP has been following up in relation to an air transport company that was named in the two Expert Panel Reports, but which had not taken contact with the Expert Panel when it was meeting with companies to clarify the claims that it had made against them. The Chair of the French NCP met with officials of this company in February 2004 and found out that this company's situation is linked to a specific instance concerning a Belgian company. The French NCP contacted the Belgian NCP and received information in early May 2005. The French NCP has resumed its consideration of the case.
- *Germany*. The German NCP has conducted exploratory talks with "the German companies concerned". The NCP has encountered considerable difficulties in obtaining the information on activities in the war-stricken north-eastern part of the DRC that would enable it to determine whether there has been non-observance of the Guidelines. Germany's report states that: "In any case, the process of contacting companies and discussing the issue with them has led to a considerable increase of awareness of the Guidelines and the likelihood that the Guidelines will be taken into account properly in future activities in the [DRC] (and elsewhere)."
- *Israel*. The Israeli NCP notes that it has concluded its consideration of a specific instance that arose from the NCPs follow up on the UN Expert Panel Report. It summarised the results of the specific instance as follows: "Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from the DRC."
- *United Kingdom*. The UK NCP reports "close cooperation and exchange of information with the Belgian NCP". It also discussed "issues with a representative from the government of the [DRC]". An All Party Parliamentary Group on the Great Lakes published a report on the OECD Guidelines and the Democratic Republic of Congo (an official response was delayed by the UK election). The UK NCP issued a public statement on its engagement with a company mentioned in the Expert Panel reports. This statement can be found in Annex A.4, Document 4.
- *United States*. The report of the United States states: "With regards to the request that the US NCP reconsider its decision with respect to US companies identified in the United Nations Panel of Experts' Report..., the US NCP reiterated its earlier decision, but also took steps to inform the companies that there were continuing concerns being raised with respect to their earlier activities and, further agreed to review additional information provided subsequently by the party raising the issue to determine whether there was nay basis for further reconsideration of its decision."

## **VII. Follow-up on issues raised at earlier 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.
- Report of the UN High Commissioner on Human Rights.

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

"Parallel legal proceedings" refer to "specific instances" that deal with business behaviours that are also the subject of legal or administrative proceedings in the host country. Over the past several years, the NCPs have been sharing their experiences in handling specific instances with a view to improving the consistency, fairness and effectiveness of their procedures. A survey of NCPs handling of specific instances published in the NCP's 2003 Annual Report shows that specific instances considered in parallel with legal and administrative procedures are common.<sup>9</sup>

In the past, NCPs have observed that they might have different approaches to this issue. The 2003 Annual Report states: "NCPs differed in their views on whether the fact that a specific instance concerned business conduct covered by host country procedures would influence their decisions to agree to consider a specific instance. Nine NCPs state that it would – or already has – influenced decisions. One NCP refused a specific instance on the grounds that it concerned business conduct that was also the subject of a legal procedure. Another accepted a specific instance being dealt with under parallel home country procedures, but had to modify its own procedures as a result."

The 2004 Annual Report on the Guidelines describes reports by two volunteer NCPs on specific instances brought to their attention that were also subject to parallel consideration under host country legal or administrative proceedings. At its September 2004 meeting, the Investment Committee agreed to follow up on the view, expressed in the Chair's report on 2004 meeting of the NCPs, that the issue of "parallel legal proceedings" should be further explored during the June 2004-June 2005 cycle of implementation of the Guidelines. In April 2005, the Working Party considered a paper proposing a framework for further information sharing and discussions of this issue. The results of this consideration were that the Working Party:

- Asked the Secretariat to propose an amended list of questions covering both generic issues and NCPs specific experiences with parallel legal proceedings and distinguish carefully specific instances involving business behaviour in adhering and non-adhering countries.



- Agreed that in, after revision, the list of questions could be sent to NCPs, who would be invited to provide answers on a voluntary basis.

In their individual reports for 2005, a number of NCPs have noted that they are waiting to handle specific instances until the Committee's consideration of this issue has produced some practical guidance (e.g. Czech Republic).

### **VII.b. Report of the UN High Commissioner on Human Rights**

At the consultations associated with the 2004 Annual Meetings, BIAC invited the Investment Committee, the NCPs, TUAC and NGOs to work with it in promoting the Guidelines in the context of the work of the UN Commission on Human Rights. 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, it 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.

During the 2004 Annual Meetings, NCPs agreed that this report represented an important promotional opportunity for the Guidelines. In accordance with this view and in response to a request from the Office of the High Commissioner on Human Rights, the OECD made a submission in Summer 2004 on the distinctive features and achievements to date of the Guidelines.

Dated February 15, 2005, the “Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Trans-national Corporations and Related Business Enterprises with Regard to Human Rights” included extensive references to the Guidelines.<sup>10</sup> The report considers the scope and legal status of existing initiatives and standards on the responsibilities of trans-national corporations and related business enterprises with regard to human rights as well as outstanding issues that require further consideration by the Commission. The report reviews existing initiatives and standards on corporate social responsibility from a human rights perspective, noting that there are gaps in understanding the nature and scope of the human rights responsibilities of business. Based on the consultative process undertaken in the compilation of the report, the High Commissioner makes conclusions and recommendations to assist the Commission in identifying options for strengthening standards on business and human rights and their implementation.

The Report's references to the Guidelines describe: 1) the overall content of the Guidelines' recommendations and, more specifically, their coverage of human rights issues; 2) their “wide territorial and company coverage”; and

3) their unique implementation mechanisms, including reports on the use of the specific instances procedure.

This spring, the UN Commission on Human Rights met to consider the Report and, on April 19, 2005, it adopted a resolution requesting the UN Secretary General to appoint a Special Representative on the issue of human rights, trans-national corporations and other business enterprises. The appointment is expected to be made later in the year.

## **VIII. Progress to date and considerations for future action**

### **VIII.a. Progress to date**

The reports for the June 2004-2005 period shows that the Guidelines are being used heavily by stakeholders and that adhering governments have reinforced their commitment to the instrument by stepping up their promotional activities and by actively dealing with specific instances. The specific instances procedure is still the subject of strong interest – a total of 106 requests to consider specific instances have been brought since the 2000 Review. NCPs are showing more confidence and openness when dealing with specific instances – they are more likely to issue statements at the conclusion of a specific instance and they are even discussing the procedure in the mass media. Promotional activities ranged from sponsorship of major international conferences and forging formal alliances with academic institutions to engaging in informal contacts with business students.

There are indications that the Guidelines may have helped to “strengthen the basis of mutual confidence between companies and the societies in which they operate”<sup>11</sup>. For example, some NCPs report that the mere fact that they contact a company or that a specific instances procedure has been initiated can provide the impetus for finding solutions to problems. The Chilean NCP reports that the *Marine Harvest* specific instance<sup>12</sup> has helped to relieve tensions in the vicinity of the Dutch company’s aquaculture operations. The report on the Mexican/German specific instance (see section IV.b.) shows that joint action by the Mexican and German NCPs has been associated with innovative solutions to managing the adjustment costs of a plant closure and may have contributed to reducing tensions between a German company and Mexican factory workers. Although it is difficult to disentangle the contributions of the Guidelines from those of other processes (e.g. legal proceedings), some believe that the specific instance may have improved the quality and transparency of the dialogue between the workers and the company.

The annual meeting of NCPs also underscored the need for continuing efforts to raise the profile of the Guidelines and to improve their institutions. Several NCPs noted that parties to the specific instance procedure often have

*unrealistic expectations* concerning the outcomes of the procedures. In particular, NCPs were concerned about what they viewed as a common misperception that the Guidelines' specific instance procedure is quasi-judicial in nature. In fact, through the specific instance procedures, NCPs are asked to provide a "forum for discussion" and, with the agreement of the parties concerned, to facilitate "access to consensual and non-adversarial means, such as conciliation and mediation, to assist in dealing with the issues."<sup>13</sup> The NCPs invited all partners in the Guidelines implementation process to ensure that their promotional efforts accurately communicate the Guidelines' unique strengths – they are an integral part of a broad-ranging inter-governmental dialogue on global investment issues and create a "space" (to quote an NGO participant) for discussing concrete business ethics problems.

NCPs were also concerned about protecting the confidentiality of the specific instance procedure. Many felt that the practice of posting news of a specific instance on stakeholders' websites or of issuing press releases was not conducive to building the trust needed for effective multi-stakeholder dialogue. NCPs were concerned that these practices could undermine "the quality of the dialogue" and could imperil the successful conclusion of specific instances. They asked stakeholders to reflect carefully on the possible costs of their actions before issuing public statements on specific instances that they bring to NCPs.

The annual half-day consultations with NCPs and the Roundtable on Corporate Responsibility provided an opportunity for stakeholders from adhering and non-adhering countries to make their views on the Guidelines known:

- BIAC expressed broad satisfaction with NCPs' handling of specific instances, but noted concerns about: 1) alleged breaches of confidentiality by some trade unions and NGOs; 2) a tendency to decouple the Guidelines from the OECD Declaration on International Investment. NCPs reaffirmed that the Guidelines are an integral part of the Declaration and that, indeed, one of their strengths is that they are part of a balanced package defining the rights and responsibilities of both governments and companies. At the same time, it was recognised that the Guidelines do differ in important respects from other elements of the Declaration. In particular, the Guidelines apply to the global operations of multinational enterprises operating in or from the territories of adhering countries – this creates challenges that will never be encountered in implementation of the other instruments of the Declaration. Their implementation involves discussions among governments that have agreed to adhere to the instruments, whereas the Guidelines give rise to consideration of business activities in host countries that may not adhere to the Guidelines. BIAC and NCPs agreed that the emerging *Policy Framework for Investment* would complement the Guidelines by helping governments to assume their responsibilities more effectively.

- TUAC and NGOs noted that, while some NCPs are taking their responsibilities seriously, the goal of “functional equivalence” of NCPs has still not been achieved. They complained that specific instances are not being handled expeditiously and fairly by many NCPs. They proposed that NCPs establish peer reviews of NCP performance, drawing on the rich experience of the OECD in this area (e.g. in monitoring respect for commitments made under the OECD Anti-Bribery Convention). Trade unions and NGOs from non-adhering countries said that their experience shows that serious violations of the Guidelines occur routinely (e.g. forced labour in Myanmar and life threatening violations of occupational safety norms in Zambia). In view of the seriousness of these violations, they felt that NCPs should deal with their specific instances as a matter of the utmost urgency.

### **VIII.b. Considerations for future action**

*Peer learning.* The NCPs reaffirmed their commitment to continual improvement in Guidelines implementation and agreed that there is a need to reinforce human and institutional capacity. As noted above, NGOs and trade unions proposed that NCPs undertake formal peer reviews of their performance. NCPs were of the view that their current peer review practices have already led to substantial improvements in NCP performance. In addition, many thought that highly structured and costly peer reviews would not serve the dynamic and wide ranging needs of the Guidelines. Nevertheless, support was expressed for increasing efforts to share best practices. Suggestions for reinforcing peer learning among NCPs include: a training workshop for NCPs (e.g. on managing a mediation process); more frequent informal exchanges of NCP experiences during meetings of the Working Party of the Investment Committee; and annual regional meetings for NCPs (the Nordic NCPs had found their annual meetings to be very useful).

*Positive agenda.* All participants at the meetings agreed that more needs to be done to capitalise on the unique strengths of the Guidelines, to raise their visibility, to enhance the positive agenda and to reinforce partnerships. One of the themes of the 2005 report is the acceleration of promotional activities by NCPs. NCPs also noted the extensive promotion efforts undertaken by trade unions, NGOs and business and invited stakeholders – particularly business – to reinforce these efforts. NCPs welcomed BIAC’s commitment to support this positive agenda and, in particular, its desire to focus on projects that provide concrete assistance to international investors. BIAC highlighted two projects on which it would focus its support: 1) the Joint Task Force on Solicitation, consisting of BIAC and interested members of the Working Group on Bribery. BIAC is currently developing an inventory of public and private facilities that provide assistance to companies facing solicitation and extortion;<sup>14</sup> 2) the development of a reputational risk management tool to help companies invest

with integrity in weak governance zones (see Annex A.6 for a summary of the Investment Committee's consultations on this issue) and appropriate follow up with companies and international organisations to assist companies in using this tool.

*Non-Adhering Countries and the Guidelines.* NCPs and participants in the consultations and the Roundtable identified this as a priority area for further work. The 2005 Corporate Responsibility Roundtable on "The Guidelines and Developing Countries" showed that the Guidelines are based on globally shared values and showed that the pattern of management practices in the corporate responsibility field is similar in adhering and non-adhering countries. However, there are still many outstanding issues in this area. NCPs stressed the need for the Investment Committee and its Working Party to complete its work on parallel legal proceedings and the need to pay special attention to parallel legal proceedings in the context of non-adhering countries (this was already identified as a priority area in the 2004 *Annual Report*). NCPs also felt that there was a need for informal exchanges of views on the specific challenges of considering specific instances in non adhering countries.

*Trade and Structural Adjustment.* Some NCPs reported that they were considering specific instances dealing with labour management practices during relocations of production sites. The 2005 OECD Ministerial Meeting considered a report on *Trade and Structural Adjustment*. In making the case for open markets, the Report acknowledges both the opportunities and the "acute challenges" raised by structural adjustment and "aims to identify, for both developed and developing countries, the requirements for successful trade-related structural adjustment via the relocation of labour and capital to more efficient uses, while limiting adjustment costs for individuals, communities and society as a whole". The Guidelines are prominently cited in the Report as being one element in a broader approach to managing adjustment costs. NCPs took note of this report and identified a need for possible follow up work, including exchanges of experiences among NCPs.

## Notes

1. Individual reports from the following NCPs were received in time to be included in this report: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Israel, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The European Commission also filed a report, though it does not have a National Contact Point.
2. The Guidelines have now been translated into at least 28 languages: 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. The text describing the Commission for Africa is quoted from the LEAD and Commission for African Press Release cfapn09/05. *Commission for Africa Comes Under Spotlight*.
4. The document is also available at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
5. The “report” referred to in this quote is the 19-page report drafted by the Chilean NCP on the Marine Harvest specific instance. This report can be accessed at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines) (then click under NCPS and look under NCP statements).
6. See the 2003 and 2004 *Annual Reports* on the Guidelines for additional information on Investment Committee and NCP follow-up on the UN Expert Panel reports.
7. G8 Summit, Africa Action Plan, 2002, Section 2.6.
8. More information about the web based consultation can be found at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines). Click on *Public Consultation on Conducting Business with Integrity in Weak Governance Zones*.
9. Of the 12 NCPS that had considered specific instances at the time of the survey, 9 had considered “business conduct that was covered by host country laws, regulations or administrative procedures”.
10. This summary of the report is quoted from the Report itself, which can be found at: [www.ohchr.org/english/issues/globalization/business/reportbusiness.htm](http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm).
11. Quote from first paragraph of the Preface of the Guidelines.
12. See sections IV.b. of the 2004 *Annual Report* and of this *Report*.
13. Quotes taken from the Procedural Guidance of the June 2000 Council Decision.
14. See the 2003 *Annual Report* on the Guidelines – Summary of the Corporate Responsibility Roundtable Discussions for more background on the nature of and reasons for BIAC interest in this project.

## ANNEX IA.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 and Trade 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.



	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 Transnational 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 NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.

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

	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	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. 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. The Ministry of Trade and Industry is responsible for the handling of inquiries and the implementation in Specific Instances. The members of the committee come from various ministries, The Bank of Finland, business and labour organisations and NGOs. 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. The committee has met several times over the review period.
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and five Trade Union Federations are part of the NCP.

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

	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	In the first quarter of 2005 the composition of the Hungarian NCP changed. Ministry of Foreign Affairs was restructured and its tasks were modified. Current organisational structure is bilateral, the HNCP is an interdepartmental government body with permanent members. Deputy State Secretariat of the Ministry of Foreign affairs which was responsible for affairs of international organisations (among others for the OECD) and foreign economy was directed to the Ministry of Economy and Transport. Within the MoET new Deputy State Secretariat was formed which absorbed this unit and its tasks.
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 those ministries mentioned in the previous column, and business and employee organisations

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

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Italy	Single Department	General Directorate for Productive Development and Competitiveness, Ministry of Productive Activity	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Welfare Ministry of Agriculture Ministry of Health	The NCP works in close collaboration with representatives of social organisations and its Advisory Committee also includes members of the most important trade unions and business associations.
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.
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,	Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Latvian Employer's Confederation Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economics	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	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.

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

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
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.
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		
Romania	Interdepartmental Office	<i>Coordination</i> – Minister of State for coordination of the activities from business environment and small and medium sized companies fields, Ministry of Foreign Affairs;	Ministry of Foreign Affairs The Cabinet of the minister of state for coordination of the activities from business environment and small and medium sized companies fields – Business Environment Department	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.

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

Composition of the NCP		Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Romania (cont.)		<p><i>Executive function</i> – Minister of State for coordination of the activities from business environment and small and medium sized companies' fields and the Romanian Agency for Foreign Investments.</p> <p><i>Technical secretariat</i> Ministry of Foreign Affairs and Romanian Agency for Foreign Investments</p>	<p>Ministry of European Integration Ministry of Public Finances Ministry of Justice Ministry of Education and Research Ministry of Labour, Social Solidarity and Family Ministry of Economy and Commerce Ministry of Transport, Constructions and Tourism Ministry of Environment and Waters Management Romanian Agency for Foreign Investments National Agency for Small and Medium Sized Enterprises and Cooperation Romanian Academy – National Institute for Economic Research Alliance of Romanian Patronage Confederation Chamber of Commerce and Industry of Romania and Bucharest</p>	
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	<p>Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency</p>	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	<p>Ministry of Environment Ministry of Justice Ministry of Health and Consumption Ministry of Labour and Social Affairs</p>	The NCP liaises with representatives of social partners and NGOs.

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

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
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.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP 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. The NCP holds 2 formal "Stakeholder" meetings a year.
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 IA.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.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>

**Argentine – Argentina**

Ambassador 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:	<a href="mailto:fef@mrecic.gov.ar">fef@mrecic.gov.ar</a>
Esmeralda 1212, 9th floor		<a href="mailto:igf@mrecic.gov.ar">igf@mrecic.gov.ar</a>
Buenos Aires		

**Australie – Australia**

The Executive Member	Tel.	(61-2) 6263 3763
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) 277 72 82
PME, Classes Moyennes and Energie	Fax:	(32-2) 277 53 06
Potentiel Economique	Email:	<a href="mailto:colette.vanstraelen@mineco.fgov.be">colette.vanstraelen@mineco.fgov.be</a>
Rue du Progrès 50		
1210Bruxelles		

**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>
Esplanada dos Ministérios, Bloco P – Sala 225	Web:	<a href="mailto:angela.freitas@fazenda.gov.br">angela.freitas@fazenda.gov.br</a>
70048 – 900 Brasília DF		<a href="http://www.fazenda.gov.br/multinacionaispcn">www.fazenda.gov.br/multinacionaispcn</a>

**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		

**Chili – Chile**

Chef du Département OECD/DIRECON	Tel.	56 2 565 93 25
Dirección de Relaciones Económicas Internacionales	Fax:	56 2 696 06 39
Ministerio de Relaciones Exteriores de Chile	Email:	<a href="mailto:clrojas@direcon.cl">clrojas@direcon.cl</a>
Teatinos 20, tercer piso,	Web:	<a href="http://www.direcon.cl">&gt;"acuerdos comerciales"&gt; OECD</a>
Santiago		

**Corée – Korea**

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:	<a href="http://www.mocie.go.kr">www.mocie.go.kr</a>
Kyonggi-do		

**Danemark – Denmark**

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:	<a href="mailto:eed@am.dk">eed@am.dk</a>
Ved Stranden 8	Web:	<a href="http://www.bm.dk/kontaktpunkt">www.bm.dk/kontaktpunkt</a>
DK-1061 Copenhagen K		

**Espagne – Spain**

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:	<a href="mailto:pnacional.sssc@mcx.es">pnacional.sssc@mcx.es</a>
Paseo de la Castellana n° 162	Web:	<a href="http://www.mcx.es/sgcomex/home1fra.htm">www.mcx.es/sgcomex/home1fra.htm</a>
28046 Madrid		

**Estonie – Estonia**

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:	<a href="mailto:hellehelena.puusepp@mkm.ee">hellehelena.puusepp@mkm.ee</a>
Harju 11	Web:	
15072 Tallinn		

**États-Unis – United States**

Director	Tel.	(1-202) 736 4274
Office of Investment Affairs	Fax:	(1-202) 647 0320
Bureau of Economic and Business Affairs	Email:	<a href="mailto:usncp@state.gov">usncp@state.gov</a>
Department of State	Web:	<a href="http://www.state.gov/www/issues/economic/ifd_oia.html">www.state.gov/www/issues/economic/ifd_oia.html</a>
2201 C St. NW		<a href="http://www.state.gov/e/eb/oeed/">www.state.gov/e/eb/oeed/</a>
Washington, DC 20520		

**Finlande – Finland**

Secretary General, Chief Counsellor	Tel.	+358-9- 1606 4689
Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA)	Email:	<a href="mailto:jorma.immonen@ktm.fi">jorma.immonen@ktm.fi</a>
Ministry of Trade and Industry	Web:	<a href="http://www.ktm.fi/monika">www.ktm.fi/monika</a>
PO Box 32		
FIN- 00023 Valtioneuvosto		
Helsinki		

**France**

M. Ramon Fernandez	Tel.	(33) 01 44 87 73 60
Sous-Directeur "Affaires multilatérales et développement"	Fax:	(33) 01 44 87 74 59
Direction Générale du Trésor et de la Politique Économique	Email:	<a href="mailto:ramon.fernandez@dgtp.e.fr">ramon.fernandez@dgtp.e.fr</a>
139, rue de Bercy 75572 Paris cedex 12	Web:	<a href="mailto:anne.muxart@dgtp.e.fr">anne.muxart@dgtp.e.fr</a>
		<a href="http://www.minefi.gouv.fr/TRESOR/pcn/pcn.htm">www.minefi.gouv.fr/TRESOR/pcn/pcn.htm</a>

<b>Grèce – Greece</b>		
Directorate for International Organisations and Policies	Tel.	(30210) 328 6231
General Directorate for Policy Planning and Implementation	Fax:	(30210) 328 6404
Ministry of Economy and Finance	Email:	<i>evgenia.konto@mneec.gr www.elke.gr</i>
Ermou and Cornarou 1	Web:	
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) 332-6154
V., Honvéd utca 13-15	Email:	<i>tejnora.tibor@gkm.gov.hu</i>
H-1055 Budapest	Web:	<i>www.gkm.gov.hu/balmenu/gkm/nemzetkozikapcsolatok/oecd_nkp.html</i>
<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:	<i>Pat_Hayden@entemp.ie</i>
Department of Enterprise, Trade and Employment	Web:	<i>www.entemp.ie</i>
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. Avichai Levit	Tel.	(972-2) 666 2687
Israel's National Contact Point	Fax:	(972-2) 666 2941
Ministry of Industry, Trade and Labour	Email:	<i>avichai.l@moital.gov.il</i>
5 Bank Israel Street	Web:	<i>www.ncp-israel.gov.il</i>
Jerusalem		
<b>Italie – Italy</b>		
Mrs. Loredana Gulino	Tel.	(39-6) 47052988/47052475
Ministero delle Attività Produttive	Fax:	(39-6) 47052475
Direzione Generale per lo Sviluppo Produttivo e la Competitività	Email:	<i>pcn1@attivitaiproduttive.gov.it</i>
Via Molise 2		<i>pcn2@attivitaiproduttive.gov.it</i>
I-00187 Rome	Web:	<i>www.pcnitalia.it</i>
<b>Japon – Japan</b>		
Director	Tel.	(81-3) 5501 8348
OECD Division	Fax:	(81-3) 5501 8347
Economic Affairs Bureau	Web:	<i>www.mofa.go.jp/mofaj/gaiko/oecd/</i>
Ministry of Foreign Affairs		
2-2-1 Kasumigaseki		
Chiyoda-ku		
Tokyo		
Director	Tel.	(81-3)-3595-2403
International Affairs Division	Fax:	(81-3)-3502-2532
Ministry of Health, Labour and Welfare	Web:	<i>www.mhlw.go.jp</i>
1-2-2 Kasumigaseki		
Chiyoda-ku		
Tokyo		

<b>Japon – Japan (cont.)</b>		
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
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 Brvbās Bulvīris	Web:	<a href="http://www.mfa.gov.lv">www.mfa.gov.lv</a>
Rīga LV – 1395		
<b>Lituanie – Lithuania</b>		
Director	Tel.	370 5 262 0582
Company Law Division	Fax:	370 5 263 3974
Enterprise Economics and Management Department	E-mail:	<a href="mailto:m.rucinskaite@ukmin.lt">m.rucinskaite@ukmin.lt</a>
Ministry of Economy of the Republic of Lithuania	Web:	<a href="http://www.ukmin.lt">www.ukmin.lt</a>
Gedimino ave. 38/2		
LT-01104 Vilnius		
<b>Luxembourg</b>		
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\* The European Commission is not formally a "National Contact Point". However, it is committed to the success of the Guidelines.

## ANNEX IA.3

*Specific Instances Considered  
by National Contact Points to Date*

(14 June 2005)

This table provides an archive of specific instances that have been or are being considered by NCPs as of June 2005. This archive 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 in other reports 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.



NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Argentina	Argentine subsidiary of a multinational enterprise involving employment relations	December 2004	Argentina	II. General Principles IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP has offered to facilitate a dialogue between the parties and continues to pursue this goal.
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.
Belgium	Speciality Metals Company S.A.	September 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group	September 2003	Democratic Republic of Congo	Not specified in the UN report	Ongoing	n.a.	The case is handled together with the NGO complaint.
Belgium	Forrest Group	November 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment V. Environment IX. Competition	Ongoing	n.a.	Under consideration.
Belgium	Tractebel-Suez	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Two meetings organised by the NCP, in presence of both parties took place. The case is nearly finished. A press release is in preparation.
Belgium	KBC/DEXIA/ING	Mai 2004	Azerbaijan, Georgia and Turkey	I Concepts and Principles II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Coordinating with lead UK NCP.
Belgium	Cogecom	November 2004	RD Congo	I Concepts and Principles II. General Policies IV. Employment	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Belgium	Belgolaïse	November 2004	RD Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems	November 2004	RD Congo	I Concepts and Principles II. General Policies X. Taxation	Ongoing	n.a.	
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	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made 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	Concluded	n.a.	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	October 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	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.
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	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	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	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	February 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Denmark	Trade union representation in Danish owned enterprise in Malaysia	February 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country	January 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see <a href="http://www.minefi.gouv.fr/minefi/europe/rerelations_ecofi/index.htm">www.minefi.gouv.fr/minefi/europe/relations_ecofi/index.htm</a>
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.
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.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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	Not specified in information supplied by Panel	Ongoing	n.a.	In consultation with parties
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	November 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 <a href="http://www.minefi.gouv.fr/minefi/europe/relations_ecofi/index.htm">www.minefi.gouv.fr/minefi/europe/relations_ecofi/index.htm</a>
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	February 2005	France	IV. Employment and Industrial Relations	Ongoing		

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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. The German NCP is still waiting for the necessary further information by the party that brought the original complaint.
Germany	Child labour in supply chain	October 2004	India	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	MNE was unable to join the meeting due to a question of principle based on a management-decision with regard to a categorical (non-) cooperation with one of the NGOs involved. Notwithstanding that, the MNE has notified the NCP in detail that it has already taken constructive and concrete steps to solve the problems raised. The NCP is currently conducting separate talks with the parties involved.
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.	Under consideration – there is a parallel legal proceeding.
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 – There is a parallel legal proceeding.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration – there is a parallel legal proceeding.
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 common consent between the interested parties in November 2003. Korean NCP decided, in May 2004, to specify the NCP procedures and promote the Guidelines more aggressively. 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>
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.	The conflict was settled on 17 January 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican <i>Llanti Systems</i> and a cooperative of former workers and was re-named "Corporacion de Occidente". The workers have received a total of 50% in shares of the tyre factory and <i>Llanti Systems</i> bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Netherlands	Adidas' outsourcing of footballs in India	July 2001	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>
Netherlands	Dutch trading company selling footballs from India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues	July 2001	Myanmar	IV Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties could agree on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found on <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> (English version)
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the USA.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.



NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company	August 2002	Netherlands	IV. Employment and Industrial Relations	Ongoing	No, expected July 2005	The fact that the Dutch affiliate is bankrupt makes it difficult to close the instance.
Netherlands (consulting with Chile)	On the effects of fish farming	August 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the DRC.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned. ( <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> )
Netherlands	Closure of an affiliate of an American company in the Netherlands	September 2003	Netherlands	IV Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union	August 2004 – April 2005	United States	IV Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, though its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Treatment of the employees of an Irish company in the Netherlands	October 2004	Netherlands	IV Employment and Industrial Relations	Ongoing	Investment nexus/ legal proceedings?	Research is being conducted as part of the initial assessment.
Netherlands	Closure of an affiliate in the Netherlands of a European company	October 2004	Netherlands	IV Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Netherlands	Travel agencies organising tours to Myanmar	2003-2004	Netherlands	IV Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make statement about discouraging policy on travel to Myanmar, see <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> (in Dutch only).
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.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2004	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2002	Poland	IV. Employment and Industrial Relations	Resumed	n.a.	In contact with representatives of parties involved.
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.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	December 2004	Peru	IV. Employment and Industrial Relations	Concluded		
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>

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United Kingdom	Complaint from an international labour organisation over BAT activities	2003	Myanmar	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 Myanmar 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 parties informed.
United Kingdom	Activities of Avient Ltd 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 September 2004 <a href="http://www.dti.gov.uk/ewt/avient.doc">www.dti.gov.uk/ewt/avient.doc</a>
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

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United States (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 IA.4

### *Archive of Documents*

Document 1. Letter from Investment Committee Chair to EITI.....	66
Document 2. References to the Guidelines in the Commission for Africa Report	68
Document 3. Public statement by French NCP .....	70
Document 4. Public statement by UK NCP .....	72
Document 5. Swiss NCP's request for clarification .....	76
Document 6. Letter of clarification to Swiss NCP.....	78

## **Document 1. Letter from Investment Committee Chair to EITI**

### **Extractive Industries Transparency Initiative**

#### **London Conference 2005**

**London, 17 March 2005**

*OECD Investment Committee*

*Statement by Manfred Schekulin, Chair*

As Chair of the OECD Investment Committee, I am pleased to convey the OECD's support for the general principles of transparency and accountability underpinning the Extractive Industries Transparency Initiative (EITI). These principles are essential to achieving the international community's goal of promoting integrity and sustainable growth in the global economy. The OECD fully subscribes to this goal and the recognition of the important steps governments must take to enhance transparency. It also recognises that multinational enterprises can make an important contribution to the sustainable development of the countries in which they operate and considers that enhanced transparency by multinational enterprises should go hand in hand with improved public sector governance.

The OECD was a participant in the first EITI conference in June 2003. Since, the OECD has continued to make progress with activities in such areas as combating bribery and corruption, promoting improved corporate governance and encouraging corporate responsibility which all complement EITI's efforts to enhance transparency:

- The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* requires each signatory to criminalize the bribery of foreign public officials by companies based in its territory. The Convention, and its related Recommendations, provides a broad blueprint for eliminating the pernicious practice of foreign bribery by companies to obtain or retain business in foreign markets. Thirty six countries now have ratified the Convention, and several applications for accession have been made.
- Improving corporate governance is another area where the OECD makes a distinctive contribution. The OECD is currently completing its work on *Guidelines on Corporate Governance of State-Owned Enterprises* which supplement and build on the *OECD Principles of Corporate Governance*. This

work is of obvious interest to the many state-owned oil and mining companies, whose governance practices also form important parts of the broader transparency picture in extractive industries.

- Transparency is also one of the themes of the *OECD Guidelines for Multinational Enterprises*. The OECD Guidelines are voluntary recommendations to multinational enterprises which are applicable world-wide. All OECD governments, the European Commission and a growing number of non-OECD governments are committed to their effective implementation. They are supported by follow-up procedures which allow discussion among governments, business, trade unions and NGOs of issues relating to implementation of the Guidelines and clarification where needed of the meaning of the Guidelines in specific circumstances.

The OECD Committee is currently completing a project aimed at assisting companies operating in weak governance zones – that is, areas where governments are unable or unwilling to protect the general rights framework and to provide other public services. Based on extensive consultations with African and other government partners and business and other civil society stakeholders, the expected output of this project is an OECD risk management tool for investors wishing to conduct business with integrity in weak governance zones.

The project focuses on those issues about which the OECD integrity instruments can shed light. These include the OECD Guidelines for Multinational Enterprises, the Corporate Governance Principles, the Guidelines for Managing Conflict of Interest in the Public Sector, the Anti-bribery Convention. The project is also a contribution to addressing the generic issues raised in recent United Nations Council Security discussions on illegal exploitation of natural resources in the Democratic Republic of Congo

I welcome that the OECD has been given opportunity to make a contribution to the second meeting of EITI. I believe that further co-operation, consistent with our institutions' respective functions, mandates and procedures, could be useful.

## Document 2. References to the Guidelines in the Commission for Africa Report

### Report of the Commission for Africa published 11 March 2005

[www.commissionforafrica.org/english/report/introduction.html](http://www.commissionforafrica.org/english/report/introduction.html)

Page 40. "... some companies knowingly fuel conflict. They pay substantial sums to oppressive governments or to warlords. Some firms even assist with arms purchases... but many of their actions are not crimes – and at present the various voluntary corporate codes of conduct, such as the OECD Guidelines for Multinational Enterprises, do not provide clear enough guidance on what companies should do in these situations."

Page 69. The following recommendation is made under the heading *Tackling the causes of conflict, and building the capacity to manage them*: "OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict for incorporation into the OECD Guidelines on Multinational Enterprises."

Page 150. Under the heading *Corruption: procurement*. Recommendation: "The international community should encourage more transparent procurement policies in both Africa and the developed world, particularly in the areas of construction and engineering... It should also strengthen existing instruments aimed at curbing corruption. This includes ratifying the UN Convention against Corruption... and wider accession to the 1999 OECD bribery convention by countries engaged in commercial activity on Africa. Governments should also take strong action to encourage companies registered in their territories to adhere to the various international guidelines, such as the *OECD Guidelines for Multinational Enterprises*, that exist, among other things, to prevent corrupt commercial practices in developing countries."

Pages 165-166. Under the heading *Corporate activity in conflict areas*. Recommendation: "OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict, for incorporation in to the *OECD Guidelines for Multinational Enterprises*."

One of the negative impacts of instability is reduced foreign and domestic investment... However, while this investment is often desperately needed, companies that are actively engaged in such countries can also have a negative effect on peace and security. ... Many such actions are in breach of international laws. But many unhelpful acts are not actually crimes and cannot be controlled using existing channels of regulation. The regulatory gap is currently filled by various standards and codes for behaviour, such as the *OECD Guidelines for Multinational Enterprises*. Although voluntary, OECD



governments are obliged to promote and ensure adherence to the guidelines. The G8 has already committed to ‘encouraging the adoption of voluntary principles of corporate social responsibility by those involved in developing Africa’s natural resources’. That obligation now needs to be implemented.

However, existing guidelines make inadequate provision for economic activity in areas at risk of, or actively engaged in, violent conflict. Corporate guidelines need to be revised with conflict zones in mind, setting out the best current practice on security arrangements, transparency and revenue-sharing arrangements. Such guidelines should be aimed at helping companies to avoid the potential risks to their own business of operating in such environments, and thus allow them to invest with greater confidence. They should set out the importance of using conflict analysis and risk assessments to avoid creating or worsening conflicts. The mechanisms for the implementation of the OECD Guidelines through National Contact Points (NCPs) should be strengthened, for example through establish NCPs in resource rich African countries, as recommended by participants at the Commission’s regional consultations.”

Page 174. Under the heading *Tackling the causes of conflict, and building the capacity to manage them*, the following recommendation is made: “OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict, for incorporation into the OECD Guidelines for Multinational Enterprises.”

Pages 246-247. “We call on the business community to identify actions it can take in support of the priority actions set out in this Report... This means businesses moving beyond CSR strategies that focus on philanthropy to a more fundamental look at how they do business. It means better coordinated, outcome-focused efforts centered around leading initiatives, including the UN Global Compact, the *OECD Guidelines for Multinational Enterprises*, the Global Reporting Initiative, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policies and the OECD Bribery Convention.... The Commission urges greater participation of African countries – and their private sectors, including small enterprise and civil societies – in the global CSR debate, including in the context of the next review of the OECD Guidelines.”

Page 303. “As discussed elsewhere in this report (Chapter 4), a strategy of development through extractive industries is difficult and requires a high degree of transparency. This is why the Commission is urging a strengthening of the Extractive Industries Transparency Initiative..., agreement of a common definition of conflict goods... and changes to the *OECD Guidelines for Multinational Enterprises* to cover behaviour in conflict situations.”

### **Document 3. Public statement by French NCP**

#### **Recommendations of the French National Contact Point to EDF and its partners regarding the “Nam Theun 2” Project in Laos**

**Thursday, 26 May 2005**

A specific instance was submitted to the French National Contact Point (NCP) by the non-governmental organisation “Les Amis de la Terre” (“Friends of the Earth”), on 26 November 2004, in connection with the project for the construction in Laos of a hydroelectric dam known as “Nam Theun 2” by the NTPC consortium, of which Électricité de France is the principal shareholder.

The case submitted is based on a number of chapters of the OECD Guidelines for Multinational Enterprises: Chap. II (General Policies) concerning sustainable development and respect for human rights; Chap. V (Environment) concerning the gathering and communication of information on the potential effects of the activities carried out, consultation with the local population and assessment of the environmental, health and safety impacts on the persons involved; Chap. IX (Competition) concerning compliance with the rules of international competition (this part of the case was rejected by the NCP). In addition, the NCP considered that it was appropriate to broaden this case so as to include Chap. IV concerning Employment and Industrial Relations.

On the basis of all the documents gathered from the NTPC consortium, the World Bank, the Asian Development Bank and the international network of the Ministry for Economic Affairs, and consultations with experts from the Coface and the French Development Agency (AFD), the NCP has reached the conclusion that, in the light of the information available, no violation of the OECD Guidelines could be attributed to EDF and that EDF had even made commitments that went beyond these Guidelines. In this regard, the NCP takes note of the fact that, on 24 January 2005, EDF signed an agreement on social responsibility defining the group’s commitments with respect to its activities.

However, considering that the NCP also has responsibility for monitoring the effective implementation of the company’s commitments to comply with international environmental and social standards, the NCP members have decided to make the following recommendations in this regard:

1. The NCP is of the opinion that EDF and its partners – through the NTPC consortium – must remain involved in the implementation of all compensatory measures, in the framework of the agreed sharing of responsibilities with the Laotian national authorities. The institutions participating in this project are also asked to ensure that there is an equitable sharing of responsibilities. The NCP takes note of the studies

conducted by the consortium on the potential environmental impact of its activities and encourages NTPC, in accordance with its obligations, to continue these evaluations and participate actively in the appropriate protective measures.

2. The NCP is also of the opinion that multinational enterprises doing business in countries where the legislative and regulatory system in the environmental and social field is considered to be weak should do their utmost to apply the same internationally recognised good practices that they follow in their own country at construction sites and with regard to the people affected by their activity. In this respect, the fundamental ILO standards – in particular regarding trade union rights – constitute appropriate rules of conduct for enterprises to follow in their activities.

The NCP also proposes to engage in regular consultations with the company (at least on an annual basis), in order to monitor the project and its impacts, and in constructive exchanges regarding the corrective action to be taken to maintain a high level of good practice and the exemplary standard set for this project.

## **Document 4. Public statement by UK NCP**

### **Statement on Avient**

#### *Introduction*

Avient were 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 Avient were listed 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 Avient provided military supplies to both the Congolese Army (FAC) and the Zimbabwe Defence Force (ZDF), thus contributing to the conflict in the area.

It was alleged that Avient provided crews for Antonov 26 aeroplanes and Mi 24 helicopters stating that these types of aircraft were used in offensive action in the DRC at the time Avient were contracted by the government of the DRC. The Panel did not supply further details nor evidence of any specific actions undertaken by Avient crews.

Finally the Panel alleged that Avient brokered the sale of six military helicopters to the DRC Government. No evidence was supplied by the Panel to support this allegation.

The Panel did not, however, identify which provision(s) of the *OECD Guidelines for MNEs* they alleged Avient to be in breach of.

#### *Co-operation with the UN Expert Panel*

In the Panel documentation the company is described as “Avient Air”. The company has denied ever being incorporated as Avient Air and for the purposes of this process the UK NCP has conducted all dialogue with representatives of Avient Ltd.

The Panel stated in a letter to the UK NCP dated 26 September 2003 that some progress had made with Avient over the allegations but that it could not come to definitive conclusions before the Panel’s mandate expired in October 2003. Avient met with the Panel in May 2003 and corresponded with

the NCP, the Panel and the UN on a number of occasions subsequently. Avient were, and remain, unhappy with the conduct of the Panel throughout – although they agreed to cooperate with the Panel, the UK NCP and to abide by the Guidelines. Specifically Avient feel aggrieved that the allegations were presented as fact, but without evidence to substantiate such assertions. Subsequently these allegations have been produced by banks, organisations and governments as reasons as to why they cannot conduct business with the company.

### *NCP Comment on Panel accusations*

The Panel supplied very little evidence to support the allegations made. Some documentation was supplied by the UN in May 2004 and, informed by this documentation and discussion with Avient, the NCP asked Avient to respond formally to the specific accusations.

1. The Panel allege that Avient Air had a close relationship with Oryx (another company named in the UN report) and that Avient Ltd. was a military company which supplied services and equipment to the ZDF and the FAC.

Avient Ltd. has confirmed that they carried commercial cargo from Zimbabwe and South Africa to the DRC (Mbuji-Mayi) for Oryx and had done so for a number of years, providing a selection of manifests, as requested by the NCP, to support this. The equipment carried was commensurate with mining activity.

From the evidence provided, the NCP finds that although owned and partly managed by a former military person, Avient Ltd. is not a military company.

Avient Ltd. denies supplying equipment to the ZDF and FAC, but concede supplying services (“carriage, re-supply and movement of personnel and equipment”) to the ZDF. They stress this was not a tactical or military role but a supply function.

Avient Ltd. also provided engineering, training and crews for the FAC for a short period of time. They claim certain issues within the DRC made such work ineffective and these also meant that the crews supplied by Avient Ltd. hardly ever flew. Their major support function was the airdropping of food and supplies to DRC Government forces who were cut off in places by rebel forces. Avient Ltd claim its staff respected all cease-fire agreements.

2. *Crewing for Antonov cargo planes, Mig 23 Jet fighters and MI 24 attack helicopters.*

Avient Ltd. admits carrying cargo and supplies under a commercial arrangement with the Government of the DRC using their Antonov aircraft.

Avient Ltd. provided crew for a Mig 23 jet fighter to train DRC crews to fly and maintain the aircraft. On arrival in the DRC the staff found the aircraft

were in poor condition and supplied to the FAC a list of spare parts required to make them airworthy. This resulted in one aircraft flying a circuit of Kinshasa airport and thereafter a flight training course was arranged as agreed. Events overtook such training and the course was cancelled after 3 days; the aircraft never flew again and the whole crew returned home.

Avient Ltd. admits that it provided crew for an MI 24 helicopter and that they were involved in the relief of isolated places but shortly afterwards it suffered a technical problem and the staff returned home.

Avient Ltd. claim that the FAC became disillusioned with the methodology employed by the Company and the contractual arrangements were dissolved after 8 months. This is supported by UN documentation.

The Panel alleges that Avient Ltd. brokered the sale of six military helicopters to the DRC Government.

Avient Ltd. absolutely denies this allegation. No evidence has been supplied by the UN to support this allegation. No evidence from other enquiries across government by the NCP has arisen. In the circumstances the NCP finds this allegation unsubstantiated.

## Conclusions

The UK Government is firmly committed to the Guidelines as a baseline for corporate behaviour and an aid to companies drawing up their own codes of conduct. The purpose of the Guidelines however, is not to act as an instrument of sanction nor to hold any company to account. The implementation procedures within the Guidelines are a problem solving mechanism with a view to parties coming to an agreement or for the NCP to make recommendations for future behaviour in similar circumstances. In this case, given that there is no complainant, it falls to the NCP to make recommendations.

The DRC and surrounding area is a difficult business environment. During the period under consideration there was a lack of regulation coupled with lawlessness and poor governance. With this in mind, although difficult, it is important for companies to act in a way which would support the development of the region.

The NCP accepts Avient Ltd's contention that they were working within a contractual arrangement with the officially recognized governments in the area.

In future Avient Ltd. should carefully consider the recommendations of the Guidelines particularly, but not exclusively, Chapter 2 before entering into contracts with Governments and businesses in the area.

Specifically Chapter 2 of the Guidelines states enterprises should:

- contribute to economic, social and environmental progress with a view to achieving sustainable development;
- respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments;
- abstain from any improper involvement in local political activities.

## Document 5. Swiss NCP's request for clarification

**From:** Head, Swiss National Contact Point

**To:** Chairman of the Investment Committee

**Re:** Request for clarification regarding implementation of the *Guidelines for Multinational Enterprises* (Ref.: 438387 – kau)

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Bern, 9 July 2004

Dear Sir,

Pursuant to the June 2000 Decision of the [OECD] Council regarding the *Guidelines for Multinational Enterprises*, the Committee on International Investment and Multinational Enterprises is responsible for providing clarification in the event a National Contact Point makes a substantiated submission regarding interpretation of the *Guidelines*. Herein, we should like to submit the following request.

### **Case in point:**

The Swiss NCP was contacted by a Swiss trade union that considered that a certain multinational enterprise headquartered in Switzerland did not, in its dealings with one of its subsidiaries, which is also based in Switzerland, adhere to certain recommendations set forth in the *Guidelines* – namely, Chapter IV (“Employment and Industrial Relations”), and more specifically §1(a) in respect of collective bargaining.

In the union's opinion, the *Guidelines* are an expression of the universal values of the countries adhering thereto. In particular, reference is made to Chapter 1 (“Concepts and Principles”), §§2 and 4, which stipulate respectively that “Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines wherever they operate*” and that “The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises” [emphasis added]. It follows from this that, in the union's view, the Swiss NCP should also take up “specific instances” relating to a Swiss enterprise's behaviour vis-à-vis its Swiss subsidiary, i.e. instances having no international element.

### **Interpretation of the Swiss NCP**

The Swiss NCP recognises that the *Guidelines* are a multi-dimensional instrument, and that the issue of their applicability must be envisioned flexibly. We therefore deem that the *Guidelines*, as governments' recommendations to “their” enterprises, are universal in nature.

Notwithstanding, as stated in the “Report by the Chair” of the 2003 Annual Meeting of the National Contact Points (Chapter VI – Scope of the



Guidelines), “the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of [such] an investment nexus”.

Consequently, the Swiss NCP considers that a distinction should be made between the substance of the *Guidelines* and their implementation in particular cases. While the recommendations contained in the *Guidelines* are aimed at the activities of businesses both at home and abroad, the procedure for implementation by the National Contact Points in “specific instances”, as formulated in the 2000 Decision of the Council, should theoretically be limited to issues arising in a context of international investment.

### **Question**

Does the Investment Committee share the Swiss NCP’s interpretation, or does it consider that the “specific instances” procedure should also apply to issues having no international dimension?

Thanking you in advance for your reply, I am,

Yours faithfully,

*Ivo Kaufman*

Head, Swiss National Contact Point  
State Secretariat for Economic Affairs

## Document 6. Letter of clarification to Swiss NCP

Mr. Ivo Kaufman Head,  
Swiss National Contact Point  
State Secretariat for Economic Affairs  
Switzerland

Vienna, 19 April 2005

Dear Mr. Kaufman,

**Re: Request for clarification regarding implementation of the Guidelines for Multinational Enterprises dated 9 July 2004 (Ref: 438387 – kau)**

I am writing you in answer to your letter of 9 July 2004 requesting a clarification regarding appropriate approaches to specific instances that have “no international element”.

Your letter provides factual background about a Swiss trade union’s request that you consider a specific instance “relating to a Swiss enterprise’s behaviour *vis-à-vis* its Swiss subsidiary.” You also offer your own interpretation of this factual background and ask whether the Investment Committee agrees with your interpretation.

Your interpretation states the following: “The Swiss NCP recognises that the Guidelines are a multi-dimensional instrument, and that the issue of their applicability must be envisioned flexibly. We therefore deem that the *Guidelines*, as governments’ recommendations to ‘their’ enterprises, are universal in nature. Notwithstanding, as stated in the ‘Report by the Chair’ of the 2003 Annual Meeting of the National Contact Points (Chapter VI – Scope of the Guidelines), ‘the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of [such] an investment nexus’. Consequently, the Swiss NCP considers that a distinction should be made between the substance of the *Guidelines* and their implementation in particular cases. While the recommendations contained in the *Guidelines* are aimed at the activities of businesses both at home and abroad, the procedure for implementation by the National Contact Points in ‘specific instances’, as formulated in the 2000 Decision of the Council, should in principle be limited to issues arising in a context of international investment.”

Your letter then poses the following question:

*Does the Investment Committee share the Swiss NCP’s interpretation, or does it consider that the “specific instances” procedure should also apply to issues having no international dimension?*

The Working Party of the Investment Committee discussed your request for clarification at its December meeting and reported to the Investment Committee on its findings. The Working Party asked the Secretariat to solicit

written comments from BIAC, TUAC and NGOs on this issue, based on paragraphs 1 to 14 of DAF/INV/WP(2004)2. They contributed three sets of comments that can be found in DAF/INV/WP/RD(2005)1. The request for clarification was the subject of further discussions at the 5 April 2005 Working Party and during consultations with BIAC, TUAC and NGOs held in conjunction with the April 2005 meetings.

Based on these discussions, the Investment Committee confirms that the specific instances procedure was created to deal with issues arising in the context of international investment. The Committee notes that it did not attempt to assess the appropriateness of the Swiss NCP's application of the generic interpretation to the specific instance at hand. It also wishes to stress the following:

- *Furthering the effectiveness of the Guidelines.* NCPs approach to specific instances (including those having “no international element”) should, above all, be oriented toward furthering the effectiveness of the Guidelines. All decisions as to whether or not to consider a specific instance should be evaluated in light of this consideration. The Guidelines aim “to ensure that the operations of [multinational 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”. NCPs are asked to fulfil this mandate while operating within resource constraints and within the bounds of authority defined by their positions as investment officials of adhering governments. In general the interests of the Guidelines will be best served by: 1) NCPs demonstrating clearly that they are willing to accept the responsibilities that have been given to them under the Guidelines; 2) by not using the scarce resources dedicated to the Guidelines to address problems that other national institutions have been specifically designed to address; 3) by taking maximum advantage from the expertise of the group of officials charged with responsibility for the Guidelines – the international investment community; and 4) by working effectively with other policy communities.
- *The Guidelines express global principles applicable to both domestic and international operations of companies.* The Guidelines text is quite clear on this matter and there is strong agreement among delegations, NCPs and Guidelines partners on this point. Your letter makes this point and the comments by BIAC, TUAC and NGOs broadly concur that the “values the Guidelines stand for are universal in scope” (quote from BIAC letter). As pointed out in earlier Investment Committee statements, the Guidelines “reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines”.

- *Level playing field.* The discussions of your request for clarification raised concerns about what one delegate described as the need to “create a level playing field”. The Committee agrees that this is a concern. However, it also recognises that many different actors – other agencies within adhering and non-adhering governments, other international and regional organisations as well as non-public actors such as business associations, trade unions and NGOs – are working in their own ways to uphold the values and principles from which the Guidelines are derived and which they reinforce. They are seeking to level the playing field by making these meaningful in the day-to-day operations of a broad cross-section of companies. The implementation procedures of Guidelines are just one among many such processes and NCPs should seek to complement other processes.
- *Differences between purely domestic and international dialogue on matters of business ethics.* Past Investment Committee work recognises that systems for encouraging appropriate business conduct are complex and, for the most part, rooted in local social, civil and legal processes. These include informal pressures on company employees coming from family and peers, scrutiny from the national press, and formal deterrence stemming from local law enforcement. International companies may have a different relation to these processes than domestic companies do – they might not pick up and interpret host country signals and pressures in the same way as domestic companies would; host country actors might be more suspicious of or discriminate against foreign actors; the international dimension of economic transactions might introduce complexities of interpretation that would not be present in purely domestic transactions. The Guidelines implementation procedures are designed to help fill a gap left between the largely national institutions of dialogue and the international character of many business transactions. The Guidelines provide an international perspective on business ethics that is backed by 39 governments whose territories are home to most large multinational enterprises. Much of the value-added of the Guidelines lies in this international-national link and the Investment Committee encourages the NCPs to make the most of this link.
- *Boundary between international and domestic issues.* The global economy and international investment – while shaped by what might be thought of as a mosaic of national policy environments – do not always give rise to clear cut boundaries between home and host country operations or between foreign and domestic issues. During the discussions, several delegations argued that, the mere fact that a company is a multinational enterprise means that its business decisions are, almost by definition, international in nature. It is precisely because of the difficulty of establishing crisp typologies of economic transactions that many NCPs and delegations stressed the

importance of a case-by-case approach to this issue. This message is reinforced by the 2003 Statement by the Committee on Scope of the Guidelines, which notes: “When considering the application of the Guidelines flexibility is required”.

We hope that this answers your question in a way that is useful for you and for the parties to this specific instance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Manfred Schekulin', followed by a large, stylized flourish.

Manfred Schekulin  
Chair, OECD Investment Committee  
[www.oecd.org/investment](http://www.oecd.org/investment)

cc: Investment Committee delegates.

## ANNEX IA.5

*Joint OECD-UN Document  
on the UN Global Compact and the OECD Guidelines  
The UN Global Compact  
and the OECD Guidelines  
for Multinational Enterprises:  
Complementarities  
and Distinctive Contributions*

*This document, by the UN Global Compact Office and the OECD Secretariat, has been developed as an input to the OECD Investment Committee's work on the implementation of the Guidelines. It has been commented on by Committee delegates and posted on the UN and OECD websites.*

### **Introduction**

The UN Global Compact and the OECD Guidelines for Multinational Enterprises ("the OECD Guidelines") are the world's foremost comprehensive, voluntary corporate responsibility initiatives. In articulating principles of responsible business conduct, they draw on international standards enjoying widespread consensus.

This document seeks to clarify the complementarities and distinctive contributions of these two initiatives by setting forth the initiatives' major premises and objectives, scope and coverage, and implementation and follow up mechanisms. In so doing, it aims to lay the foundation for closer cooperation.

## **The United Nations Global Compact**

The Global Compact is an open and voluntary corporate citizenship initiative engaging a wide spectrum of multi-stakeholder participants across the globe. With more than 2 000 companies and other societal actors participating from more than 80 countries, the Global Compact is the world's largest corporate citizenship initiative. Local networks, launched in more than 40 countries, are helping to carry forward the Global Compact at the local level. The United Nations Secretary-General first proposed the Global Compact in an address to the World Economic Forum on 31 January 1999. The Compact's operational phase was subsequently launched at UN Headquarters on 26 July 2000.

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core principles in the areas of human rights, labour standards, the environment and anti-corruption. The ten Global Compact principles enjoy universal consensus being derived from: The Universal Declaration of Human Rights; the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development; and the United Nations Convention against Corruption.

As a voluntary initiative, the Global Compact seeks to promote responsible corporate practices through a variety of engagement mechanisms, including learning, dialogue and projects. The initiative's core comparative advantages are the universality of its principles, the international legitimacy that only the United Nations embodies, and the Compact's potential to be a truly global platform with great appeal to companies all over the world. The Global Compact is grounded in universally accepted declarations and conventions, which has enabled strong support in developing countries, one of the Organization's unique characteristics. To date, over half of all Global Compact participants are from non-OECD countries, bolstering the initiative's credibility and promise of positive social impact where the need is greatest.

To achieve its mission of a more sustainable and inclusive global economy, the Global Compact pursues two complementary objectives: Making the Global Compact and its principles an integral part of business strategy and operations everywhere, and facilitating cooperation among key stakeholders promoting partnerships in support of UN goals.

Although the Global Compact enjoys a large measure of government support, it operates mainly as a network that brings together companies with UN agencies, labour and civil society organisations to advance universal social and environmental principles. It is supported by the Global Compact Secretariat, which is composed of the Global Compact Office and six UN agencies: the Office of the High Commissioner for Human Rights, International Labour Organization, the UN Environment Programme, the UN Industrial Development Organization, and the UN Office on Drugs and Crime. Business participants include large as well as small and medium-sized enterprises (SMEs) from virtually all industry sectors and geographic regions.

## **The OECD Guidelines for Multinational Enterprises**

The OECD Guidelines are recommendations by governments to multinational enterprises (MNEs) operating in and from the territories of the 39 countries that adhere to the Guidelines.\* The Guidelines are a multilaterally endorsed and comprehensive code of conduct that enjoys the backing of governments whose territories are home to almost 90 per cent of foreign direct investment flows and to 97 out of the top 100 multinational enterprises.

The Guidelines establish non binding principles and standards covering such areas as human rights, disclosure of information, anti corruption, taxation, labour relations, environment, competition and consumer protection (see Table IA.5.1 for a mapping of the two initiatives' coverage). These principles and standards draw on the same set of core values in the areas of human rights, labour standards, the environment and anti corruption as the UN Global Compact. The Guidelines are the means through which the OECD Investment Committee seeks to integrate these core values into its work on international investment so as to help it advance its mission of enhancing the contribution of investment to growth and sustainable development.

The Guidelines aim to promote the positive contributions multinational enterprises can make to economic, environmental and social progress and to ensure that MNEs act in harmony with the policies of the countries in which they operate and with societal expectations. By adding the weight of adhering governments' views to the general public debate on many issues in international business ethics, the Guidelines process has already succeeded in raising the legitimacy and profile of corporate attempts to address these issues.

The fact that the Guidelines implementation processes are government backed lends significant credibility to them. Their unique implementation

\* These are the 30 OECD countries and 9 non-member countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia) that have adhered to them.



**Table IA.5.1. A comparison of the coverage of the UN Global Compact principles and selected OECD Guidelines chapters**

Global Compact principles	OECD Guidelines' chapters
<b>Human Rights</b>	
<b>Principle 1:</b> Businesses should support and respect the protection of internationally proclaimed human rights;	<b>Chapter II</b> – General Policies <b>Chapter VII</b> – Consumer Interests
<b>Principle 2:</b> Make sure that they are not complicit in human rights abuses.	<b>Chapter II</b> – General Policies
<b>Labour</b>	
<b>Principle 3:</b> Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 4:</b> The elimination of all forms of forced and compulsory labour;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 5:</b> The effective abolition of child labour;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 6:</b> The elimination of discrimination in respect of employment and occupation.	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Environment</b>	
<b>Principle 7:</b> Businesses should support a precautionary approach to environmental challenges;	<b>Chapter V</b> – Environment
<b>Principle 8:</b> Undertake initiatives to promote greater environmental responsibility;	<b>Chapter V</b> – Environment
<b>Principle 9:</b> Encourage the development and diffusion of environmentally friendly technologies.	<b>Chapter V</b> – Environment
<b>Anti-corruption</b>	
<b>Principle 10:</b> Business should work against all forms of corruption, including extortion and bribery.	<b>Chapter VI</b> – Combating Bribery
<b>Other issues</b>	
	<b>Chapter III.</b> Disclosure <b>Chapter VII.</b> Consumer Interests <b>Chapter VIII.</b> Science and Technology <b>Chapter IX.</b> Competition <b>Chapter X.</b> Taxation

procedures (described more fully below) provide a unique channel for exploring concrete issues of business ethics.

The Guidelines are part of a broader, balanced instrument of rights and commitments – the OECD Declaration on International Investment and Multinational Enterprises. The Declaration promotes a comprehensive, interlinked and balanced approach for governments' treatment of foreign direct investment and for enterprises' activities in adhering countries.

The OECD instruments on international investment and multinational enterprises are one of the main means by which the OECD helps adhering countries to work towards a liberal regime for foreign direct investment, while at the same time ensuring that multinational enterprises operate in harmony with the countries where they are located.

## **Complementarities between the initiatives and their distinct contributions**

*Premises.* The two initiatives are based on complementary premises. The Guidelines are founded on the assumption that internationally agreed principles can help prevent misunderstandings and build an atmosphere of confidence and predictability among business, labour, governments and society as a whole. The Global Compact is based on the premise that business has an interest in sustainable and inclusive global markets underpinned by universal principles, and that the UN's unique convening power can be used to build consensus and promote substantive positive action and practical solution finding to the challenges of globalization.

*Scope.* The initiatives complement each other well in terms of the topics they address and their geographical coverage. Both initiatives are based on broad international consensus: both the OECD Guidelines and the UN Global Compact are deeply rooted in international conventions and declarations enjoying universal consensus.

The Global Compact principles are general and broad. Their breadth and simplicity are part of their appeal, rendering them accessible for all types of businesses, regardless of size, industry, location or level of experience with corporate citizenship. In many cases, the OECD Guidelines provide more detail. They also cover topics – e.g. taxation and competition – which are not addressed in the Global Compact's ten principles.

The Global Compact's global reach and its focus on company initiatives and networking with UN Agencies complement the strongly inter-governmental character of the Guidelines. There are companies to whom the recommendations in the OECD Guidelines are not applicable – namely, companies that do not operate either in or from the territories of any of the 39 adhering countries (which are, for the most part, developed countries). By contrast, the Global Compact has a particularly strong uptake in developing countries, where most of its local networks are located. It is open to participation by all companies, wherever they are based or operate as long as they express their support for the ten principles and are willing to work toward their implementation

The Global Compact is based on a set of 10 universal principles in the areas of human rights, labour, environment and anti-corruption. Being

derived from four key international declarations and conventions, the principles enjoy universal consensus. The OECD Guidelines are recommendations – drawing on largely the same normative sources as the UN Global Compact – by 39 adhering governments to multinational enterprises operating in or from their countries. They contain voluntary principles and standards in the areas of employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The following table maps the Global Compact principles with relevant chapters of the OECD Guidelines.

Since the OECD Guidelines' text is relatively long and detailed, it covers some areas that are not covered explicitly by the UN Global Compact. These include chapters on disclosure (which contains recommendations on both financial and non-financial disclosure), consumer interests, science and technology, competition and taxation.

*Manner and degree of engagement with business.* The initiatives also complement each other in their different manner and degree of engagement with business. Companies initiate their participation in the Global Compact through a leadership commitment by their CEO and (where appropriate) Board that is communicated to the United Nations. Business and other societal actors also engage directly in the various engagement mechanisms that the Global Compact offers at the global, regional and local level, such as practical solution finding, identification of good practices and projects on the ground. Although the OECD welcomes expressions of support for the Guidelines, its implementation process does not depend on them – the normative framework upon which the Guidelines is based is deemed to be so fundamental that its relevance to companies is taken for granted. Responsibility for promoting the recommendations in the Guidelines lies primarily with the adhering governments as does the administration of the Guidelines' unique follow up mechanism.

*Implementation.* The Global Compact offers five different types of engagement opportunities for its participants: networks, dialogues, learning, initiatives and partnership projects. Companies and other Global Compact stakeholders are encouraged to take an active role in country networks. Global Compact networks support implementation of the Global Compact in a local context through dialogue, learning and projects, and provide support for quality assurance.

In policy dialogues, the Global Compact supports action-oriented local, regional or international meetings that focus on specific issues related to globalisation and corporate citizenship.

To promote learning, the Global Compact fosters the development of tools and publications to assist participants with the process of implementing

the principles and sponsors opportunities for participating companies to share best practices and lessons learned. As a voluntary initiative, the Global Compact seeks to establish the business case for responsible corporate citizenship. In furtherance of this aim, it has, for example, facilitated a number of initiatives with the financial community to promote responsible corporate practices.

Global Compact participants are also encouraged to undertake partnership projects with UN agencies and civil society organisations in support of global development goals, such as the Millennium Development Goals.

The distinctive, government-backed implementation mechanisms of the OECD Guidelines include the operations of National Contact Points (NCP). These are government offices located in each of the 39 adhering governments. They are responsible for encouraging observance of the Guidelines and for ensuring that the Guidelines are well known and understood by the national business community and other interested parties. NCPs promote the Guidelines; handle enquiries about them; assist in solving problems that may arise; gather information on national experiences with the Guidelines; and report annually to the OECD Investment Committee.

*Accountability and follow up mechanisms.* Both initiatives are voluntary from the perspective of the corporations that choose to engage with them in that neither relies on formal legal sanctions to achieve their objectives. Rather, they each have their own unique means of promoting observance.

The Global Compact is not a regulatory instrument – it does not “police”, enforce or judge the behaviour of companies – it relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share best practices in pursuing the principles upon which the Global Compact is based. To promote basic engagement quality, the Global Compact asks participating companies to publish in their annual report (or similar corporate report) a description of the ways in which they are supporting the Global Compact and its ten principles. This “Communication on Progress” is an important tool to demonstrate the continuous performance improvement to which the Global Compact aspires. Companies that do not communicate their progress for two years in a row are declared inactive until they communicate their progress. To further promote continuous quality improvement and better accountability, the Global Compact has introduced other integrity measures that utilize dialogue to help participants raise the quality of their implementation efforts. Under these integrity measures, it is anticipated that local networks will play an increasingly important role in practical solution finding.

The OECD Guidelines provide a unique follow up mechanism for raising “specific instances”. This facility allows interested parties to call a company’s alleged non-observance of the Guidelines’ recommendations to the attention of an NCP. Since the creation of the specific instance facility in 2000, it has been used 80 times as a forum for discussing concrete problems of business ethics – those encountered by managers “on the ground”. For example, the facility has been used to discuss a Korean company’s labour management practices in a Guatemalan export processing zone, a Canadian company’s resettlement of populations in the vicinity of its mine in the Zambian copper belt, and a sporting goods manufacturer’s management of the risk of employing child labour in the sporting goods supply industry in India. NCPS are still refining their use of the specific instances procedure to ensure that all parties – businesses, civil society and trade unions, other governments – find it a useful tool. Promising developments include the use of embassy networks and official development assistance programmes as sources of information about investment projects in non-OECD countries and the issuance of public statements explaining the nature and conclusions of the discussions held under the specific instance.

The National Contact Points meet every year in order to engage in a “peer review” of their activities, including their handling of specific instances. In this way, Guidelines implementation involves continual improvement, both by NCPS and by other users. An annual report on implementation of the Guidelines is published which includes information on specific instances and how other parts of government (*e.g.* export credit agencies) use the Guidelines in the context of their work.

Responsibility for oversight of the functioning of the Guidelines falls to the OECD Investment Committee, which is expected to take steps to enhance their effectiveness. It can also issue clarifications on the application of the Guidelines in specific circumstances.

## **Conclusions**

The Global Compact and the OECD Guidelines are two of the world’s foremost corporate responsibility initiatives. They complement and reinforce each other in many ways.

That the initiatives have mutually reinforcing missions is clear: The government-backed OECD Guidelines uses an inter-government process to promote the positive contribution that multinational enterprises can make to economic, environmental and social progress. The Global Compact seeks to advance responsible corporate citizenship by inspiring voluntary action in support of universally agreed principles. Opportunities for mutual advocacy and promotion will be explored.

Given their common interest in promoting responsible corporate citizenship, there is scope for exploring opportunities for mutually beneficial cooperation. Some concrete examples already exist. For example, the Secretariats have invited each other to participate in and contribute their expertise to relevant events, including on the topics of business in zones of conflict, transparency and anti-corruption. In March 2005, they co-sponsored – along with NEPAD and Transparency International – a major anti-corruption conference in Addis Ababa. Other joint efforts on substantive work could be undertaken on a case-by-case basis.

## ANNEX IA.6

## Investments in Weak Governance Zones – Summary of Consultations

*The Guidelines aim to ensure that the operations of 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.*

*OECD Guidelines for Multinational Enterprises, first paragraph of the Preface.*

### Introduction and background

Weak governance zones are areas where governments are unwilling or unable to carry out their responsibilities.<sup>1</sup> This means that public authorities do not protect rights (including property rights) or provide basic public services (e.g. social programmes, infrastructure development and prudential surveillance). These “government failures” lead to broader failures in political, economic and civic institutions that the OECD Investment Committee refers to as “weak governance”. A recurrent theme of the OECD Investment Committee’s work on the OECD Guidelines for Multinational Enterprises is that corporate responsibility goes hand-in-hand with government responsibility. The current document summarises the results of a multi-stakeholder dialogue that has sought to provide inputs to an answer on the

following central question: Do companies have different roles and responsibilities when operating in weak governance zones, where governments are not working well, than in healthier investment environments?

In late 2004, the Investment Committee discussed a Secretariat background paper that identifies some of the ethical challenges posed by investments in weak governance zones. This paper focused on the challenges about which the OECD integrity instruments can shed light. The Committee then held three consultations organised around the issues identified in the paper: 1) an expert consultation held in Paris in December 2004; 2) a web-based expert consultation held in early 2005;<sup>2</sup> and 3) a conference in Addis Ababa attended by over 90 participants and co-sponsored by the OECD, UN Global Compact, NEPAD and Transparency International.<sup>3</sup> This Annex reports on the results of these consultations.

## Summary of consultations

### General issues

*Human dimension of the problem.* Some participants recalled the human suffering caused by the institutional problems being addressed in the consultations – this discussion is not a dry policy debate. One NGO participant recalls that what is at stake is not simply the credibility or profitability of OECD investment, but the physical, social and economic well-being of millions of people throughout the developing world”.<sup>4</sup>

*Primacy of the roles of host country actors.* The primacy of the roles of host country actors in reforming their own institutions was stressed both in the background paper and in the consultations. Indications are that host country actors – even in weak governance zones – are starting to assume these roles. Angola has taken the first steps toward enhancing revenue transparency, Nigeria has moved forward on fiscal reform and, in the DRC, an evaluation of SOE performance recently led to the suspension of six Ministers. At the Addis Ababa conference, one business representative noted the emergence of new African leadership whose goal is to leave a lasting political legacy. This augurs well for reform. Home country and international organisations can play important – but only supporting – roles in assisting weak governance host countries to get on the path to reform.

*Missing issues.* A number of participants remarked that, while the Investment Committee project addresses some highly relevant concerns in the anti-corruption and governance areas, it leaves aside many important issues.<sup>5</sup> Missing issues mentioned by consultation participants are: human rights and humanitarian law, handling of extortion and relations with rebel



authorities and other belligerents, conducting business in the midst of war crimes, supply chain management, protection of workers' rights, management of security forces and the possible role of investment embargoes.

*Rapid growth of initiatives in this area.* Many initiatives have been undertaken that, in various ways, help weak governance countries to find solutions to their problems. Initiatives cited by participants include: the Convention on Business Integrity in Nigeria; the OECD Development Assistance Committee's Guidelines on Conflict, Peace and Development Cooperation; Extractive Industry Transparency Initiative (EITI); Global Reporting Initiative; International Budget Project; International Association of Oil and Gas Producers' Guidelines on Reputational Due Diligence; Sarbanes Oxley; South Africa's King II Report (a corporate governance code); Transparency International (TI) and Social Accountability International's Business Principles for Countering Bribery; TI's Integrity Pacts; the Voluntary Principles on Security and Human Rights; the United Nations Convention against Corruption; the UN Global Compact Conflict Guidelines; and the Wolfsberg Principles.

*These initiatives draw on the distinctive competences of many organisations.* The rapid growth of initiatives to help improve the situation in weak governance zones – sponsored by home and host governments, international organisations, businesses and business associations, NGOs and trade unions – suggests that a broad, global effort to address these issues has developed. Organisations' contributions reflect their distinctive competences and have given rise to a framework that, while far from complete, nevertheless represents progress. Thus, while the consultations underscored the daunting nature of the challenges posed by weak governance zones, they also conveyed a hopeful message that many people are working in many different ways to help these countries in their quest for reform and for a higher quality of life. These diverse initiatives have been undertaken by home and host governments, business, trade unions and NGOs operating in both adhering and non-adhering countries. With this project, the OECD Investment Committee's aims to draw on the OECD's established strengths in the area of integrity and governance instruments so as to complement and reinforce other initiatives.

*Strategic partnerships.* Many of these initiatives are the fruit of collective action and strategic partnership was one of the major themes of the consultations.<sup>6</sup> These partnerships have involved and will continue to involve business, host and home governments, NGOs, trade unions and international organisations.

## **Nature and allocation of public sector and business responsibilities**

*Mixing politics and economics.* Mixing politics and economics is, according to participants, a feature of weak governance zones – one contribution notes that “the political system in these environments is often closely intermingled with the economic framework”.<sup>7</sup> This intermingling is unhealthy in weak governance zones in the sense that it creates a situation in which neither the public sector nor the business sector does its job well. Participants reported that foreign investors (like their domestic counterparts) in weak governance zones tend to already be deeply involved in host country politics – they need to nurture political contacts to protect their investments and can also to use them to gain competitive advantage. This makes it difficult for companies operating in these countries to maintain credibly an apolitical, “strictly business” stance.<sup>8</sup> Given this situation, companies need to distinguish between appropriate and inappropriate political engagement.

*Constructive political involvement.* Participants underscored the double-edged position that companies find themselves in with respect to political involvement – for while consultation participants were concerned about excessive mixing of politics and economics, most them also felt that companies have a role in supporting reform in weak governance host societies. For example, all written responses to the question as to whether companies have a role in supporting reform are either an emphatic or a (sometimes highly) qualified “yes”. Some participants emphasised the particular importance of this role in weak governance zones, where multinational enterprises are not only relatively powerful (compared with most host country actors), but also better informed about international “rules and standards”.<sup>9</sup> On the other hand, participants often expressed concern that “even the most well-meaning initiatives by companies to support host state reform will carry the risk of inappropriate involvement in host country politics or the appearance of misconduct...”.<sup>10</sup> Participants identified a number of characteristics of constructive political engagement:

- Subject and purpose of involvement – appropriate involvement promotes better participatory processes and a competitive market environment; strengthens reputational agents such as accounting, audit and legal professionals and civil society; promotes the integrity-enhancing institutions (e.g. business associations and chambers of commerce).<sup>11</sup>
- Good faith test – “the test involves a company ensuring that its intention in the particular context is candid, *bona fide* and for the best interest of the host community and country in the long run.”<sup>12</sup>
- Competence – the company is well informed about the local political situation and has taken steps to ensure that it understands the national, regional, local and ethnic dimensions of host country politics.<sup>13</sup>

- Partnership – Most contributions stressed the importance of partnership – for example, an NGO asks companies to engage in “multi-stakeholder dialogue ... which will enable different actors to pool their core competencies ... and will also facilitate the development of stronger inter-relationships, co-ordination and transparency”.<sup>14</sup> Partnerships with international organisations and with local embassies were also frequently mentioned.

*No double standard.* Participants noted that it is both possible and necessary to respect international standards (e.g. on human rights, anti-bribery and avoidance of conflict of interest) in weak governance zones. They stressed that it is in weak governance zones that these standards become doubly relevant and useful – they help frame and provide boundaries to corporate responsibilities in countries where the political and legal framework is not providing reliable guidance for companies. One business participant states that “... not only is adherence to international standards sufficient, but clear internal guidelines and support should be given to management and staff deployed in such zones.... It is essential for companies to ensure that their own standards of operation are emphatically consistent – whatever the state of governance... in the regions in which they conduct business”.<sup>15</sup>

*Greater due diligence and managerial care.* Participants considered that, while the same standards of business conduct apply in all the countries of the world, observing these standards requires more extensive due diligence and greater managerial care in weak governance zones. There is a need for a context-sensitive “heightened degree of caution” according to one mining company official. The International Association of Oil and Gas Producers’ contribution notes that “companies that conduct due diligence will be better positioned to identify areas of risk and reduce the likelihood of reputation damage” and calls attention to its *Guidelines on Reputational Due Diligence*. Thus, at one level, the consultation participants appear to have answered the central question addressed to them: “Do companies have different roles and responsibilities when operating in weak governance zones than in healthier investment environments?” Broadly described, their answer appears to be: “Companies’ responsibilities are largely the same in weak governance zones as they are in other investment environments. What is different is the amount of due diligence and managerial care needed to ensure that these standards are adhered to – this has to be much greater in weak governance zones.”

*Bearing witness.* Consultation participants generally supported the view that companies have some kind of responsibility to “report wrongdoing to the appropriate authorities<sup>16</sup>” and provided indications that companies are already doing this.<sup>17</sup> One business executive at the December consultations noted that, in his company’s experience, when companies do speak out, they are often ignored – by host and home governments and by international

organisations. Participants also stressed the obvious risks of whistle-blowing – losing business, “getting shot” and expropriation. Some doubted that companies could play an important role in this respect because of the gravity of the threats against them. One NGO suggested that there is a need for a “witness protection programme,” for businesses and that, if companies felt they could not “report serious wrongdoing to an international body and/or host country institution without suffering negative consequences”, then this was a reason not to invest in that host country.<sup>18</sup> Noting that “unilateral action under such conditions is usually suicidal”,<sup>19</sup> participants highlighted the value of collective action<sup>20</sup> – e.g. operating through business associations or in partnership with international organisations<sup>21</sup> – in facilitating effective whistle-blowing. The useful role played by some OECD embassies in channelling such information was acknowledged.<sup>22</sup>

*Small- and medium-sized enterprises (SMEs).* Participants (including SMEs themselves<sup>23</sup>) generally held that “the same minimum standards apply to all companies, large or small. Whilst it may be unreasonable to expect small companies to adopt the same levels of reporting as large and listed companies, in weak governance countries in particular any lowering of the requirements on integrity and transparency will encourage irresponsible elements”.<sup>24</sup> Understandably, the SME contributions tended to stress the high standards to which they already adhere.<sup>25</sup> One NGO contributor stated that the real question was not so much whether international standards apply to SMEs, but how they can be made meaningful: “Quite clearly, due to their lesser visibility and, in the case of small unlisted companies, their imperviousness to shareholder accountability, these companies have fewer incentives to adopt best practices...”.<sup>26</sup> One SME noted that some listed SMEs face growing legal pressure for fuller disclosure (e.g. from Sarbanes-Oxley) and that complying with these demands is quite costly for them.<sup>27</sup>

*Know your business partners and clients.* Many participants underscored the importance of companies knowing their business partners and clients. According to the former Chairman of the Wolfsberg Group (speaking at the December 2004 consultation), “knowing your clients” is a core responsibility for banks. He advocated the use of the *Wolfsberg Principles* as a basis for designing bank procedures in this area. The International Association of Oil and Gas Producers’ *Guidelines on Reputational Due Diligence* help companies to design due diligence procedures and to “establish a framework for in-house programmes”. In particular, the *Guidelines* propose “red flags” (i.e. possible danger signals) that companies should research and take into account when deciding whether to conduct business with another company or an individual.<sup>28</sup> Thus, the consultations provided indications that business – mainly through business associations – is moving forward in this area.

## **Management and reporting practices – maximising value with integrity**

Enterprises should...

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.

OECD Guidelines for Multinational Enterprises, Chapter 2. General Policies

Weak governance zones confront companies with many decisions in areas over which they have only partial control, but they have almost complete control of their choice of corporate governance arrangements. A company's management and reporting practices are probably the best indicator of the importance that it attaches to facing various ethical and business challenges. One of the questions considered by consultation participants was whether or not companies operating in weak governance zones should use basic business tools – boards, internal management systems, external audit and disclosure – to manage the serious risks (human rights, corruption, etc.) encountered in these difficult business environments.

Participants generally answer “yes” to this question. For example, a junior mining company, states that “the greater level of independence within the Board..., more rigour, responsibility and independence for audit committees, ... increased independent auditor responsibilities... will be helpful in better managing our roles in difficult environments.”<sup>29</sup> Consultation participants stressed the need to undertake more extensive due diligence and use greater managerial care in supporting employees and business partners “on the ground” in weak governance countries<sup>30</sup> – propriety in this area is “is one aspect in which there is no room for flexibility”.<sup>31</sup> One NGO notes that companies’ behaviour in these areas is central to how they will be viewed by surrounding societies – she states “companies are only expected to act in their “sphere of influence”. Companies will be assessed on the way in which they negotiate deals; the transparency of their transactions; their relations with local communities not merely in providing “services” but whether they disclose relevant information about their activities, the composition of their boards, their ultimate beneficial owners and the scale and duration of their investment.”<sup>32</sup>

## **Doing business with State-Owned Enterprises (SOEs)**

*Enterprises should take fully into account established policies in the countries in which they operate ... In this regard, enterprises should:*

- 1. Contribute to economic, social and environmental progress with a view to achieving sustainable development...*
- 3. Encourage local capacity building through close co-operation with the local community, including business interests...*
- 6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.*

OECD Guidelines for Multinational Enterprises, Chapter 2. General Policies

The Addis Ababa conference provided an opportunity to survey country experiences with SOEs (countries covered were the DRC, Ethiopia, Namibia, Nigeria, Senegal, South Africa and Tanzania). The SOE sector also featured prominently in more general discussions of public and private governance and of corporate responsibility at the conference. The sector was described by conference participants as “obstacle to development” and as a “liability to the African economy”. Thus, the Addis Ababa conference underscored the significance that African actors attach to the SOE sector, both as a target for promoting corporate responsibility and as an integrity issue for private companies conducting business with it.

Although the discussion of African experiences with SOEs showed some differences among countries (*e.g.* in the degree of privatisation achieved to date), the overall picture painted at Addis Ababa was one of serious, but strikingly similar problems (including inefficiency and corruption, especially political corruption). SOE governance problems mentioned by conference participants include:

- *Regulator and ownership roles of the state not separated.* SOE relations with Ministries and top political actors are generally close. This gives rise to conflicts of interest in the formulation of a number of policies, including regulation, competition and procurement. Many African SOEs enjoy monopoly powers in their sectors.
- *Ineffective Boards of Directors.* Boards of directors often do not have *de facto* rights to exercise their responsibility to set the strategic direction of the company and to ensure that management acts in the best interest of the shareholders (for example, real control may reside outside the Board with political parties or top government officials). Board appointments are made on the basis of political connections, not business competence. SOE Board nominations can be a channel for political patronage and Boards are often beset with conflicts of interest.

- *Slack Internal Management Systems and Other Controls.* SOEs' internal control systems are often defective or non-existent. SOEs are frequently "excluded from the Auditor General's purview"<sup>33</sup> and sometimes hire their own auditors, who do not follow international audit standards and are subject to conflicts of interest.
- *Low standards of disclosure.* One participant at the conference noted that SOEs should adhere to higher transparency standards than privately owned companies because SOEs act in trust for the public. In reality, the average standard of disclosure observed by SOEs in most countries surveyed is low.

Thus, overall, the Addis Ababa conference confirmed the relevance of the focus placed by the background report on the way OECD-based companies structure their business transactions with state-owned enterprises. The consultations revealed no general view that companies should avoid all business relations with weak governance SOEs; rather the tenor of the conversation was that companies should give carefully monitor the structure of individual transactions; should be particularly diligent in monitoring relations with problematic SOEs; and should promote improved SOE governance arrangements. The consultations showed clearly that companies themselves recognise that how they manage their relations with weak governance SOEs is an important issue and that they are willing to try to promote better governance with these business partners (as recommendation II.6 of the OECD Guidelines for Multinational Enterprises urges them to do). At the same time, companies wished to avoid giving the impression that they can assume full responsibility – one business contribution, while expressing a willingness to engage on this issue, stresses that the "responsibility for proper governance of SOEs lies with governments, not industry".<sup>34</sup>

The consultations indicated, in particular, that there is a role for OECD-based companies who sit on boards of partially-privatised SOEs to protect the rights of "other shareholders", notably those of host country citizens who are (or should be) the ultimate owners of their SOEs.<sup>35</sup> FAFO's contribution states that larger multinational enterprises sitting on SOE Boards "have a legitimate shareholder right to demand accountability from these companies and the leverage to make a difference, something that local citizens in weak governance zones do not have".<sup>36</sup>

### ***Dealing with the authorities of weak fiscal systems***

*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 arrangements to the arm's length principle.*

OECD Guidelines for Multinational Enterprises, Chapter 10. Taxation

Fiscal policy determines who gets what out of government spending and who has to pay for it. Many societies have developed elaborate systems for meeting their collective needs and implementing their models of social justice. These policies have created their own distinctive rent seeking opportunities and have contributed to fiscal imbalances in many countries, but they are also widely recognised to have helped create prosperous, just and peaceful societies. Spending and taxation programmes need effective political oversight to ensure that money is well spent and to prevent abuses. As stated by the contribution from the Institute for Democracy in South Africa (IDSA): “In a democracy, citizens have a right to know what public money is being spent on, and what decisions their elected representatives make on their behalf. It is only with this knowledge that elected officials can be held accountable for their budget planning, allocations and implementation”.

The OECD Guidelines are one of the few major corporate responsibility instruments that recognise the importance of the business responsibilities as taxpayers – Guidelines Chapter 10 deals with this issue. Consultation participants generally accepted the importance of these responsibilities, but had mixed views about the willingness and ability of OECD-based companies to play a major role in supporting fiscal reform. Generally, the importance of partnership was stressed: “[companies] should not be unilateral proponents of reform but must be willing to get involved in a coalition of interests seeking reform.”<sup>37</sup> As one business executive states, companies can “use best endeavours to encourage [fiscal] transparency. Business can help to create a positive environment and influence such reform – and it is in its interest to do so – but is a guest in the host country and cannot dictate. Again, the EITI is leading the way on this issue”.<sup>38</sup> In general, the effective and useful role played by the EITI in this area was acknowledged by many participants in all the consultation processes. The OECD Investment Committee has twice associated itself with the EITI<sup>39</sup> and considers that the current project reinforces and complements the EITI.

IDSA states that companies, in partnership with civil society and international organisations, can make a significant contribution to improving budget systems. Companies are often important revenue sources for weak governance fiscal systems and are potentially a powerful force for promoting budget reform. IDSA's contribution proposes a number of ways that non-governmental actors (including companies) might be able to contribute to



improving budget systems. These include helping to build a culture of accountability and advocating more public access to budget decision-making.

### *Bribery of public officials*

Chapter VI of the OECD Guidelines – Combating Bribery – is the Organisation’s main direct communication to business on the subject of combating bribery to obtain or retain business or other improper advantage.<sup>40</sup> As such, it is an essential complement to the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions and to the Revised Recommendation on Combating Bribery in International Business Transactions. An NGO consultation participant notes the particular relevance of this chapter for investors in weak governance zones and “the fact that the OECD [member countries] also have legislation on this issue is of particular significance. The link between bribery and corruption and poor development is well-documented – as is the cycle of bribery, extortion and violent conflict. Paying bribes directly implicates companies in these dynamics...”<sup>41</sup>

Participants emphasised the need for a “zero tolerance” policy and for “tone from the top”. Business representatives working in African subsidiaries of OECD-based multinational enterprises described incidents where they were forced to assume very high costs in saying no to bribe solicitors (for examples, a Nigerian executive abandoned \$250 000 of production inputs blocked in a Nigerian port rather than pay a bribe to have it released). They noted the importance of support from headquarters for resisting solicitation.<sup>42</sup> In this sense, the consultations reinforce a finding of the Phase II reviews of signatories’ implementation of enabling legislation under the OECD Convention. These have shown that, if support from headquarters is to be effective, it requires a clear chain for reporting corruption (sometimes through a hotline) as well as whistleblower protection. Such measures should be set forth in company guidelines and supported with regular awareness and training activities.

An NGO and a trade union participant addressed a word of caution to international business – prosecutions and investigations are underway and are becoming more common among the 36 countries that have signed the OECD Convention.<sup>43</sup> In addition, since the Convention came into force there have been several convictions – for example, in Canada, Korea, Mexico, Norway, Sweden (under appeal) and the United States. The Addis Ababa conference showed that – beyond the OECD Convention – the anti-corruption framework is being built up at the international, regional and national levels. Companies engaging in bribery now run greater risks.

Chapter 6 of the OECD Guidelines provides guidance on the appropriate use of agents. The OECD Convention requires signatories to criminalise

bribery of foreign officials “whether directly or through intermediaries” – thus, bribery through agents is clearly covered by the Convention.<sup>44</sup> Current good practice suggests that companies should first ascertain if the use of an agent is really required. If it is, then companies need to handle their relationship with care *inter alia* by: 1) engaging in due diligence in the selection and appointment of the agent; 2) ensuring that the amount paid to the agent is reasonable and that it corresponds to a real service; and 3) establishing a clear contractual relationship in which the agent is informed of and accepts the policies of the company.

The Expert Panel Report on the DRC revealed a case where a company found that one of its agents had bribed public officials – its letter to the Panel<sup>45</sup> states that the company severed its relations with the agent as soon as it became aware of the problem. Participants were asked whether this measure is sufficient, or whether other remedial activities should be undertaken by a company confronted with such a situation. Many noted the need to change the way the company selects and manages agents. In addition, consultation participants proposed a number of other measures that might be undertaken in the event that an agent is found to have engaged in bribery. These include: 1) reporting the agent to the appropriate authorities;<sup>46</sup> 2) reduction in the discretionary powers of agents to release payments;<sup>47</sup> 3) publication of a press release explaining the company’s decision to sever its ties with the agent (but also take action to protect company against potential backlash);<sup>48</sup> 4) and communication with other stakeholders.<sup>49</sup>

### **Responsibilities of home governments and international organisations**

The responsibilities of home governments and international organisations identified by consultation participants were of three types.

- First, they are responsible for supporting integrity in weak governance zones via the financial support they provide for businesses operating in these zones (*e.g.* via overseas development assistance and export credit and investment guarantee schemes). Although the message was mixed, consultation participants sometimes questioned these organisations’ willingness and ability to become deeply involved in the fight against corruption in these areas. The need for Official Development Assistance (ODA) programmes to become more sophisticated and rigorous in dealing with corruption in all its forms was noted by many consultation participants, particularly in Addis Ababa. One consultation participant jokingly advocated the creation of a Kimberly Process for tracking ODA funds. A keynote speaker at the conference described the arsenal of “Weapons of Mass Diversion” that is arrayed against African economies – home governments need to increase the sophistication of their policies, controls and reporting as they face this arsenal.

- Second, many participants looked to home governments and international organisations to provide guidance and assistance to companies in the fight against corruption.
- Third, home governments and, especially, international organisations were viewed as having a comparative advantage (relative to companies) in promoting institutional reform in weak governance host countries and were urged to continue to play this role. However, a keynote speaker at the Addis Ababa conference noted that “Northern” interventions in “Southern” reform processes sometimes had unintended and undesirable consequences and that, in undertaking reform, there can be no substitute for genuine political commitment in the host country.

## Summing up

The themes and views that emerged from the consultations may be summarised as follows:

- *No double standard.* Consultation participants were of the view that companies have the same responsibilities when operating in weak governance zones as in healthier investment environments – they are expected to comply with law and with other widely held international standards (e.g. on human rights, management of security forces, protection of local populations, corporate governance). While business responsibilities are the same everywhere, what is different in weak governance host countries is: 1) the amount of due diligence and managerial care that has to be taken to ensure that these standards are adhered to; and 2) the effort companies need to make to ensure that they can be held accountable for their performance in these weak governance zones (where such transparency-enhancing institutions as business associations, legal and accounting institutions, free press and civil society do not function well).
- *Political involvement and the business community.* The consultations brought into relief the extreme importance of political involvement as an ethics issue for investors in weak governance zones – investors’ cultivation of political relations is a necessary condition for survival (e.g. to protect their investments or to ward off competitors). The difficult (and still open) question is: what kind of political involvement is acceptable under these circumstances? How can companies and others tell the difference between constructive political involvement and inappropriate involvement? The consultations provided some interesting answers to these questions (e.g. constructive involvement is transparent and done in partnership with other civil society actors). In general, though, OECD and non-OECD societies will need to continue dialogue on this important question.

- *Home governments and international organisations* can and do play a role in helping weak governance countries develop healthier institutions. The importance of the EITI and the positive roles of home country embassies were frequently mentioned during the consultations. More generally, though, the consultations highlighted the need for home governments and international organisations to become more sophisticated in and more committed to ensuring that their operations do not contribute, directly or indirectly, to corruption. In addition, it was felt that both could do more to assist companies in dealing with the many difficult challenges they face as they try to conduct business with integrity in weak governance zones. This assistance could include providing advice to companies and helping them channel information about wrongdoing to authorities who are in a position to make use of it.

## Notes

1. Estimates made by the UK Department of International Development. See *Why we need to work more effectively with fragile states*, January 2005, page 5.
2. The contributions to the web-based consultation can be found at: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
3. Information about this conference, including contributions by participants, can be found at [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment) under "Conferences".
4. Fourth paragraph of FAFO's written contribution to consultation questionnaire. The same point was also made by Transparency International at the December 2004 consultation.
5. See, for example, submissions from BIAC, International Alert, Rights and Accountability in Development and the All Party Parliamentary Group on the Great Lakes Region.
6. See, for example, Soji Apampa's (SAP, Nigeria) answer to consultation questionnaire and his presentation to the Addis Ababa conference ([www.oecd.org/daf/investment](http://www.oecd.org/daf/investment)).
7. Paragraph 2 of Edward Nathan Corporate Law Advisors' answer to Question 1. The unhealthy intermingling of politics and business was described by numerous participants at the Addis Ababa conference.
8. See for example, the junior mining company's contribution on standards of political involvement and use of political relationships to gain competitive advantage, page 1 and 2. This point was also made in the background paper for the consultations.
9. Contribution of Asif Saeed, Government College University, Lahore Pakistan, page 1.
10. Karen Ballentine, FAFO written contribution on Question 2, second bullet point, page 2. Also Edward Nathan Corporate Law Advisors, page 3.
11. Edward Nathan Corporate Law Advisors page 2. See also FAFO response, page 2 on building local competence, building "remedial technical assistance into Production Sharing Agreements" and strengthening civil society organisations.

12. Edward Nathan Corporate Law Advisors, page 3, answers to second bullet of Question 2.
13. Edward Nathan Corporate Law Advisors, page 3, answers to second bullet of Question 2.
14. International Alert's contribution, page 3, Question 10.
15. Edward Nathan Corporate Law Advisors, page 2.
16. De Beers contribution, page 3. DeBeers stressed that illegal activity needs to be reported.
17. Canadian junior mining company's contribution. Groupe Forrest contribution, page 10.
18. Rights and Accountability in Development, page 3.
19. Soji Apampa (SAP Nigeria) contribution, page 2.
20. This theme – the fact that business has information that could be useful to anti-corruption practitioners, but that it is often difficult to use it – was also an raised by participants at the June 2003 Corporate Responsibility Roundtable (see summary of discussions published in the 2003 *Annual Report on the OECD Guidelines for Multinational Enterprises*). Follow up on this Roundtable is being undertaken Joint Task Force on Bribe Solicitation.
21. DeBeers stated that governments and international organisations have a comparative advantage in speaking out on matters of public sector management.
22. Junior Mining Company contribution.
23. At least 5 SMEs participated in the consultation events.
24. De Beers contribution, page 5.
25. See, for example, the written contributions by Groupe Forrest and the junior mining company.
26. FAFO contribution, page 5. Soji Apampa's contribution (page 3) makes the same point and notes the role of regulation and stock market listing requirements in helping to "level the playing field".
27. Canadian junior mining company, pages 4 and 5.
28. According to the International Oil and Gas Producers submission, these include: "Public officials holding shares or other interests in the company in his own right; an officer, senior executive or key employee of the company has an interest in another company that might be considered to be a competitor; there are uncertainties in the business or financial references; payment instructions requested by the company include split payments, payments to an apparently unrelated third party or to a bank account in an offshore tax regime; and the company asks that the identify of the directors, owners or employees not be disclosed."
29. See junior mining company contribution, page 4. This statement is made in relation to governance changes imposed by "Sarbanes-Oxley-type initiatives".
30. See contributions from DeBeers, International Association of Oil and Gas Producers and Edward Nathan Corporate Law Advisors, page 2.
31. Contribution of Asif Saeed, Government College University, Lahore Pakistan, page 4, Question 7.

32. Contribution of Rights and Accountability in Development. Page 2. See also contributions from Asif Saeed, DeBeers, the junior mining company, Edward Nathan Corporate Law Advisers, International Alert.
33. Participant in the parallel session on state-owned enterprises at the Addis Ababa conference.
34. De Beers contribution, page 5.
35. See, for example, Asif Saeed, DeBeers, Edward Nathan Corporate Law Advisers, FAFO, International Alert and the junior mining company's answers to Question 10.
36. FAFO contribution, page 7.
37. Contribution of Soji Apampa, SAP Nigeria, page 5. answer to Question 11.
38. DeBeer contribution, page 6.
39. A formal statement was made by the Investment Committee Chair at the EITI meeting on 17 June 2003 and a statement by the Chair was also submitted to its meeting on 17 March 2005 (Annex IA.4, Document 1).
40. Chapter 6 was added to the Guidelines at the June 2000 Review. The text of the chapter and its commentary was developed by the Working Group on Bribery in conjunction with the Investment Committee.
41. International Alert contribution, page 7.
42. Two business executives speaking at the Addis Ababa conference.
43. Transparency International and UNICORN – Global Unions Anti-Corruption Network, speaking at the Addis Ababa conference.
44. In addition, the agent is liable under the Convention for aiding and abetting the bribery transaction, where he or she has the requisite intent.
45. See Reaction number 4 (page 13) in the Addendum to the report of the UN Panel of Experts to United Nations Security Council on the Illegal Exploitation of Natural Resources in the Democratic Republic of Congo. S/2002/1146/Add.1. Distributed 20 June 2003.
46. Groupe Forrest contribution, page 10.
47. Asif Saeed contribution, page 8.
48. Soji Apampa of SAP Nigeria, page 5.
49. Edward Nathan Corporate Advisers, page 18.

## ANNEX IA.7

## *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.

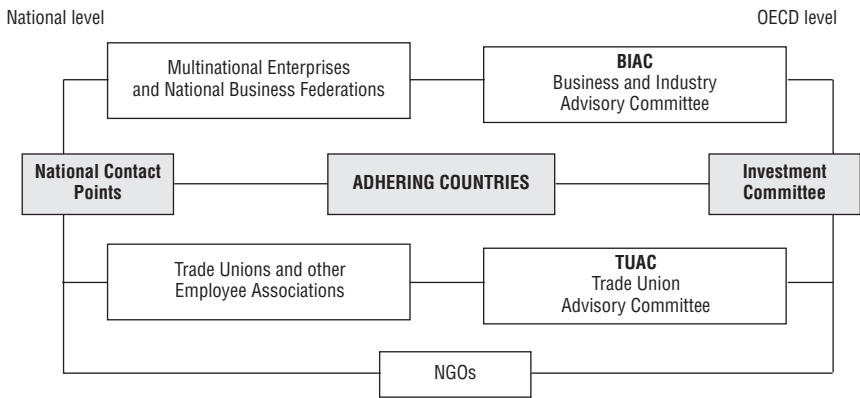
The National Contact Point:

- 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 2002.

Figure IA7.1. **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 its member countries.*



# *BIAC Submission to the Annual OECD Roundtable on Corporate Responsibility*

*June 2005*

## **1. Good public governance is a prerequisite for FDI and facilitates CR**

FDI has a positive impact on host countries' economies due to the additional financial, technological and managerial resources associated to it. In addition, many foreign investors decide to engage on voluntary activities related to corporate responsibility (CR) in order to increase the benefits of FDI to the societies in which they operate. They are investing significant resources in policies such as fostering an atmosphere of trust between management and workers, protecting the environment, supporting national science and technology policies and engaging in community relations.

CR activities must not be misunderstood though as alternatives or substitutes for government action to promote the sustainable development of societies. Governments and businesses have distinct responsibilities which need to be clearly defined and kept separate.

The responsibility of companies is to efficiently provide goods and services to their customers and through this, yield adequate returns for their capital providers. When they engage in additional CR activities companies do this on a voluntary basis and because they believe it is good for their long-term competitiveness.

Governments need to provide a well functioning legal, political, social and economic environment in which companies can operate successfully. The quality of the business and investment environment provided by government is the precursor to investment (domestic and foreign) and investors' ability to pursue voluntary CR activities, not the other way round.

The importance of countries' positive approach to investment is currently being highlighted in the "Policy Framework for Investment" initiative. This project, which is being developed by OECD and non-OECD countries in collaboration with the OECD business community, aims at promoting shared views among governments and the business community on what constitutes "good policies" for attracting foreign direct investment.

The discussion in the Meeting of the Task Force on the Policy Framework on 13 June confirmed again that an attractive investment environment includes ensuring government accountability and transparency, a rigorous enforcement of the rule of law, a strong commitment to fight bribe solicitation and corruption, liberal trade and investment regimes, labour market flexibility, human resource and infrastructure development and a level playing field between domestic and foreign investors.

Countries which are determined to provide such an investment environment are much better positioned to attract investment and to stimulate investors' CR activities that bring additional benefit to their societies than countries who fail to provide an attractive policy framework for investment.

## **2. The OECD Declaration and the Guidelines – A package that cannot be untied**

The close relationship between government policies, FDI and CR described is also reflected in the OECD Declaration on International Investment and Multinational Enterprises.

The 30 OECD and 9 non-OECD countries that adhere to the Declaration commit themselves in particular to the two policy goals, which are of key importance for any government determined to provide a good environment for foreign investors. Adhering governments have agreed not to discriminate against multinational enterprises and to avoid imposing legal requirements on multinational companies that conflict with those of another Member country.

In turn, the countries adhering to the Declaration address through the *OECD Guidelines for Multinational Enterprises* recommendations for voluntary good corporate conduct to foreign investors that cover a broad range of corporate issues. In addition, they establish structures which – usually in co-operation with business – promote the Guidelines and their effective implementation into actual business practices.

The Guidelines are an integral part of the OECD Declaration from which they cannot be separated. Any government which would try to promote and implement the Guidelines without committing itself to a healthy investment regime would be unlikely to succeed in attracting FDI and stimulating FDI related CR activities.

## **3. The OECD MNE Guidelines – A valuable reference tool for business**

Literally hundreds of CR guidelines, recommendations, principles and voluntary commitments have been developed so far. This vast variety of instruments reflects that there is no one-size fits all approach to CR. It leaves companies the necessary flexibility to use those tools which fit best their needs.

There are instruments that may more practically oriented than the OECD *Guidelines for Multinational Enterprises* and some might be better applicable for specific sectors or companies. However, the Guidelines are the cornerstone of CR.

Their particular value for multinational companies stems from the fact that they were drafted in close partnership with business, labour unions and NGOs and that they were endorsed by 39 governments from OECD and non-OECD countries. This strong backing gives the Guidelines a high credibility in the business community and hence practical relevance for company operations.

In addition, the Guidelines draw on a structure of National Contact Points (NCPs) established by governments that adhere to the OECD Declaration on International Investment and Multinational Enterprises. The task of the NCPs is to promote the Guidelines, to handle inquiries about their content and to contribute to the *bona fide* resolution of issues that arise relating to implementation of the Guidelines in practical cases ("specific instances"). In particular, NCPs are expected to offer a forum for confidential discussion and to assist the business community, employee organisations and other parties concerned in dealing with issues raised by interested parties.

About 95 requests to consider specific instances have been filed with NCPs since the Guidelines' revision in 2000. The experience gained from the specific instances indicates that the Guidelines have served as an effective tool for resolving issues with companies. In the majority of the cases the allegations made against companies have either been found unsubstantiated or the parties involved agreed on how to solve the issue at stake. Therefore, the Guidelines are a valuable instrument that helps separating between relevant criticism and false allegations.

The *bona fide* nature of the Guidelines and the confidentiality of their implementation procedures are major "selling"-arguments to motivate companies to work closely with the relevant National Contact Points. There have been cases where the confidentiality requirement was not respected by all parties involved. Labour unions and NGOs have occasionally used issues at stake in pending specific instances for public campaigns. This is detrimental though to the credibility and practical relevance of the guidelines among businesses. Therefore, NCPs must do whatever they can to preserve the confidential and *bona fide* nature of the Guideline implementation procedure.

The cases mentioned below exemplify how well functioning implementation procedures of the Guidelines can work for the benefit of companies that decide to cooperate with NCPs in the handling of specific instances:

### **Example 1**

*Two NGOs brought an issue to the attention of an NCP regarding the business conduct of the subsidiaries and partners of two national companies in a non-OECD*

country. Allegations were made by the NGOs that the subsidiary enterprises of the two national companies failed to observe the Guidelines in the area of human rights and environmental considerations.

The NCP took into consideration information from the NGOs, the companies concerned, a trade union, the national embassy in the host country and an NGO in the host country. The NCP also held several meetings with reference to the specific instances which included all parties concerned. Furthermore, the NCP, together with the two companies and the trade union, travelled to the area to further investigate the situation.

The NCP came to the conclusion that the companies have not failed to observe the OECD Guidelines. It encouraged them though to enhance the knowledge of the personnel employed at their subsidiaries about the Guidelines and concluded the proceeding.

### **Example 2**

In many cases the role of the NCP successfully facilitates the dialogue between the parties concerned. One such case involved a company with its origin in a OECD country and an NGO. The NGO brought to the attention of the NCP allegations of corporate misconduct and non-observance of the Guidelines in the form of insufficiently respected labour rights in one of the company's factories in a non-OECD country.

The NCP invited both parties individually to clarify their points of view and subsequently organised a meeting between the two parties and the NCP for an open dialogue. The two parties agreed upon better transparency by the company and continuing external monitoring, disclosure and verification. They also agreed that communication in the future should be improved and both parties welcomed the opportunity the NCP had given for a constructive discussion and a furthering of information exchange between industry and NGOs. The NCP stepped back at this point but may be asked to step back in by either the company or the NGO in the event that communication between them breaks down.

## **4. Business support for the Guidelines' promotion**

Since the revision of the Guidelines in 2000 the OECD business community was actively involved in promoting awareness about and effective implementation of the Guidelines. BIAC members have appointed experts who act as focal points for the Guidelines. Through seminars and conferences, web-links, publications and co-operation with investment promotion agencies BIAC members have continuously informed about the content of the Guidelines. In addition, they have been very active in assisting companies which are confronted with specific instances. The BIAC Secretariat has installed a webpage link containing promotional material and started publishing the Guidelines "Business Brief" on various procedural and substantive issues related to the Guidelines.

In an attempt to adapt the use of the Guidelines against Bribe Solicitation, BIAC has been promoting the Guidelines as an instrument with a high potential in the future. Together with interested Members of the OECD Working Group on Bribery BIAC has set up a “Joint Task Force on Bribe Solicitation” whose work BIAC is co-ordinating. The Task Force has met twice since October 2004 and BIAC is currently conducting a survey on mechanisms in OECD countries that companies can use if they are faced with bribe solicitation. The goal is to compile an inventory that helps to increase countries’ and companies’ awareness about mechanisms available and to arrange an easily accessible information venue for companies to use when faced with bribe solicitation.

## **5. Challenges regarding the application of the Guidelines in non-adhering countries**

The principles for voluntary good business conduct expressed by the Guidelines are relevant for the world-wide activities of foreign investors. However, the Guidelines always have to be seen in the context of the local environment in which the firms operate.

The implementation of the Guidelines into business practice in developing and emerging countries is often challenging. In many countries outside the OECD foreign investors operate in legal, economic, social and political environments which are less conducive to core business activities and to possible additional CR activities than in developed countries.

Governments and civil society should therefore not create unrealistic expectations as regards CR in developing countries. Companies may find it difficult to increase or maintain their operations, which are beneficial to the host countries, when they are confronted with too high expectations.

Meeting high standards of business integrity and CR is particularly a challenge in weak governance zones (WGZ). WGZ are countries or regions where the functioning of even the basic legal, political, social and economic infrastructure is limited. In these zones businesses need practical assistance which helps them to operate with integrity and to promote the goals of CR in the host societies. Therefore, the OECD business community has asked the OECD to collaborate with other international organisations such as the World Bank in order to explore development of a pilot instrument for the dissemination of practical information on doing business in weak governance zones. The information provided would also have to help in clarifying the very distinct roles companies and governments have to play in WGZ. BIAC would view this undertaking as a positive commitment by the OECD Governments to build a partnership to develop a positive approach regarding business integrity and CR in WGZ.

# TUAC Submission

*June 2005*

## 1. Introduction

TUAC estimates that more than 60 cases have been raised by trade unions during the five years since the revision of the *OECD Guidelines for Multinational Enterprises*. More than half of these still have to be resolved and the seriousness with which National Contact Points (NCPs) deal with cases varies greatly. In view of this, TUAC regards the improvement of NCP functioning and their treatment of cases as the priority for governments at the 2005 Annual Meeting of NCPs.

In order to assess the performance of NCPs, TUAC has surveyed our OECD affiliates and trade union organisations in other adhering countries on the functioning of NCPs. The questionnaire is attached in Annex 1. This paper is based on replies and comments made by trade union organisations in Argentina (CGT), Belgium (CSC and FGTB), Brazil (CUT), Denmark (LO), Germany (DGB), Ireland (ICTU), Italy (CGIL and UIL), Netherlands (FNV), New Zealand (NZCTU), Norway (LO), Spain (CC.OO), Sweden (LO and SACO), Switzerland (USS), the UK (TUC) and the US (AFL-CIO).

## 2. Information on and promotion of the Guidelines

A significant number of those replying reported that they had a satisfactory relationship with the NCP in their home country, *e.g.* Belgium, Denmark, Germany, Sweden and Switzerland. Nevertheless, many trade unions described the relationship as non-existent or purely superficial. The Italian NCP was first established in July 2004 and without any previous consultation with the trade unions despite such requests. It did however set up an advisory body although this group has yet to meet. In Ireland, Spain and the US, trade unions felt that the NCPs were almost invisible. They were not aware of any activities organised to raise awareness of the Guidelines. The Spanish NCP normally held one meeting every year with stakeholders, but it was perceived as a way for the NCP to meet its requirements under the Guidelines and not as a real engagement to their promotion and implementation. In Ireland and the US, trade unions have not even been invited to a yearly meeting.



Equally worrying is the fact that only one trade union reported any improvements in the functioning of the NCP during 2004/05. The Argentinian NCP had participated in a workshop organised by NGOs in December 2004 and was investigating a case raised by an affiliate of the CGT and was therefore described as slightly more active. But in principle, NCPs that are considered inactive or non-operating have not made any significant progress.

Despite efforts to raise awareness of the Guidelines, trade unions remained concerned that they were not sufficiently well known. Although the DGB in Germany was continuing to organise seminars and had just finalised the German version of TUAC's User's Guide, it concluded that the Guidelines were not widely known in Germany.

The User's Guide is now available in 22 languages: Bahasa, Indonesian, Bulgarian, Chinese, Croatian, Czech, English, Estonian, French, Georgian, German, Hungarian, Italian, Japanese, Korean, Latvian, Lithuanian, Macedonian, Portuguese, Romanian, Russian, Spanish and Turkish.

TUAC is currently engaged in a project with the support of the European Commission to develop the use of the Guidelines by European Works Councils (EWCs) principally through a series of four training workshops. Two workshops have so far been held for European Works Councilors in co-operation with affiliates – one in Stockholm for the Nordic countries in January 2005 and one in the UK mainly for British and Dutch participants in May 2005. The other two will be held in Germany and France later this year. The project has also led to presentations of the Guidelines for members of EWCs in the textile sector, the public sector and the building- and woodworker sector. Affiliates in Belgium, Denmark and Switzerland are also promoting the Guidelines among EWCs.

In partnership with affiliates, other trade union organisations and the Friedrich Ebert Foundation (FES), TUAC continues to disseminate the Guidelines in adhering as well as non-adhering countries. FES and TUAC jointly held a regional seminar in Montevideo at the end of 2004 targeting the countries in Latin America that have adopted the Guidelines. Trade unions and the NCPs of Argentina, Brazil, Chile and Mexico were represented. The seminar focused on how to improve promotion and implementation of the Guidelines in Latin America, to share experiences and to learn from the best functioning NCPs. The Brazilian NCP announced that it would organise an international conference on the Guidelines during 2005, which would be needed considering that the NCP did not carry out any promotional activities in 2004.

Other trade union activities reported in the survey, besides various seminars and training programmes, included the activities of the USS (Switzerland) to increase knowledge of the Guidelines in Eastern Europe. The most recent conference was held in Macedonia in May 2005. LO Norway has been promoting the Guidelines in Russia in particular.

The majority of NCPs referred to in the survey had not organised any activities to promote the Guidelines during 2004/05 at least not to the knowledge of the trade unions in the countries concerned. Considering that the Guidelines remain relatively unknown outside the CSR “community” and special interest groups, TUAC would encourage governments to increase efforts to inform all relevant parties including trade unions of the Guidelines.

Furthermore, there is a fundamental imbalance between NCPs and different regions in the OECD area. While some NCPs regularly carry out promotional activities, others have not even five years after the revision undertaken any activities for trade unions. It is therefore a matter for the OECD Investment Committee to ensure that even the most passive NCPs organise at least one conference or similar activity to inform trade unions and others of the Guidelines.

Regional NCP meetings, such as the annual meeting between the Nordic NCPs, should also be encouraged. Such meetings could help to improve relations between NCPs and to activate the more passive NCPs. They could learn from each other by exchanging experiences, and the most effective NCPs could serve as a benchmark for the others.

### **3. Treatment of cases by NCPs**

Since the revision of the Guidelines in 2000, about 60 cases have been raised with NCPs by trade unions. More than half of those are still pending. The oldest cases date back to 2002. A considerable number of cases submitted during 2003 are still unresolved. The lack of timeliness in dealing with cases remains one of the major shortcomings of the Guidelines follow-up process.

We call on NCPs as a start to acknowledge receipt of cases. This would avoid unnecessary confusion and misunderstandings as have been the case in some specific instances. We would also expect such a receipt to be given within weeks not months of receiving a case. Nevertheless, it appears that the Canadian trade union that raised a case with the Canadian NCP in November 2004 concerning UMP Kymmene had still not received any response from the NCP by the end of May 2005.

Only one trade union in the survey was content with the NCP’s handling of cases. Several trade unions reported serious problems in NCPs’ management of cases. Some NCPs ignore the Procedural Guidance and do not offer the parties involved a forum for discussion to help deal with the issue in question. According to CUT in Brazil, the NCP had not once tried to facilitate a dialogue between the social partners to help resolution of issues. This makes it very difficult, if not impossible, to reach an agreement between the parties concerned. The US NCP was described as unresponsive and had not effectively intervened in one single case. In the Netherlands, the handling of cases has

worsened. The FNV noted that the Dutch NCP had narrowed the applicability of the Guidelines by citing the “investment nexus” clarification of the CIME and the introduction of new requirements limiting the receivability of cases.

The attitude of NCPs to parallel legal proceedings was seen as an important obstacle to the resolution of cases since some NCPs refused to take any action while the proceedings were ongoing. This is particularly problematic for the cases in non-adhering countries as legal remedy is often sought before raising a case with an NCP. Thus no progress has been made on the case raised by the Malaysian Trades Union Congress (MTUC) in May 2003 concerning breaches of the Guidelines by the Korean company Kiswire. Nor have there been any developments on the case regarding Top Thermo Manufacturers’ operations in Malaysia submitted to the NCP of Japan in March 2003 by the MTUC or the case of Toyota in the Philippines submitted in March 2004.

In view of the shortcomings in the legal systems in some non-adhering countries, for example regarding law enforcement, it is indispensable that NCPs try to resolve cases notwithstanding possible domestic legal proceedings. Some NCPs however argue that they do not want to interfere with host countries’ legal systems. Yet this risk is virtually non-existent. NCPs are not making judgements over whether national law is being violated. Their task is merely to uphold the implementation of the Guidelines. The danger is not that NCPs may try to influence the outcome in domestic courts, but that they are so anxious not to point out corporate conduct incompatible with the Guidelines that the implementation procedures risk losing their significance.

It has to be reiterated that the Guidelines go beyond national law and should not be confused with juridical procedures. On the contrary, the Guidelines implementation procedures offer a possibility to reach settlements out of court. Moreover, legal or other proceedings do not rule out NCP proceedings. This has already been confirmed in the handling of a number of cases. Deviations from this principle are also a deviation from the 2000 revision of the Guidelines.

#### **4. Accountability of NCPs**

Governments have now had five years to establish NCPs and to put in place procedures for the implementation of the Guidelines. In spite of that a number of NCPs are still not functioning properly. In addition, there are considerable discrepancies in the way NCPs are operating particularly concerning the treatment of cases.

The NCPs of Japan, Korea and the US in particular have constantly failed to “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”. In practice, the US NCP has not contributed to the resolution of one single case. In Italy, the NCP did not come

into existence until July 2004. The Irish and Spanish NCPs are other examples of NCPs that lack engagement and commitment to the Guidelines. Even NCPs that have not had to handle specific instances can play an active role in their promotion. Lack of cases is not a reason to remain passive.

In order to get all the NCPs fully operating, they must be held accountable. But it is clear that the OECD Investment Committee has not succeeded in this respect. At present there is not enough peer pressure within the Committee.

The annual reports from NCPs were designed to increase accountability – to provide a means to share experience and encourage best practices and to assess the effectiveness of NCPs. Yet they provide at best a description of the promotional activities of NCPs and a summary note on cases, and at worst a half page covering little more than the location of the NCP and contact details.

The annual reports should rather provide a proper account of the activities of NCPs including efforts made to resolve cases. Furthermore, the Investment Committee should evaluate the performance of NCPs, identify problems and weaknesses and make recommendations so as to improve their effectiveness as stated in the Procedural Guidance.

It is urgent that the Guidelines realise their full potential as an effective instrument to influence corporate conduct. TUAC calls on the OECD to initiate peer reviews of the adhering governments' implementation of the Guidelines and more specifically the performance of NCPs.

Peer reviews are seen as one of the strengths of the OECD and are often cited as an effective method to learn from others and to improve performance in a specific area. The review creates pressure on the government to live up to a certain standard. Part of the work of the Investment Committee aims to introduce the model of peer reviews to Africa through NEPAD (New Partnership for African Development). It would thus be appropriate for the Investment Committee to apply peer reviews to its own members' work on the Guidelines.

Such peer reviews should be conducted by the Investment Committee or its Working Party in co-operation with the BIAC, TUAC and OECD Watch. As is the practice in other areas of the OECD, for each review lead examiners should be appointed from the member countries. They have to be chosen carefully since they are supposed to be objective and free from any influence of special interests. The peer reviews should result in a report that evaluates the accomplishments of the government on the implementation of the Guidelines, but it should also analyse the shortcomings and make recommendations to the government concerned.

Peer reviews would create a more systematic exchange of information than is currently the case. It would increase transparency and open up a real policy dialogue. Today NCPs that do not wish to share information with their colleagues can easily avoid obligations. Peer reviews would also contribute to

capacity building for resolving cases, which should not be underestimated given the character of the Guidelines and the limited resources that have been devoted to their implementation.

## 5. Conclusions

- Despite efforts by governments, trade unions, NGOs and business to raise awareness of the Guidelines, they remain relatively unknown. Government efforts are however unevenly dispersed and new promotional activities seem particularly needed in Argentina, Brazil, Ireland, Italy, Spain and the US according to the TUAC survey. Increased efforts at promotion are also needed elsewhere.
- The management of NCPs is the key to an effective implementation of the Guidelines. There are however many shortcomings in the treatment of cases: delays, lack of transparency, reluctance to offer a forum for discussion for the parties involved including offering conciliation or mediation, reluctance to handle cases in connection with parallel legal proceedings and general lack of openness towards issues being raised with NCPs.
- In order to improve the functioning of NCPs, governments must be held accountable. TUAC believes this warrants introducing peer reviews of adhering governments' implementation of the Guidelines.

## ANNEX

# *TUAC Questionnaire on the Functioning of National Contact Points (NCPs)*

**April 2005**

### **A. General**

1. How are your relations with the NCP in your country?
2. Have any particular activities been organised by the NCP during 2004/05?
3. Have there been any changes or improvements in the functioning of the NCP during 2004/05?

### **B. Cases under the Guidelines**

1. Please provide information on the case(s) raised by your organisation during 2004/05. What measures has the NCP taken to deal with the issue? What action has your organisation taken to get the case resolved?
2. Please provide information on other ongoing cases your organisation or NCP are involved in.
3. Are you satisfied with the handling of the case(s)? If yes, why? If no, why not?

### **C. Other**

1. What activities have your organisation undertaken in relation to the Guidelines?
2. Please provide any further comments relating to your experience with the Guidelines and/or NCPs.

# OECD WATCH Submission

*June 2005*

## **Five Years On – A Review of the OECD Guidelines and National Contact Points**

### **1. Introduction**

Five years after the adoption of the revised *OECD Guidelines for Multinational Enterprises* is a good time to take stock of the achievements, learn from the mistakes and prepare for future challenges. This review, the third by OECD WATCH, tracks the development of the National Contact Points (NCPs) in 22 adhering countries, and is based on NGO experiences and perceptions. Given the importance of making the Guidelines a meaningful corporate accountability tool for communities in the developing world, which is the theme of the June 2005 OECD Corporate Social Responsibility (CSR) Roundtable, particular efforts have been made to obtain views about the promotion and implementation of the Guidelines in non-adhering countries.

In 2000, after lengthy negotiations, the scope and content of the Guidelines were extended and a new implementation mechanism was agreed enabling NGOs for the first time to submit complaints about alleged breaches of the Guidelines to NCPs. A year later, the first NGO case was filed about Adidas and its supply chain. Five years on, as of June 2005, NGOs had presented a total of 45 complaints, 20 of which had been filed in 2004 alone. This review attempts to provide answers to the questions often posed by NGOs. Is the time and effort spent on preparing cases and going through the procedures worthwhile? What is the value added of the Guidelines? Are not other NGO approaches more effective? Crucially, has there been any discernible improvement in the behaviour or policies of multinational companies as a result of their involvement in an OECD Guidelines case? Five years on what has been achieved?

## 2. Promotion

A major aspect of the work of NCPs is to enhance the profile of the Guidelines. NCPs are “required to make the Guidelines better known and available by appropriate means”. It is clear that the Guidelines have become better known over the past five years but not always as a result of the endeavors of the NCPs. Once again the work of the Australian NCP has been highly commended for promoting the Guidelines.

The NCP has been proactive in promoting the Guidelines in an environment where an absence of specific instances could have easily “lulled” the NCP into a false sense of security about the CSR practices of Australian companies and resulted in a low or non-existent profile for the NCP and the Guidelines... Perhaps the most positive development has been the website and ongoing improvements to the website. This work has been internationally recognised as one of the best NCP websites by both other NCPs and OECD WATCH.

Research conducted by the Brotherhood of St Laurence in 2002 into ethics and governance practices of Australia’s top 100 companies indicated that 10 of the 56 companies that responded had incorporated the OECD Guidelines into their CSR codes. “The perception is that the Guidelines have increased in popularity with large enterprises as a direct response to the increased visibility of the Guidelines.’ The other leading OECD country in terms of promotion and outreach is Sweden with its Partnership for Global Responsibility whereby the Swedish Government actively encourages Swedish companies to comply with the OECD Guidelines and to become “ambassadors for human rights, core labour standards, anti-corruption and a sound environment”. The Swedish Government has an explicit policy to promote sound business behaviour within state-owned companies, a policy that other governments should emulate. But other Nordic countries appear to have done very little. Both the Finnish and Norwegian NCPs have failed to promote the Guidelines. But the efforts of others have been noteworthy. The Dutch Government’s conference on CSR in Maastricht in November 2004, for example, held during the Netherlands EU Presidency, has helped establish the Guidelines as one of the main measures of corporate accountability. The Canadian NCP’s plans for autumn 2005 to hold a sector specific workshop, with Transparency International, to make junior mining companies more aware of the Guidelines is a welcome if overdue initiative. A survey carried out last year by the Groupe de recherche sur les activités minières en Afrique (GRAMA) about the attitudes of Canadian mining companies to CSR showed that only 2 out of the 10 companies surveyed had their own code of conduct and none of them referred to the OECD Guidelines.



Despite evidence of greater efforts on the part of more NCPs to promote the Guidelines, OECD WATCH members would not endorse the view expressed in the OECD's 2005 report "that many adhering governments have deepened their use of the Guidelines in the context of a 'whole government approach' to corporate responsibility". There is still a long way to go. That said credit should be given to areas where progress has been made. For example, after years in the twilight zone, the Italian NCP has recently started to emerge from the shadows. According to the Annual Report the Italian NCP has launched a major promotional campaign and has sent out 3 000 copies of a brochure about the Guidelines to all multinational enterprises operating in Italy. Campagna pela Riforma del Banco Mondiale (CRBM) reports that nine months after the formal establishment of the office, NGOs have finally managed to have some contact with the NCP. In Austria, there have been improvements in the efforts made to reach out to business, primarily in the production and dissemination of materials. The most important initiative, "CSR-Austria", is sponsored by the Ministry for Economic Affairs and Labor. The Ministry has worked closely with the Austrian Chamber of Commerce and the Federation of Austrian Industry to develop guidelines for "CSR Austria" but so far there has been little NGO input.

CSR Austria refers to many guidelines, including the OECD-guidelines, as a possible reference point, but it is left to the respective businesses to act on this invitation/recommendation or to set their rules in more general terms without specific references to the Guidelines. At least the process has generated more discussion on the CSR issue, and has prompted the beginning of some dialogue between civil society and the business.

In France, there is not much communication around the NCP's work. "The NCP only gives accounts of its activity through quite vague communiqués, available on the NCP Web site. The NCP claims that confidentiality is necessary in order to obtain business collaboration.' At a meeting in February 2005 with NGOs, the US NCP readily admitted that little had been done in the way of outreach because of inadequate resources:

The main obstacle to improvement seems to be a lack of capacity to promote the Guidelines among US multinationals. This has had an impact on the NCP's ability to dedicate the necessary time and staff to adequately assess and resolve specific instances that are brought against US companies. A dedicated senior civil servant with the necessary supporting budget is recommended to improve the effectiveness of the US NCP.

It is understandable that the Guidelines are not regarded as a priority in a country like Argentina that faces severe budgetary constraints. According to El Otro it would require the filing of a complaint to galvanize the mechanism and clarify the role of the NCP. For the time being the NCP in Argentina "is a dead

duck". In Brazil too, it is clear that without government backing and the allocation of appropriate resources, the NCP cannot function. It was the filing of a case by the trade unions against the Italian multinational, Parmalat that led to the setting up of the NCP unit in Brazil in 2003. With hindsight, the abrupt closure of the Brazilian plant and dismissal of the workforce without prior consultations was a warning sign about the company's imminent economic collapse. The Frente Autentico del Trabajo (FAT) has commended the Mexican NCP for disseminating the Guidelines and for offering an additional forum for conciliation. But FAT believes that the NCP should do more to raise its profile and to encourage companies to adhere to the Guidelines.

An adhering but non-OECD country like Chile sets a good example showing how much can be achieved where there is political will. The Chilean NCP took the complaint jointly filed by Milieudefensie (Friends of the Earth Netherlands) and the Chilean NGO, Ecoceanos, seriously and handled it well. Ecoceanos believes that the complaint not only helped to establish the NCP but have set a precedent for the future handling of civil society concerns. The resulting authoritative Statement and recommendations concerning the environmental and labour practices of the Dutch multinational Nutreco/Marine Harvest have been commended by the OECD for providing a useful instrument for strengthening environmental responsibilities within companies. The OECD and the Economic Commission for Latin America (CEPAL) in a report issued in May 2005 upheld NGO criticisms about the damaging environmental effects of intensive salmon aquaculture in southern Chile.

## **2. Promotion**

The minimum that might be expected of an adhering country to meet the NCP transparency requirement would be the creation of a website. It is shocking that five years after the revision of the Guidelines, there are a number of NCPs in OECD countries who are virtually invisible. Some have still not set up websites. In Belgium, although the NCP has made preparations for a website, it requires the final approval from the Federal Government before it can go on line. Surprisingly for one of the Nordic countries, with their reputation for openness, the Danish NCP does not have its own website. The Czech NCP on the other hand has a website and seems to relate well to trade unions. But so far however, the Czech NCP has not shown much willingness to engage with interested NGOs like the Global Alliance for Responsibility, Democracy and Equity – GARDE.

In the Netherlands, over the past five years, there has been a gradual move towards greater transparency, for example in terms of sharing draft

annual reports with social partners and NGOs, the involvement of other government departments and reporting about cases. According to Joris Oldenziel of SOMO, “The Dutch NCP also seems eager to maintain its position as one of the more active NCPs illustrated by its willingness to speak at the OECD WATCH Roundtable in Brussels and by the fact that the NCP took the initiative to raise the issue of the investment nexus with the OECD Trade Committee”.

There are many complaints about the lack of access which only confirms the general NGO view that NCPs are mainly concerned to cultivate the business sector.

It is instructive to compare the widely different efforts of two Asian countries to promote the Guidelines. In OECD WATCH’s perception a country like Japan, which is a full OECD member, does badly in comparison with Taiwan (Chinese Taipei) a non-adhering country. Despite the fact that the Japanese NCP has handled a number of complaints, there is no institutional mechanism for obtaining information from NGOs. A group called the Protest Toyota Campaign, report that “the Japanese NCP does not engage with civil society at all. No meetings, seminars or other activities have been arranged to inform the public about the Guidelines or about the existence and function of the NCP”. The Japanese NCP maintains a website but it is relatively inaccessible and hard to find. Contrast this with the efforts of the “shadow NCP” in Taiwan. In April 2005, after nearly a year of preparation, the NCP has set up a dedicated “Corporate Social Responsibility in Taiwan website (<http://csr.idic.gov.tw>) with information about the Guidelines. So far the shadow NCP is showcasing examples of best practice but it intends to move towards handling problem areas in the coming year. As a major supplier of footwear and textiles, many of which are manufactured in China, Taiwan has taken a leadership role in Asia, by recognizing the importance of providing meaningful assurances to retailers and consumers about the social and environmental integrity of its companies’ supply chain. The shadow NCP plans to develop closer links to different government ministries, NGOs and other stakeholders in the coming year.

The Australian NCP website has been significantly improved in terms of access, the number of “useful documents” and an enhanced “links” section. These were areas raised as a concern in the previous OECD WATCH Report Card so it is encouraging that improvements have been made. In the UK the main problems hindering the development of the NCP are seen to be a lack of resources, appropriate skills and marginalization.

This is all indicative of a lack of commitment on the part of Department for Trade and Industry (DTI) and the British Government to promote the Guidelines as a genuine corporate accountability tool. Despite a few sporadic

attempts to be more open, it would be fair to say that the NCP unit currently has not shown much interest in improving transparency. Information about the Guidelines and the work of the NCP Web site is buried in the Europe and World Trade section of DTI's Web site. The site is poorly maintained and not regularly updated, although the NCP statements are posted there.

Although the US NCP is responsive to inquiries and responds to letters and emails in a timely manner NGOs are critical about the lack of transparency. Neither the US nor German NCPs, for example, publish their Annual Reports to the Investment Committee on their Web sites – a practice followed by Australia, Canada, France, the Netherlands, Sweden and the United Kingdom. Generally, the German NGOs complain about a complete absence of transparency in their NCP's decision making.

In the USA, the absence of adequate feedback to interested NGOs, trade unions and to Congress is particularly troublesome in view of the fact that it is the US NCP that has considered the largest number of specific instances (16) since the revision of the Guidelines. The NCP's US constituencies would welcome the opportunity of learning from this experience. The State Department manages the Advisory Committee on International Economic Policy which would be the relevant committee for the OECD Guidelines. It serves the US Government in a solely advisory capacity by providing a forum for discussion of issues and problems in international economic policy. It meets three times a year. But so far the Guidelines and the work of the Investment Committee have not featured in the discussions.

#### **4. Perspectives on the Guidelines from non-adhering countries**

OECD WATCH members in non-adhering countries, though they recognize the limitations of the Guidelines, are on the whole positive about their potential as a corporate accountability tool. But they have expressed a number of concerns.

WACAM Ghana tried to use the OECD Guidelines to hold Swedish supplier companies to account for alleged complicity in human rights abuses attributed to AngloGold Ashanti in mining areas. WACAM is concerned that working with the Guidelines might prove to be "a green washing gimmick" to blur the violation of rights of marginalized people and to perpetuate the extreme exploitation of resources of developing nations by powerful multinational companies. Nevertheless WACAM believes "If corporate bodies really were to comply with the existing Guidelines, many community problems would not exist. The problem is how to ensure compliance. The Guidelines need to be clear on the supply chain clause".

Edward Lange, from the Zambian NGO, DECOP, reports that "civil society groups have found the Guidelines useful". They have empowered NGOs and

trade unions and made civil society a force to be reckoned with. “Companies cannot take us for granted. But Zambian NGOs have been disappointed by the slow pace in handling cases by the UK NCP”. They would like to find some way of compelling governments of non adhering states to recognize the Guidelines as a pre-requisite for inward investors.

CIVIDEP, an Indian NGO, which works on issues related to workers in the ready-made garment sector, believes that “in this rapidly globalizing economy, it is imperative that the activities of transnational companies in India are monitored using available global instruments such as the OECD Guidelines to hold them accountable for the impact of their investment on the environment and society”.

In Pakistan, according to Farhan Anwar of Sheri-Citizens for a Better Environment, civil society groups are eager to know more about the OECD Guidelines’ process. “They feel that the Guidelines are helping them better understand the social and environmental implications of corporate operations. They feel that they would be better equipped to question and seek responsible corporate behaviour from the corporate sector from the knowledge gained from the Guidelines.” For NGOs in many non adhering countries the Guidelines, even if they do not deliver everything, certainly provide an extremely useful reference and guide for developing capacity in civil society groups. The Guidelines can also be useful by offering a model for strengthening policies or legislation in developing countries. The Guidelines can act as a catalyst for change.

These views are echoed by Hubert Tshiswaka, who runs the Congolese NGO, Action contre l’impunité pour les droits humains (ACIDH). Disseminating information about the Guidelines in the Democratic Republic of the Congo is a priority. But much more work needs to be done to make the Guidelines useful in conflict prone countries. “Business can seed a culture of peace, security and legality or by paying bribes fuel conflict and participate in the unsustainable exploitation of natural resources.” As recent reports about AngloGold Ashanti’s payments to rebel fighters in Ituri and Anvil Mining’s alleged complicity in a massacre in Katanga show the practices condemned by the UN Expert Panels continue unchecked in the Congo today.

Many OECD WATCH members in non adhering countries feel that there is a tendency for governments of developed countries to protect their companies when they violate provisions of the OECD Guidelines. This is undermining the credibility of the Guidelines as a global corporate accountability instrument. (See below OECD WATCH’s recommendations about how to improve implementation of the Guidelines in non-adhering countries.)

## 5. Efficiency of the procedures

Another positive sign is the interest shown in using the implementation procedures. Some 100 specific instances have been filed in total over the past five years: TUAC estimates that trade unions have filed over 60 complaints and OECD WATCH has registered 44 NGO cases. While a few NCPs have developed reasonable and timely procedures that deal fairly with both parties this is far from being the norm. Manfred Schekulin, the Chair of the Investment Committee, acknowledged that more needs to be done to improve the effectiveness, transparency and timeliness of the procedures:

Despite this progress and their growing confidence that the Guidelines are a useful instrument for promoting appropriate conduct by international business, NCPs recognized the validity of some concerns. In particular, they underscored the need to speed up the handling of specific instances...

As Shirley van Buiren of Transparency International Germany has observed “flexibility in the institutional arrangements and in dealing with formal complaints can and in fact has produced very unequal results”. She adds “Presently the NCPs do more or less as they please, report what they choose; the Investment Committee’s Annual Report in its own words is “based on the individual NCP reports”. No wonder the Committee can only ascertain but not interpret much less overcome the “significant and unexplained differences in practice”. One possible solution to this problem, that was proposed at the OECD WATCH Multi-stakeholder Roundtable on the Implementation of the OECD Guidelines (Brussels, 1 April 2005), is the adoption of a peer review mechanism for NCPs. “Just as law enforcement is indispensable for the effectiveness of legal rules, so an appropriate monitoring system seems a *sine qua non* if voluntary standards are to have meaning and sufficient impact.”

Another solution is to make NCPs accountable to national parliaments. There are welcome signs of increasing interest in the work of NCPs and the OECD Guidelines by British, Belgian and Dutch members of parliament. The Dutch NCP’s Annual Report is discussed in parliament. In Belgium, which in some respects might be seen as the cradle of the OECD Guidelines, there has been a proposal to introduce legislation to link explicitly the award of export credits with adherence to the Guidelines. Under this proposal a company found to be in breach of the Guidelines would be ineligible for obtaining support from Belgium’s export credit agency, Ducroire.

The US Congress does not exercise oversight of the NCP in practice; this is due to the lack of advocacy at the congressional level. Few members of Congress are aware of the Guidelines. But it is interesting to note that in 1994 and 1995 there were attempts to introduce bills in the House of Representatives which made reference to the OECD Guidelines. The bills

called on the Secretary of State to establish Guidelines (based *inter alia* on the OECD Guidelines for Multinational Enterprises) which US nationals should use in conducting business operations in any foreign country. It also required that US businesses should submit a statement on compliance and it authorized Federal agencies to intercede on a US national's behalf only regarding export marketing activities only if such national were in compliance with the Guidelines. In 1995 when the bill was reintroduced it obtained the support of 45 members of the House of Representatives. The reasons why the Guidelines have not had much attention in the USA are no doubt varied. The lack of promotional efforts by the US NCP, the Iraq War, and the fact they few complaints have been filed by US NGOs. The apparent unwillingness to develop the potential of the OECD Guidelines in the USA, reflects in part the US CIB's suspicion of the specific instance procedures. Ironically this is leading to greater efforts to explore legislative alternatives. Senator Richard Lugar, Chairman of the US Senate Foreign Relations Committee, for example, is to introduce a bill linking aid to the willingness of multilateral development banks to set up fresh anti-corruption measures.

## 6. Obstacles to implementation

OECD WATCH believes that the legitimate expectations of civil society groups which participated in the review of the Guidelines have not been met as far as the implementation procedures are concerned. The Guidelines were agreed after lengthy negotiations between all the parties but their scope is constantly being eroded seemingly at the behest of business confederations. There has also been a trend to deviate from the procedural guidance with the result that different NCPs treat similar cases in different ways. The slow and cumbersome way in which many NCPs have dealt with specific instances has also been frustrating. Although the average time taken by NCPs to conclude the specific instance procedure is about 12 months, some have taken twice as long to decide on the admissibility of a case. In the UK complaints have dragged on for years without resolution. The NCPs have given themselves such latitude in the way that they operate the Guidelines that NGOs increasingly view the process as an arbitrary, unfair and unpredictable process. If the issue of impartiality is not addressed NGOs will have no incentive to use the Guidelines procedures and will focus their attention exclusively on media campaigns, ethical investment initiatives, legal actions and legislative measures to curb corporate misconduct.

The following lists some of the most serious problems highlighted by NGOs:

**Unequal treatment of the parties.** The NGOs feel that there is no equal treatment of the parties involved in complaints, even if at official meetings all sides are given an opportunity of presenting their views. They attribute this to the fact (common to nearly all the adhering countries) that the NCP is located in and managed by a government department which “by the nature of its tasks is pro-business”. The German NCP has at least set up an OECD Guidelines Working Party that involves representatives of business, trade unions and non-governmental organisations which meets once or twice a year. But NGOs are there on sufferance and do not feel that they have any influence on the NCP’s approach to cases or other issues. Similarly, the US NCP is housed at the Department of State, Bureau of Economic and Business Affairs, Office of Commercial and Business Affairs. The role of the Office of Commercial and Business Affairs is to coordinate State Department advocacy on behalf of US businesses; and to provide “problem solving assistance to US companies in opening markets, leveling playing fields and resolving trade and investment disputes. This primary task to promote business interests, which is shared by nearly all NCPs, sits uneasily with the Guidelines” requirement to act as an “honest broker”. Most NGOs believe that the two roles are not compatible. In some countries, for example, the UK and France, fundamental principles of procedural fairness have been disregarded. NGOs have not been given a chance either to present their views to the NCP nor to discuss the underlying reasons for decisions taken.

**Parallel legal procedures.** Some NCPs use the fact that there are legal proceedings in a host country to delay consideration of an OECD Guidelines case. In Denmark a complaint has been concluded after three years of NCP inaction. From the outset the Danish NCP took the controversial decision that the complaint would have to wait for the outcome of a court case in Malaysia. The NGOs and the trade unions were unhappy at this because the workers in the company had fought for their right to be represented by their union for almost 30 years. When the High Court in Malaysia finally decided in favour of the workers’ right to unionize, the NCP declared the case closed saying it had resolved itself. The complainants feel that the NCP missed an important opportunity of using the Guidelines to persuade the company about the need to respect core labour rights which would have helped bring about a speedier resolution. The decision of some NCPs to refuse complaints when legal proceedings have been opened, however peripheral to the issues raised, is rightly regarded by NGOs as another means for shirking responsibility for the implementation of the Guidelines.

**No investigative or fact finding powers.** Another source of dissatisfaction with the Guidelines has been the lack of power and/or political will on the part



of the NCPs to investigate cases. Taken to extremes this means that the NCP is not able to weigh evidence presented by the different parties. This inevitably leads to a stalemate. This was precisely the outcome of the case involving Adidas' activities in Indonesia. In February 2004, the Clean Clothes Campaign (CCC) and Adidas failed to reach agreement and the company refused to adopt any of CCC's recommendations for corrective action. The result was an ineffectual "we agree to disagree" statement.

**Investment nexus.** Out of the total 44 cases, 20 (46%) deal in some way with the supply chain of MNEs (Chapter 2, General Policies, paragraph 10) and has brought about a debate about the supposed "investment nexus" that should characterize the supply chain relationship. NGOs have been raising concerns about the arbitrary way in which the investment nexus has been used by different NCPs. Of these 20 cases, 6 have been closed or rejected outright by the NCP specifically because of the alleged lack of an investment nexus. The current interpretation of limiting the OECD Guidelines to investments and "investment like" trade relations means that this one of the leading CSR instruments fails to cover some of the most pressing issues in the world caused by corporate activities.

**Weak Statements.** The *ad hoc* procedures adopted by the UK NCP have resulted in a number of unsatisfactory "Statements" being issued on companies which are devoid of content. The NCP recommendations merely highlight the existence of a few provisions in the Guidelines but offer nothing by way of specific actions a company is expected to take to remedy breaches. Overall, as far as the DRC cases are concerned, after two years of NCP activity, no one is any the wiser as to whether the companies' conduct was compliant with the OECD Guidelines or how their behaviour should be amended. NCPs should leave companies in no doubt as to the acceptability or otherwise of their conduct. It is vital that companies are given guidance as to how to consider and interpret the Guidelines in the complex environments in which they operate.

**Failure to communicate.** Many NCPs do not properly acknowledge receipt of complaints and often they fail to formally notify complainants about decisions to reject or close a case. In too many cases, NGOs learn about important developments through the NCP's Annual Report to the Investment Committee.

**The unwillingness to assess alleged breaches.** The Procedural Guidance is clear that NCPs should assess whether a *prima facie* breach of the Guidelines has taken place. If so, NCPs should offer their good offices to mediate a resolution between the complainants and the company. However, some NCPs have seemingly opted to bypass the assessment step and have employed a more, narrow, forward-looking approach to resolving complaints. In other

words, the NCP will offer its “good offices” to improve future behavior without ever acknowledging what activities were inconsistent with the Guidelines. In theory, a joint statement would imply that there were indeed breaches, but the parties have reached an agreement and consequently, the process has been concluded successfully. However, NGOs believe some NCPs have no intention of ever facilitating a joint statement when cases are raised, presumably because of their precedent setting nature. If some NCPs will not acknowledge that breaches to the Guidelines have occurred, it is difficult to see how the Guidelines’ implementation procedures will lead to greater understanding among MNEs and NGOs of what constitutes as adherence to the Guidelines. In addition, NCPs ambiguity on whether a company is in adherence with the Guidelines after a case is submitted is seriously undermining their credibility with NGOs. This reinterpretation of the Procedural Guidance also touches on the partiality issues raised above.

## **7. Positive outcomes**

Despite the predominantly negative assessment and the fact that so few cases have resulted in a joint statement, in at least seven cases (about 15%) NGOs have reported some positive outcomes. OECD WATCH acknowledges that in a few cases NCPs have taken pains to issue useful or meaningful recommendations that could guide corporate behaviour. In others, the procedures have resulted directly or indirectly in positive changes in the company’s behaviour. Some NCPs have been proactive and innovative in their approach to the Guidelines.

- ATTAC (Sweden) and Friends of the Earth (FOE Sweden) vs. Atlas Copco and Sandvik. Although the NCP came to the conclusion that the companies had not failed to comply with the OECD Guidelines, the NCP encouraged the companies to remedy the lack of knowledge of the Guidelines among their subsidiaries and their staff in Ghana.
- RAID vs. Anglo American Plc. As a result of the pressure from the complaint Anglo was shamed into offering a better deal for the workforce when it left Zambia. The case is not yet concluded but Anglo American increased its final offer, which included improved provisions for the workforce. The company also continued to support the resettlement programme that was carried out by the residual Zambian company, KCM.
- Oxfam Canada, RAID, Afronet and Decop vs. MOPANI/First Quantum Mining. The case was concluded when the company agreed to remove the threat of forcible evictions from mine land and to restart negotiations about a phased resettlement programme for settlers with help from the World Bank.

- Centro Ecoceanos vs. Nutreco and its Chilean subsidiary, Marine Harvest. The Chilean NGO felt that the case set an important precedent for the future handling of civil society concerns about corporate behaviour.
- Clean Clothes Campaign Germany vs. Adidas. In spite of the disappointing outcome CCC considers it to have been a useful exercise. By admitting the case, the German NCP agreed that the Guidelines were applicable even though it concerned supply chain responsibilities. The CCC was also pleased at the way the NCP called on Adidas to provide detailed answers to CCC's specific allegations and did not allow the company to shift attention away towards its global ethical programme.
- GermanWatch vs. Continental AG (Euzkadi). Although this case wasn't resolved through the mediation of the Mexican NCP it seems that that the complaint acted as a focus for international pressure, which put pressure on the parent company to negotiate a settlement.
- Proyecto Gato vs. Tractabel. Although the case is still pending, the company has agreed to restore the wells in the resettlement village, and the Government of Laos decided to 1) investigate the land problems 2) not to relocate 100 people in the old village who had been under threat of resettlement since 2001 and 3) it has provided the resettlement village with 100 new houses. But in other respects, the measures taken are controversial. It is the company that has been given responsibility to carry out a land survey which is supposed to help resolve the affected people's need for alternative land.

## 8. Conclusion

There is little doubt that five years on the Guidelines as a corporate accountability instrument have become better known. The implementation procedures with their potential to resolve problems have encouraged an increasing number of NGOs to test them and to file complaints. But in the overwhelming majority of cases, the outcome has been disappointing. While it is generally accepted that the Guidelines were improved through negotiation with civil society and that the implementation procedures are still in their infancy, too many ex cathedra decisions or interpretations have been handed down by NCPs. In many cases, NCPs' decisions are not consistent either with the text of the Guidelines or with the policies and international agreements adopted by their own governments. When cases are rejected or kept indefinitely on hold, few NCPs provide any reasoned arguments for these controversial decisions.

It is not too late to reverse this situation but unless there is a speedy return to due process in the handling of complaints, reasoned transparency, a genuine attempt to consult with NGOs and solve the issue, then the fifth

anniversary of the revised Guidelines will be marked by renewed and credible calls for binding regulation, and the adoption of a truly global instrument as exemplified by the UN human rights norms for business.

## **9. Recommendations**

### **9.1. Improving implementation in non-adhering countries**

1. Adhering governments should given careful consideration to the request from NGOs in non adhering countries (where there is no host country NCP) to present complaints directly. This might be done by allocating responsibility to a member of the relevant home country's diplomatic staff. In the case of an EU company, the EC delegation might be tasked to take on some of the work of EU NCPs.
2. NCPs should be given the capacity and necessary resources to carry out investigations or fact find in order to verify the facts of a case. Even without such resources, NCPs should do their utmost to explore all possible channels to establish the facts.
3. The Guidelines should be disseminated more widely in developing countries as a possible model for host country policies or legislation. Adherence to the Guidelines should be a formal requirement for inward investors.
4. If the potential of the Guidelines is to be realized then adhering country governments should ensure that the procedures lead to positive results that help improve the lives of communities negatively affected by corporate behaviour.

### **9.2. General Recommendations to improve the functioning of NCPs**

1. Urgent measures are needed to restore confidence in the impartiality of the process. At the very least, all NCPs should be inter-departmental and not be dominated by trade and investment officials who are perceived as being pro-business. If governments are sincere about enhancing the effectiveness of the implementation procedures then ultimately more radical solutions are needed. A body independent of government with some legal powers and adequate resources to investigate complaints, weigh evidence and reach conclusions about breaches of Guidelines will be needed.
2. Advisory, expert boards should be established immediately to guide the NCP's decision making and to review controversial decisions.
3. NCPs should present their annual reports to parliamentary and have their decisions on cases scrutinized by an appropriate parliamentary committee or ombudsman.

4. The Investment Committee should in a participatory way involving NGOs improve the procedural guidance and through a peer review mechanism to ensure that all NCPs are fulfilling their obligations adequately.
5. Given the gaps that have been highlighted by the Investment Committee's work on conflict and weak governance zones, and noting the recommendation of the Commission For Africa calling on all OECD countries to promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict , the Committee should undertake negotiations with stakeholders to improve the commentary to the relevant Guidelines human rights provision. At a minimum, the Commentary should include an explicit reference to the Voluntary Principles on Security and Human Rights.
6. It is unsatisfactory that trade related cases are not generally deemed to be within the scope of the Guidelines. OECD WATCH believes that this narrowing of the scope is not justified by the agreed revised text of the Guidelines and that the exclusion of supply chain cases is discriminatory. If the Investment Committee is not able to deal with trade cases, then a complementary instrument will have to be developed.
7. All adhering governments should do more to promote the Guidelines and increase the visibility, transparency, impartiality and accountability of NCPs.



## PART II

# **Roundtable on Corporate Responsibility: The OECD Guidelines and Developing Countries – Building Trust**





## 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 fifth annual meeting of the National Contact Points. Their names appear below.

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

### Chair:

*Mr. Oded Grajew*, President, Ethos Institute – Business and Social Responsibility, Former Special Advisor to the President of Brazil on Corporate Responsibility, Brazil.

Opening remarks: *Mr. Richard Hecklinger*, Deputy Secretary General, OECD.

### Speakers:

*Mr. Philip Armstrong*, Managing Director, Corporate Governance Advisory Services (PTY) Ltd, South Africa.

*Mr. Mohan Murti*, Member of the Board of Shareholders, Trevira GmbH, Chief Representative – Europe, Reliance Industries Ltd, Germany.

*Mr. Govindasamy Rajasekaran*, General Secretary, Malaysian Trades Union Congress (MTUC), Malaysia.

*Mr. Ravi Rebbapragada*, Chairperson – MM&P (Mines, Minerals and People), Executive Director – Samata, India.

*Mr. Fackson Shamenda*, Former President – International Confederation of Free Trade Unions (ICFTU), Honorary President – Zambian Congress of Trade Unions, Zambia.

*Mr. Samuel Sitta*, Executive Director, Tanzania Investment Centre (TIC), Tanzania.

*Mr. Wang Wei*, Chairman, China M&A Management Holdings, Inc., China.



## **Summary of the Roundtable Discussion**

The OECD Roundtable on Corporate Responsibility is held every year in conjunction with the annual meeting of National Contact Points<sup>1</sup> (NCPs). The purpose of the Roundtable is to help NCPs to improve promotion and implementation of the *OECD Guidelines for Multinational Enterprises* (hereafter, “the Guidelines”). The Guidelines are a multilaterally-endorsed and comprehensive code of conduct for international business. They are backed by 39 adhering governments whose territories are home to 97 out of the top 100 multinational enterprises<sup>2</sup> and are the source of nearly 90 per cent of global foreign direct investment flows.

Chaired by Brazil, the 2005 Roundtable brought together representatives of the business, trade union and NGO communities in China, India, South Africa and other non-adhering countries<sup>3</sup> to explore the theme of “The OECD Guidelines and Developing Countries – Building Trust”. The event was also attended by representatives of BIAC, TUAC and OECD Watch, a network of NGOs. Invited participants were asked to help NCPs develop a better understanding of: 1) how actors from non-adhering countries view the concepts and principles expressed in the Guidelines; 2) how they can be implemented and promoted in non-adhering countries; and 3) how the Guidelines’ development impact can be enhanced.

The discussions extended and deepened an ongoing dialogue with actors from non adhering countries in such venues as the Global Forum for International Investment (e.g. in Johannesburg and New Delhi) and the 2005 meeting in Addis Ababa of the OECD-NEPAD African Investment Initiative.<sup>4</sup> They were held under the Chatham House “no attribution” rule<sup>5</sup> to allow for candid and constructive discussion. This summary reviews the main themes developed during the Roundtable discussion (following the “no attribution” rule). It also draws implications for Guidelines promotion and implementation.

## **The Guidelines express universal values with broad relevance and legitimacy**

The Guidelines are underpinned by a multilateral normative framework that is continually evolving. It covers such areas as human rights, anti-corruption, environmental protection, labour management, consumer interests and taxation. The Roundtable showed clearly that the concepts and principles that form the foundation of the Guidelines are truly global – the Guidelines

promote values that are shared by many in the business, trade union and NGO communities in both adhering and non-adhering countries.

An Indian businessman at the Roundtable noted that “What is good for the world is good for India” and that the basic humanitarian values of the Guidelines were already expressed in his country’s religious texts (he cited an ancient Sanskrit text on the inter-connectedness of human welfare). Several participants stated that these basic principles for appropriate business conduct are far from being “luxuries” and probably even more important in poor countries than in the developed world. A participant from Zambia – noting the large gaps between international principles and actual conditions in his country – suggested that international instruments like the Guidelines might be even more important in countries such as his. Given the size of the gaps and the seriousness of the problems (he recalled, for example an explosion in a munitions factory which killed many workers and whose cause he attributed to the absence of basic safety measures), he urged that further promotion and implementation of the principles expressed in the Guidelines be made a matter of high priority in the adhering and non-adhering worlds.

This theme of the universal relevance and acceptance of the basic values underpinning the Guidelines echoes the findings of a background paper prepared for the Roundtable. The background paper looks at formal adherence by non-adhering countries to the instruments cited in the Guidelines (*e.g.* Universal Declaration on Human Rights, ILO Declarations and Conventions) using a geographically diverse sample of 20 non-adhering countries. These countries cover more than 50 per cent of the world’s population. They adhere, on average, to 13.5 of the 14 multilateral instruments specifically cited in the Guidelines. Reviewing regional initiatives in the human rights and anti-corruption fields, the paper also shows that many non-adhering countries are using their own multilateral processes to promote these concepts and principles and to explore their application in their regional contexts.

Representatives of two major OECD-based multinational enterprises reinforced the theme of universality. They noted that managerial and technological progress is helping to make multinational companies a channel for global promotion of these principles. One representative, speaking for an oil and gas company that straddles 180 countries, talked about the need to avoid double standards – she stated that her company follows the “same business principles in Africa as in California”. The other representative (from the information technology sector) described her company’s efforts to integrate its business principles – which were developed as part of a sector-wide initiative dealing with a wide range of labour, environmental and business integrity issues – into its far-flung supply chain operations. Her company is progressively extending the scope of this effort (which now covers three quarters of its suppliers).

## **Diversity of capacity and practice within and among non-adhering countries**

Thus, Roundtable participants communicated a clear message on “common goals and common challenges”, in the words of the Roundtable Chair. This underlying unity of values and aspirations contrasts with the extremely diverse picture of the non-adhering world’s capacity to move toward realising these aspirations.

On one hand, Roundtable participants sent an optimistic message. They described the successful entry of large parts of the non-adhering world into the world economy and the active participation of non-adhering companies in global management trends in the corporate responsibility field. Contrasting (and co-existing) with this was a picture of regions and populations that have not participated in or benefited from global specialisation in production; from improved standards of living that much of the rest of the world is enjoying; and that are suffering from political and economic systems that are not supporting high and rising welfare.

### ***Economic integration, convergence and growth in private sector capacity***

Participants in earlier OECD corporate responsibility events have sometimes been of the view that the OECD business community is far in advance of other business communities in terms of policies, practices and reporting in the corporate responsibility field. This view was not confirmed by Roundtable participants from non-adhering countries.

They pointed to their countries’ long traditions of corporate philanthropy and to extensive involvement in corporate responsibility by non-adhering businesses of all types (with the possible exception of small and medium-sized enterprises). Indian and South African representatives described the large NGO communities that are active in their countries and to the vibrant social dialogue that is taking place in both countries – thus, businesses in these non-adhering countries are subject to civil society pressures, just like their counterparts from adhering countries.

The discussions also highlighted the growing prominence of companies from non-adhering countries as major actors on the global scene. Some non-adhering countries (e.g. China, India and South Africa) are active outward investors in some sectors – to quote an Indian participant, “this is a new thing for us”. These countries’ businesses now need to position themselves with respect to a complex (global) set of expectations for business behaviour. The Chinese businessman described how the Chinese business community was going “up the learning curve” in dealing with what was sometimes, for it, “puzzling criticism”.

Participants described a process of partial convergence between adhering and non-adhering businesses in terms of management and reporting practices and business strategies. Some of them are already far advanced in this process and have developed their own initiatives in this area. One representative referred to the King II Report (an influential and far-reaching corporate governance code developed in South Africa) and to related developments on the Johannesburg Stock Exchange. Among other things, these promote “integrated sustainability reporting” in which broader corporate responsibility disclosure is built into more traditional corporate reporting practices.

In this respect, Roundtable participants reinforced the findings of background research prepared by the OECD Secretariat for the Roundtable, which showed that some non-adhering business communities are leaders in many corporate responsibility fields, even by OECD standards. The research also shows that non-adhering countries’ business communities, like their adhering country counterparts, have variable propensities to engage in such practices – while some are very active, others have little or no involvement in such initiatives.

### ***Exclusion of millions of people from the benefits of globalisation***

Set against the themes of progress and convergence was one of entrenched poverty and of the ongoing exclusion of hundreds of millions of people from the benefits of participation in the global economy. Trade union, NGO and even business participants pointed to parts of the world (including those mentioned above that are on the forefront of progress) in which serious violations of the standards for business conduct (of the type set forth in the Guidelines) are routine. This picture of arrested economic development and of exclusion from economic and social progress held even for the countries where progress appears to be well established. For example, in the Indian, Chinese and South African economies, world class companies and competitive, knowledge intensive sectors co-exist with regions and populations that have made little or no progress in the economic and social spheres.

Some participants (e.g. from Tanzania and Zambia) described fierce competition for investment among localities and were concerned that this competition take place with due respect for international standards. They also noted a willingness of some fragile populations to accept any kind of work and to their vulnerability to exploitation by unscrupulous investors. Trade union participants regretted the practice of some investors to “shop around” for incentive packages that sometimes ignore basic rights. The Tanzanian representative stated that, against this backdrop, there is a need to build trust, to dissipate suspicions and to create positive experiences to erase some of the darker “memories”.

**Pro-market consensus and need for continual improvement**

Overall, the tenor of the discussion (even its more pessimistic parts) was pro-market. Participants recognised their countries' need for investment (both domestic and international) and the "power of the market to raise living standards" (to quote the Chinese business representative). The Tanzanian participant remarked that his country was already rich by virtue of its extensive human and natural resource wealth. What Tanzania needs is to develop the market potential of this wealth in ways that benefit its people – this, in turn, will require a responsible and capable public sector and responsible and efficient companies willing to invest.

There is a need for all elements of society in all countries – especially governments – to learn to attract and marshal investment to raise welfare. The Chinese participant talked about the "need for good public governance" to support corporate responsibility. The Tanzanian and Zambian representatives regretted their countries' lack of "credible enforcement capacity" in several key areas. An NCP noted the role that the Investment Committee's initiative for a *Policy Framework for Investment* will play in helping both adhering and non adhering governments play their roles more effectively. Thus, the *Policy Framework for Investment* will complement the Guidelines by helping to clarify the nature of both government and corporate responsibilities and by helping countries to enhance the effectiveness of their public sectors.

**Reasons for business interest in corporate responsibility in non-adhering countries**

The Roundtable showed that actors from non-adhering countries have an active interest in corporate responsibility. This interest seems to stem largely from the same factors as those influencing their OECD counterparts. The Chair of the Roundtable presented research,<sup>6</sup> based on the experiences of 240 companies based in 60 countries, that documents the "business case" for corporate responsibility initiatives. The study finds that: "Overall, the business case exists for all companies although the specific elements may vary. While companies in all regions can achieve measurable commercial returns by investing in their employees and in environmental process improvements, there is diversity in the business case... for small and medium sized enterprises, the emphasis is very much on cost savings... National companies and multinational corporations based in emerging markets gain benefits in all areas, led by costs savings from environmental process improvements."

The Roundtable participants gave the following reasons for involvement of non-adhering companies in the corporate responsibility field:

- *More demanding regulatory environments.* These are putting pressures on companies of all sizes and in many sectors. Particularly noted were



developments in the anti-corruption field, with African representatives describing high profile anti-corruption cases in Lesotho, South Africa and Zambia. An Indian representative described the closure of several thousand SMEs for non-compliance with environmental regulations.

- *Political support for a progressive business community.* This point was made in reference to South Africa, where the “particular political context” has created a climate that has made it possible to develop South Africa’s influential corporate governance code – the King II Report.
- *A well developed and active set of civil society institutions in some non-adhering countries.*
- *Many corporate responsibility initiatives are good for business* – they help to enhance reputations and to protect brands. This is as true for non-adhering businesses as it is for adhering businesses.

As noted earlier, three of the countries represented at the Roundtable – China, India and South Africa – are becoming significant outward investors in their own right in some sectors and regions. One of the NGO participants is looking at corporate responsibility issues that arise in connection with Indian mining company investments in Africa. A representative of a Chinese company described corporate responsibility as a “hot topic” in China and expressed his interest in sharing ideas.

## **Is observing the Guidelines good for business?**

An NCP asked whether observing the Guidelines is a competitive liability for companies and the ensuing discussion did not produce an unambiguous response to this question. The overall response might be described schematically as: “while observing appropriate standards of business conduct is good for business in the long run, there is indeed a “tension” in the short- and medium-term (to quote one African participant)”. NCPs and participants noted the role of public policy, international organisations and private sectoral initiatives in helping to create a level playing field. The background papers prepared for the Roundtable document numerous public and private initiatives sponsored by non-adhering public and private organisations that will shape corporate responsibility practices. Thus, although creating a level playing field may be a challenge, some non-adhering countries are working to ensure that their companies also face reasonable incentives to adhere to international standards.

## **The Guidelines’ place in the OECD Declaration on International Investment and Multinational Enterprises**

The issue of the place of the Guidelines within the OECD Declaration on International Investment and Multinational Enterprises was discussed at

some length at the Roundtable. The Guidelines are one of four main instruments making up the Declaration. The other three are: 1) the *National Treatment Instrument*, where adhering countries commit themselves to treating foreign-controlled enterprises operating in their territories no less favourably than domestic enterprises in like situations; 2) an instrument on *Conflicting Requirements* which calls on adhering countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries; and 3) an instrument on *International Investment Incentives and Disincentives* which provides for efforts among adhering countries to improve co-operation on measures affecting international direct investment.

Some participants wondered whether it would not be easier to “sell” the Guidelines as a stand-alone instrument and the Declaration as an “à la carte” menu allowing countries to select the instruments that most interest them. The NCPs reaffirmed the place of the Guidelines as an integral part of the Declaration, which helps to define the rights and responsibilities of two major actors in the global economy – governments and multinational enterprises. NCPs described the Guidelines’ presence in this broader package as being critical to the way that the Investment Committee looks at corporate responsibility – that, if it is to be effective, it needs to be part of a broader effort to improve both policy systems and corporate practices. They also noted that, in terms of follow up, the Guidelines are somewhat different than other elements of the Declaration because adhering countries promote observance of the Guidelines by “their” multinational enterprises, even in operations taking place in non-adhering countries. For the other elements of the Declaration, the follow up involves dialogue only among non-adhering countries.

## **Promoting the Guidelines**

The Roundtable showed that there was a shared interest in forming partnerships between adhering and non-adhering countries in promoting appropriate conduct in international business.

### ***Need for promotion***

Echoing a theme developed during the 2005 NCP meeting, Roundtable participants stated that the Guidelines are not well known in the non-adhering world; that they are a “good product<sup>7</sup>” that is not being sufficiently marketed and that there is a need to step up promotional efforts. A Brazilian participant stated that they are not well known in his country, even though it adhered to the Declaration many years ago. Reinforcing a theme developed in the NCP meeting, the Roundtable made it clear that more promotion would be necessary and that, if offered in a spirit of consultation and equal partnership, such promotion would be welcomed in the non adhering world.

Many participants (from the business community in particular) described the large number of competing standards. NCPs and the Investment Committee will have to improve Guidelines promotion if the Guidelines are to make a mark relative to “competing” instruments. In contrast, a representative from South Africa stressed that, within the large array of global instruments, the Guidelines have a unique contribution to make. They should be integrated in the emerging global framework and not be allowed to exist in a “silo”, separate from other OECD instruments and from major international initiatives such as the UN Global Compact and the Global Reporting Initiative.

### ***Challenge of promotion – capitalising on shared commitment and overcoming scepticism***

The NCPs received a mixed message that combined deeply felt commitment by non-adhering representatives to the principles and objectives of the Guidelines with scepticism about their effectiveness. Overcoming scepticism is one of these challenges – an NGO poll shows that some of the non adhering actors that know about them do not believe that they are effective. An NGO from a non-adhering country asked: “how can you expect a voluntary instrument like the Guidelines to work in a country that doesn’t want to respect its own constitution?” On the other hand, participants showed many times their commitment to principles underpinning the Guidelines and communicated a sense of urgency in “turning universal principles into local practices”.<sup>8</sup> For example, the sceptical NGO just quoted also stated that the poor farmers he works with would welcome any process – including the Guidelines – that would help them to realise basic concepts for the protection of local communities and of indigenous peoples. Some participants noted that, despite some frustrations with Guidelines implementation, they are promoting the Guidelines on their own – a Malaysian trade union representative said that “trade unions in Southeast Asia together with TUAC had published thousands of copies in several Asian languages and had held series of seminars to promote the effective use of the OECD Guidelines”.

### ***What developing countries want from the Guidelines***

Some actors from non-adhering countries are interested in the Guidelines as an aid for learning and dialogue. As noted earlier, the Chinese business representative welcomed opportunities for learning about the “hot topic” of corporate responsibility. The OECD Watch submission quotes a Pakistani NGO as saying that: “They [Pakistani civil society groups] feel that the Guidelines are helping them better understand the social and environmental implications of corporate operations. They feel that they would be better equipped to question and seek responsible corporate behaviour from the corporate sector from the knowledge gained from the Guidelines.”

For some non-adhering participants, users' evaluation of the Guidelines is closely related to the effectiveness of the specific instance procedure. An Indian NGO quoted in the OECD Watch submission says: "in this rapidly globalising economy, it is imperative that the activities of trans-national companies in India are monitored using available global instruments such as the OECD Guidelines to hold them accountable for the impact of their investment on the environment and society." A Zambian NGO is quoted as saying: "civil society groups have found the Guidelines useful" and "companies cannot take us for granted. But Zambian NGOs have been disappointed by the slow pace in handling cases..." [quoted in OECD Watch submission]. TUAC developed similar themes in describing the views of non-adhering trade unions and stated that "effective implementation of the Guidelines" is the best promotional campaign.

Business representatives at the Roundtable were very receptive to the idea of partnership between adhering and non-adhering actors to promote the Guidelines and to make them meaningful. These noted that they "want to be held accountable" and that "prominent businesses are willing to partner". A representative of an OECD-based company highlighted the many opportunities and the opportunities for partnership in promotion.

### ***Mechanisms of promotion***

Roundtable participants, including NCPs, advocated the use the Guidelines as part of a "whole of government" approach to corporate responsibility. Specific mechanisms mentioned as vehicles for Guidelines promotion were: trade missions, embassy and consular programmes, public procurement, export credits and investment agreements. The Report of the Chair of the 2005 Meeting of the National Contact Points shows that many adhering governments are already using existing national programmes in this way.

An international businessman based in Germany and India favoured more systematic participation of developing countries business at Guidelines events. In particular, he favoured inviting representatives of national industry associations from developing countries. A Chinese business man recommended inviting appropriate government institutions, especially from state-owned enterprises and overseas investment departments. He also urged NCPs to form alliances with rating agencies, who could be encouraged to incorporate the concepts and principles of the Guidelines into their framework for evaluating companies.

Trade unions noted that OECD outreach events should be systematically used to promote the Guidelines and regretted what they claim is a tendency to downplay the Guidelines' role in recent and planned outreach events. An NCP advocated further consolidation of partnerships with other global and regional initiatives (e.g. UN Global Compact, NEPAD) so as to strengthen its ability to reach actors in the non-adhering world.

## Implications for Guidelines promotion and use in non-adhering countries

The Chair and other Roundtable participants identified the following implications of the Roundtable for Guidelines promotion and use in non-adhering countries:

- *Solid basis for partnership.* Actors from non-adhering countries subscribe to the concepts and principles expressed in the Guidelines and have their own initiatives in these areas. Thus, there appears to be a solid basis for partnership between adhering and non-adhering countries and the scope for integrating the Guidelines into the emerging global framework of standards and initiatives.
- *Low visibility and scepticism.* The Guidelines are not well known in non-adhering countries and significant additional efforts in promotion would be useful. In addition, there is some scepticism about their effectiveness. Thus, promotional efforts should aim both to raise visibility and to overcome scepticism.
- *Variable geometry in promotion.* Non-adhering countries have human and institutional capacity in the corporate responsibility field that ranges from extremely sophisticated to non-existent. Also, the nature of interest in non-adhering countries varies – some actors are interested in learning more about the Guidelines as a support for more general dialogue on international business conduct, whereas others want to see tangible results from dialogue with specific companies via the specific instances procedure. The Investment Committee and the NCPs will need to tailor their promotional and other activities in developing countries to the needs and interests of the particular partners.
- *Nature of promotional effort.* Broadly speaking, Roundtable participants proposed the following as a “marketing strategy for the Guidelines”: 1) use existing national programmes as promotional vehicles; 2) consolidate alliances with other global and regional initiatives; and 3) make greater use of Investment Committee outreach events. NCPs also noted with satisfaction BIAC’s promise to engage proactively in promotion. Trade unions and NGOs stressed that promotion cannot be separated from the effectiveness of implementation.

### Notes

1. National Contact Points are government offices, located in each of the 39 adhering countries, that are charged with promoting the Guidelines in the national context. They meet every year to report on their activities and to exchange ideas.
2. UNCTAD list of top 100 non-financial multinational enterprises.

3. Representatives were from the following non-adhering countries: China, Chinese Taipei, Ecuador, Taipei, India, Malaysia, Morocco, South Africa, Tanzania, Zambia.
4. See [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines) for a summary of the findings of the Addis Ababa event.
5. 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”.
6. *Developing Value: The business case for sustainability in emerging markets*. SustainAbility, International Finance Corporation and Ethos Institute. July 2002.
7. Quote from a participant from Tanzania.
8. Quote from the Chair’s summary of the Roundtable discussions. A Zambian labour union representative and an Indian NGO also described the need to make international principles a reality at the national and local levels.

## **Corporate Responsibility Practices of Emerging Market Companies – A Fact Finding Study\***

\* This study was prepared by Jeremy Baskin, an external consultant to the OECD Investment Division in co-operation with Kathryn Gordon of the OECD Investment Division. The views expressed here are those of the author and do not necessarily reflect those of the OECD or its member countries.

## 1. Introduction and key findings

Emerging market companies make up 3.8 per cent of the FT500, the 500 largest global traded companies<sup>1</sup> and 4.6 per cent of the Dow Jones Global Index of 2,500 companies. OECD statistics show that, while the bulk of international investment flows originate in the OECD, non-OECD countries are increasingly important sources of investment flows. This paper presents a fact finding study of the corporate responsibility policies and practices of emerging market companies.<sup>2</sup> The definition of “emerging market” used in this report is based on World Bank national income categories and is described in Box II.1.

### Box II.1. Emerging markets definition

In this paper all countries classified by the World Bank as Low or Middle Income countries are regarded as emerging market economies. These are countries with a 2003 Gross National Income (GNI) per capita of less than \$9 386. The paper pays particular attention to the countries which have corporations included in global market indices, and are thus most likely to attract global equity investment. Emerging market countries whose companies are included either on the FTSE All World index or the Dow Jones Global 2500 (or both) are: Argentina, Chile, Colombia, Egypt, India, Malaysia, Mexico, Peru, Poland, South Africa, Turkey, Brazil, China, Czech Republic, Hungary, Indonesia, Morocco, Pakistan, Philippines, Russia, Thailand and Venezuela.\*

\* Not covered in this research.

Sources: [www.worldbank.org/data](http://www.worldbank.org/data); Dow Jones; FTSE.

This paper has been prepared as background in support of the discussion at the Corporate Responsibility Roundtable on 14 June 2005 and is intended to help Roundtable participants address the following questions:

- To what extent have companies based in non-adhering countries participated in what earlier OECD research identified as a major trend in international business – that is, companies’ investment in policies and management and reporting systems that reinforce their ability to comply with law and with other societal expectations that might not be written down in law books?



- Are there any major differences in the policies, management systems and reporting practices of companies in non-adhering countries relative to those of companies based in adhering countries?
- What factors motivate emerging market companies to undertake these initiatives (e.g. regulatory compliance, product market competition, attracting and retaining employees, protection of reputation)?
- Are companies from emerging markets more or less likely to undertake corporate responsibility initiatives than they were in the past?

The evidence presented in this paper suggests that, overall, there is not a vast difference in approaches to corporate responsibility between companies in high-income OECD countries and their emerging market peers. Indeed the level of comparability is surprisingly high. Certain emerging market business sectors show substantial engagement in this area, while others show little or no engagement. There is significant diversity in the policies and practices of the emerging country business sample, just as there is high diversity within the OECD sample.

A number of findings stand out:

- *Global phenomenon.* Corporate responsibility initiatives are common among emerging market companies – the studies cited and the original data presented in this paper both show that these companies have participated in the broader trend in international business towards more formal management in a wide range of corporate responsibility fields. Overall, the report confirms that such initiatives are a global phenomenon that is very much present in emerging market companies. But within this broad international business trend, there are striking differences between countries, even within the same region.
- *Important regional and sectoral variations.* In a result that mirrors earlier findings on OECD companies,<sup>3</sup> the study points to significant inter- and intra-regional variations in practice. In most emerging markets there appears to be a substantial gap between companies that are doing a great deal and those that are doing little or nothing. Businesses in some emerging markets are leaders in this area, while others appear to have no involvement. These divergences – both in emerging markets and in the OECD – presumably reflect the influence of a variety of factors (e.g. variations in business circumstances relating to sectoral and geographical factors).
- *Leadership.* A study of 127 listed companies from emerging markets suggests that some are leaders in the corporate responsibility field. South African companies, in particular, stand out. The sample of listed companies in South Africa shows higher uptake in many areas than comparable samples from many OECD countries.

- *Reasons for uptake.* The review of studies looking at “drivers” of corporate responsibility initiative points to diverse reasons for undertaking such initiatives.
  - ❖ *Home grown phenomenon.* In some countries, these initiatives appear to be very much a “home grown” phenomenon. (For example, South Africa’s corporate governance code calls for corporate policies, systems and reporting in a wide range of corporate responsibility fields; it has provided a framework for significant engagement by listed South African companies.)
  - ❖ *Business case.* Surveys suggest that the “business case” for corporate responsibility is the same in emerging markets as it is among OECD companies – studies of Malaysian and Indian companies show that they adopt such measures in order to attract and retain employees, to improve product market positioning and to protect reputation capital. Surveys also indicate that companies based in non-adhering companies (like their OECD counterparts) adopt these initiatives in response to more demanding regulation and to other government pressures.
  - ❖ *OECD business partners.* In some countries, subsidiaries of OECD companies constitute the bulk of companies active in this area. In others, supply chain considerations and the desire of host country governments and business sectors to position themselves with respect to the expectations of global markets appear to be dominant considerations.
- *Growing uptake.* The statistical evidence from the review of trends in CR indicators and from some of the published reports shows growth in emerging market companies’ adoption of these initiatives.

The paper is organised as follows:

- Section II looks at four generic indicators of participation in corporate responsibility initiatives: 1) responses to the Carbon Disclosure Project, 2) inclusion in the Dow Jones Sustainability Index; 3) use of GRI reporting standards; and 4) certification to ISO14001. These indicators are used to get a statistical picture of corporate engagement on various corporate responsibility issues. Four regions are looked at – Central and Eastern Europe, Africa and the Middle East, Latin America, and Asia.
- Section III looks at what published statistical and survey data say about the levels and nature of engagement of emerging market companies in corporate responsibility initiatives. Studies are presented on Africa and Asia, the two regions where extensive statistical research on the relevant practices of businesses in non adhering countries has been conducted.
- Section IV presents original data on the corporate responsibility practices of 127 leading companies in 21 emerging markets. Each company’s corporate website and annual report were examined using a number of indicators

including corporate social investment, anti corruption policies and systems, environmental policies and systems, equal opportunities, women on corporate boards, training, and health and safety.

## **2. Emerging market companies participation in CR initiatives – Four basic indicators**

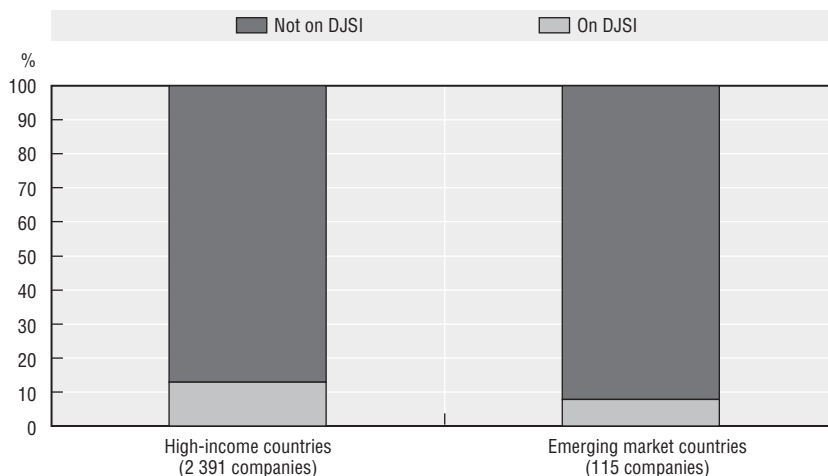
This section uses publicly-available indicators on company involvement in four widely-recognised global corporate responsibility initiatives in order to provide globally comparable statistics on engagement by companies from emerging markets. The indicators provide a useful, but only partial, picture of corporate engagement on corporate responsibility issues.<sup>4</sup> The four indicators discussed in this section are:

- Membership in the Dow Jones Sustainability Index (DJSI);
- Registration with the Global Reporting Initiative (GRI);
- Responses to the Carbon Disclosure Project (CDP);
- ISO 14001 certifications.

The first indicator, the DJSI, regularly analyses each of the approximately 2 500 companies on the Dow Jones World Index. Using general and industry-specific criteria, the DJSI approach identifies – from among these 2 500 “eligible” companies – what it calls “best in class” for “corporate sustainability” (defined as “a business approach to creating long-term shareholder value. Sustainability leaders embrace opportunities and manage risks which derive from economic, environmental and social developments”).<sup>5</sup> The roughly 10 per cent of companies assessed as most “sustainable” are included on the DJSI.<sup>6</sup> While 4.6 per cent of the eligible companies are from emerging markets, a small but still significant 2.8 per cent of the 318 companies which make it onto the DJSI come from emerging markets.

Put another way, and as Figure II.1 indicates, 309 (or 12.9 per cent) of the companies listed in high-income countries make it onto the DJSI, compared to 7.8 per cent of emerging market companies. This suggests a smaller gap than might be expected between emerging market and developed market companies. Not only do some emerging market companies take an active interest in corporate responsibility, but a number (especially in South Africa and Brazil) are among the global leaders.

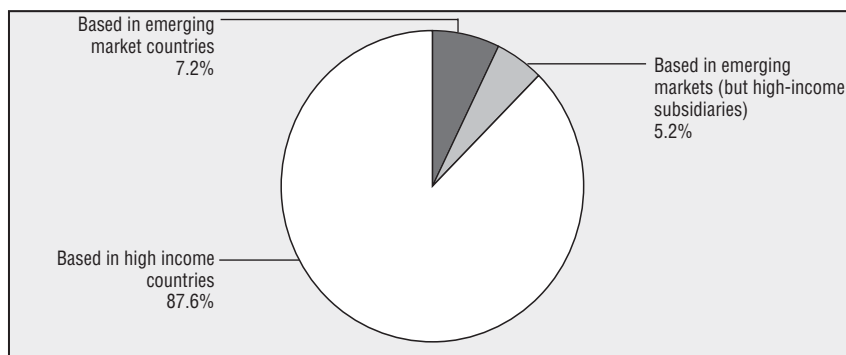
A second indicator – GRI registrations – tells a similar story. The GRI asks reporting organisations (mainly companies) to register with it when they use GRI indicators in their reporting. While compliance is not audited and while some companies prefer to use reporting frameworks that are tailored to their individual situations, GRI registrations provide a rough indicator of company involvement in “sustainability” reporting.<sup>7</sup>

Figure II.1. **Percentage of companies on DJSI by country category**

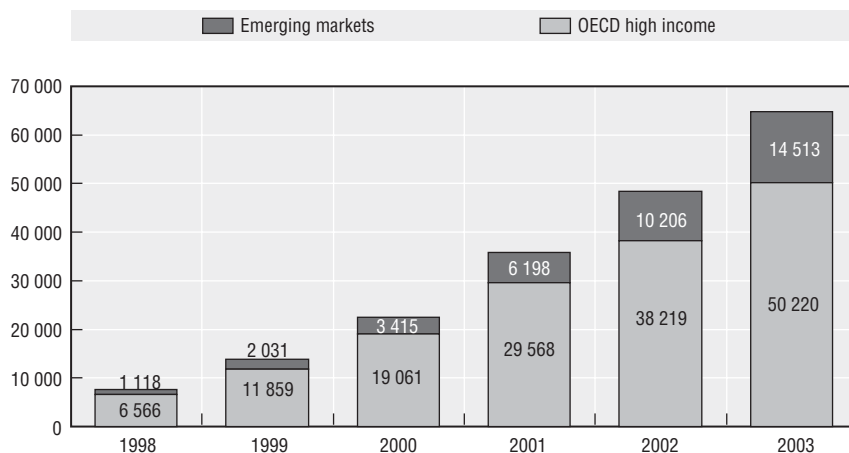
Source: Dow Jones Sustainability Index, September 2004.

Of the 614 companies registered with GRI in February 2005,<sup>8</sup> 12.4 per cent are based in emerging markets. As Figure II.1 indicates, many of the companies in this 12.4 per cent are subsidiaries or are otherwise closely associated with OECD companies. For example, 18 of the emerging market companies are subsidiaries of a single, major consumer goods company and are probably reporting because of insistence at Group headquarters level. Nevertheless this still leaves 7.2 per cent of GRI companies based in emerging markets.

A third indicator can be developed from participation rates in the Carbon Disclosure Project's survey of companies (the CDP is an initiative of a consortium of major global investors). The survey asks FT500 companies to indicate how

Figure II.2. **GRI reporters by country category**

Source: Global Reporting Initiative, Feb. 2005.

Figure II.3. **Growth in ISO14001 certifications worldwide**

Note: Figures are for December of each year. OECD members which are not high income are included under emerging markets.

Source: ISO Survey, 2004.

they are dealing with climate change and greenhouse gas emissions. Its most recent completed survey saw 59 per cent of companies respond with information. Emerging market companies participated in the survey, although at a lower rate than higher income companies, the figures being reduced sharply by the non-participation of a number of Saudi companies and the Russian oil majors.

A fourth indicator is certifications for ISO 14001, the global standard for environmental management systems. The past five years have seen a significant increase in the uptake of ISO 14001 certifications. Figure II.3 shows how certifications in high-income OECD countries have increased more than fourfold over this period, whilst in emerging markets there has been a seven-fold increase.

Table II.1 shows the growth in certification in selected countries. The Chinese figures have grown especially sharply, and have risen since China's State Environmental Protection Agency started promoting ISO in 1996.<sup>9</sup>

Table II.1. **ISO 14001 certifications for selected countries**

	1999	2000	2001	2002	2003
China	222	510	1 085	2 803	5 064
Brazil	165	330	350	900	1 008
India	111	257	400	605	879
South Africa	82	126	169	264	378
Russia	0	3	12	23	48

Source: ISO Survey, 2004. Figures for December of each year.

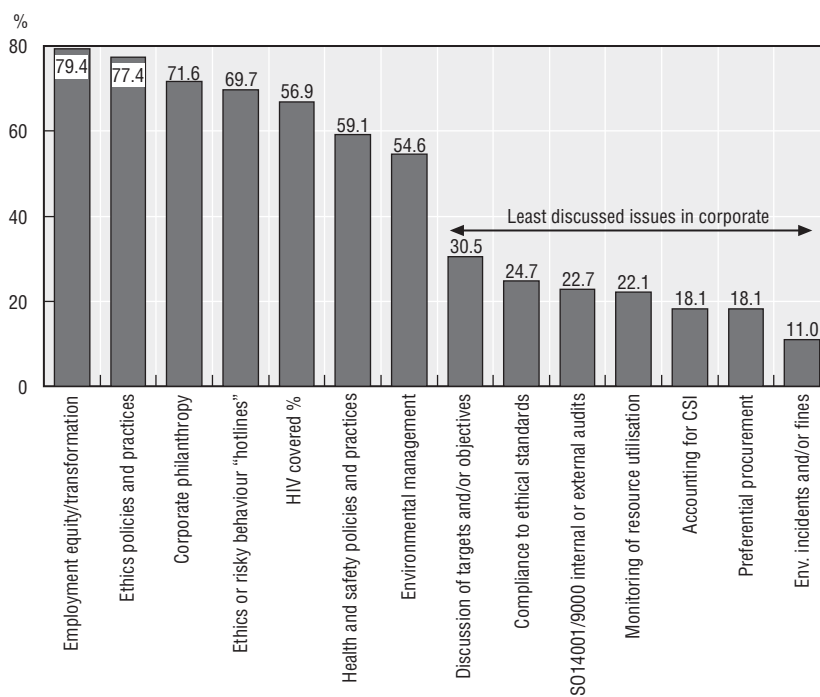
### 3. Corporate responsibility trends in Africa and non-OECD Asia – findings of published studies

This section reviews facts and trends regarding uptake of corporate responsibility initiatives by emerging markets companies based on the findings of non-OECD published studies. It looks at Africa and at non-OECD Asia, two regions for which statistical studies of business practices in the corporate responsibility field are available.

#### 3.1. Africa

Published studies of sub-Saharan African private initiatives for corporate responsibility present a variable picture. On one hand, such initiatives are more advanced in South Africa than in any other emerging market – these statistics indicate, in many areas, South African business are leaders. On the other hand, in the remainder of Africa, interest in such initiatives is not common, except among subsidiaries of major multinationals.

Figure II.4. **Per cent South African companies reporting on CR issues**



Note: Survey covered all 154 independent listed companies listed on Johannesburg Stock Exchange.

Source: KPMG South Africa, 2004.

## Box II.2. South Africa's King Report

The report calls for:

- Annual sustainability disclosure on social, transformational, ethical, safety, health and environmental policies and practices.
- Utilisation of an integrated approach to stakeholder reporting that includes a categorisation of issues into the following levels:
  - ❖ Acceptance and adoption of business principles that can be verified;
  - ❖ Implementation of practices with adequate evidence to support disclosure; and
  - ❖ Performance against related adopted business principles.
- Consideration for disclosure of sustainability items should include:
  - ❖ Relevance to business, scope of disclosure, period of disclosure, expectations of performance (benchmark), and impact directly attributable to entity action or inaction;
  - ❖ Principles of reliability, clarity, relevance, comparability, timeliness, and verifiability, with a reference to the Global Reporting Initiative Guidelines; and
  - ❖ Development of guidelines for materiality for consistency, based upon international models and national definitions.
- Specific sustainability disclosures should include:
  - ❖ Occupational health and safety matters, inclusive of AIDS;
  - ❖ Environmental matters;
  - ❖ Social investment prioritisation, including black economic empowerment initiatives; and
  - ❖ Human capital development, inclusive of employment equity.
- Every company should have a code of ethics that is relevant to its stakeholders, supported by:
  - ❖ Systems to introduce, monitor and enforce;
  - ❖ Assignment of high level authority to oversee compliance;
  - ❖ Assessment of integrity of new appointees and employees considered for promotion;
  - ❖ Exercising due care in delegating discretionary authority to the board;
  - ❖ Communication with and training of employees;
  - ❖ Environmental matters;;
  - ❖ Provision, monitoring and auditing of safe systems for reporting unethical or risky behaviour; and
  - ❖ Evidence of response to offences and consistent enforcement of discipline.

### Box II.2. **South Africa's King Report** (cont.)

- A statement as to the extent the directors believe the ethical standards have been achieved and, if not at an acceptable level, then the steps that are being taken to achieve the desired level should be presented.

Companies should consider carefully their dealings with others that do not demonstrate a similar level of commitment to organisational integrity.

Source: KPMG (2003).

The Johannesburg Stock Exchange (JSE) launched an SRI index in May 2004. All listed companies are invited to participate and those that choose to do so are assessed against the criteria. Criteria cover environmental, social and economic issues as well as corporate governance.<sup>10</sup> Currently the FTSE/JSE SRI index covers 51 companies, or about one-third of companies listed on the JSE.

South Africa's corporate governance code – known as King II – calls for the inclusion of annual reporting on sustainability. While it specifies in some detail the types of issues to be covered, it does not specify particular sustainability outcomes. The key features of the King II report are summarised in Box II.2. Compliance with King II is a listing requirement for the JSE. The code includes specific issues of major concern within South Africa such as employment equity, HIV/AIDS, and black economic empowerment.

The global business consultancy KPMG has conducted eight studies to date on the extent of CR reporting in South Africa. Their most recent study, published in December 2004, looks at the extent of sustainability reporting in all 154 independent companies listed on the Johannesburg Stock Exchange (JSE). In particular it focuses on compliance with the King II corporate governance code. Figure II.4 shows some of the results.<sup>11</sup> It suggests that South African companies are global leaders on CR reporting regarding social issues, but tend to be less advanced in relation to environmental matters. For example, two-thirds of companies report on how they are dealing with AIDS among their employees. Almost 70 per cent of companies reported having a whistle-blowing "hotline" for corruption-related issues.

## 3.2. Asia

Among Asia countries, India and Malaysia appear to be most active in the field of corporate responsibility. India has a number of companies with long traditions of philanthropic and community programmes. A paper by Das Gupta and Das Gupta argues that corporate philanthropy in India is shifting towards Corporate Social Investment (which is a more strategic approach to philanthropy involving the building of stronger relationships with stakeholders).



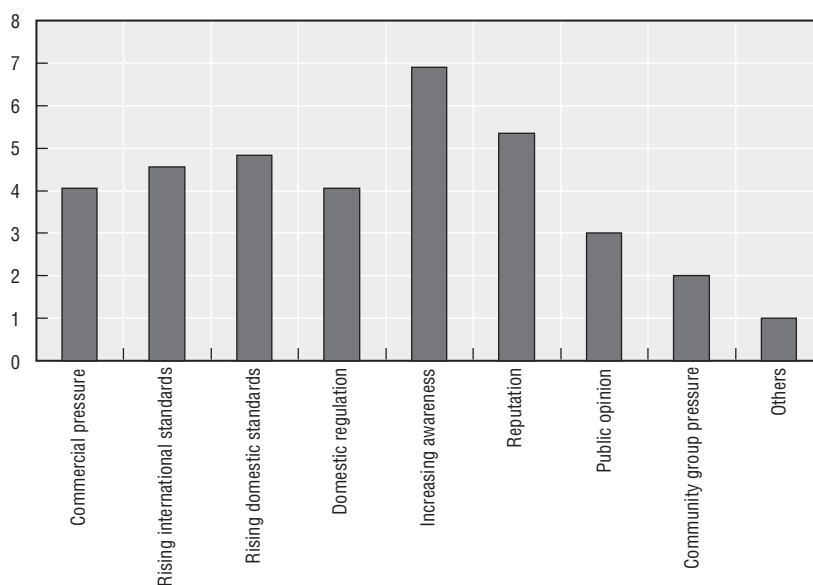
A number of leading companies are also actively managing their environmental impacts and this is evidenced by some major Indian companies producing detailed sustainability reports and exercising leadership within the broader Indian business community. The Confederation of Indian Industry has adopted Social Principles and embraced the CSR concept.

A 2001 survey by the Centre for Social Markets (CSM) asked (mainly large) Indian companies to list the main factors driving changed attitudes to social and environmental responsibility. Figure II.5 presents the results with a combination of awareness, regulatory changes and a changing global/competitive environment mentioned most frequently.

The emergence of corporate responsibility in Malaysia has been closely linked to that country's development plan – Vision 2020 – and to the government's policy of enhancing standards of corporate governance and business ethics. At a conference on CSR held in Malaysia in June 2004, the Deputy Prime Minister argued that CSR practices should not be mistaken for acts of philanthropy or charity. He argued that:

CSR helps improve financial performance, enhance brand image and increases the ability to attract and retain the best workforce – contributing to the market value of the company by up to 30 per cent. All of these translate

Figure II.5. **Indian companies' reasons for changed attitudes to CSR (2001)**  
Percentage of companies in sample



Source: Centre for Social Markets (CSM), 2000.

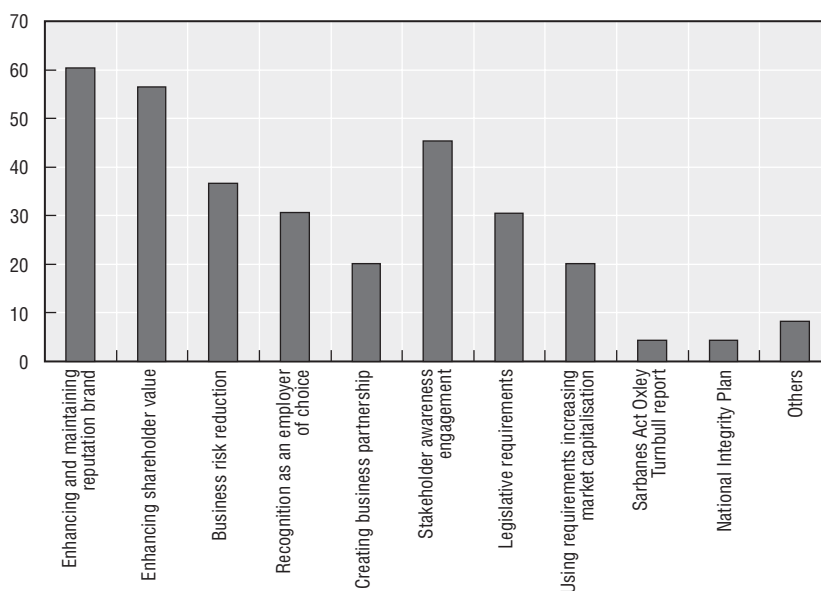
into better client and customer satisfaction, improved customer loyalty and ultimately into lower cost of capital as a result of better Risk Management. Finally from a national standpoint, a good reputation for CSR will help Malaysian companies compete in world markets by resolving the potential concerns end users may have in developed markets. (*Conference Report of CSR – Creating Greater Competitive Advantage*)

A September 2004 survey by the Malaysian Chapter of the Association of Chartered Certified Accountants (ACCA) looked at all the listed companies on the Bursa Malaysia. It found an increase, compared to a previous survey, in the number of companies reporting on social and environmental performance. Sixty companies (10 per cent) provided environmental information, and 49 companies (8 per cent) reported on social performance.

As Figure II.6 from the ACCA report illustrates, the major drivers for this increased reporting were (in addition to growing awareness), “business case” issues such as reputation/brand enhancement, promoting shareholder value, reducing risk and complying with legislation/regulation in Malaysia (and abroad).

Two cross-country initiatives in Asia, both based in Hong Kong, deserve mention. The Asian Socially Responsible Investment Association (ASRIA) has been active in researching the investment climate and promoting increased take-up of corporate responsibility across the continent ([www.asria.org](http://www.asria.org)). More

Figure II.6. **Drivers of Malaysian interest in corporate responsibility (2004)**



Source: ACCA Malaysia, 2004.

recently, CSR-Asia has started publishing regular, detailed information on corporate responsibility developments, especially in China ([www.csr-asia.com](http://www.csr-asia.com)).

#### 4. Corporate responsibility practices of companies based in emerging markets

Using original data,<sup>12</sup> this section reviews the corporate responsibility practices of 127 publicly-listed companies in 21 emerging markets. Wherever possible the findings are compared to existing data on 1 740 listed companies in a range of high-income OECD countries.<sup>13</sup> The 127 companies analysed comprised 22 per cent of the emerging market companies on FTSE's All-World index. The companies were selected so that sample would consist of the largest companies on their respective stock exchanges and so that the emerging market sample would have wide geographical coverage.<sup>14</sup>

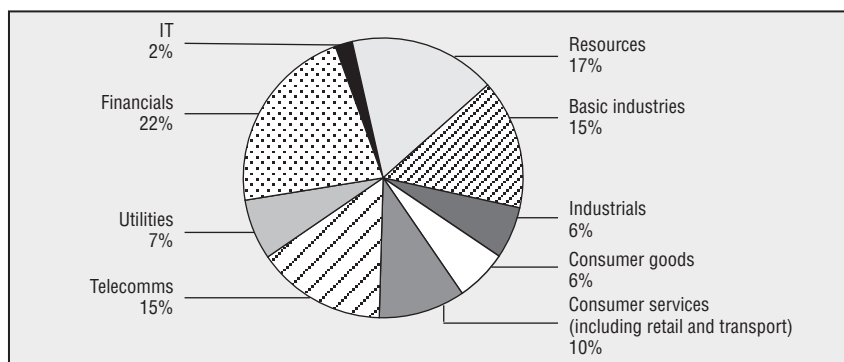
The number of companies analysed, and whether they are categorised as large or medium-sized, is summarised in Table II.2.<sup>15</sup> Even those companies classified as “medium” are substantial in size – to give an indication, half of the companies in the FTSE100 are classified as medium capitalisation, and 12 of the French CAC40. Figure II.7 shows that the overwhelming number of

Table II.2. **Number of companies analysed (by size)\***

	Large capitalisation	Medium capitalisation	Total
Emerging market total	109	18	127
OECD (high income) total	643	1 097	1 740

\* The exact number of OECD high income companies may vary slightly for specific indicators and exclude a very small number of companies without data for that indicator.

Figure II.7. **Sectoral composition of emerging market companies**



Source: OECD calculations using FTSE data.

emerging market companies analysed come from four sectors – Financials, Resources, Basic Industries and Telecommunications.

#### 4.1. Reporting publicly on corporate responsibility

The research showed that over two-thirds of emerging market companies either produce a sustainability report or have a specific section on their Web site or in their annual report covering corporate responsibility. Whilst precisely comparable data for high-income OECD countries is not available, this is a high figure and suggests that emerging market companies do not see corporate responsibility as the preserve of the developed economies.

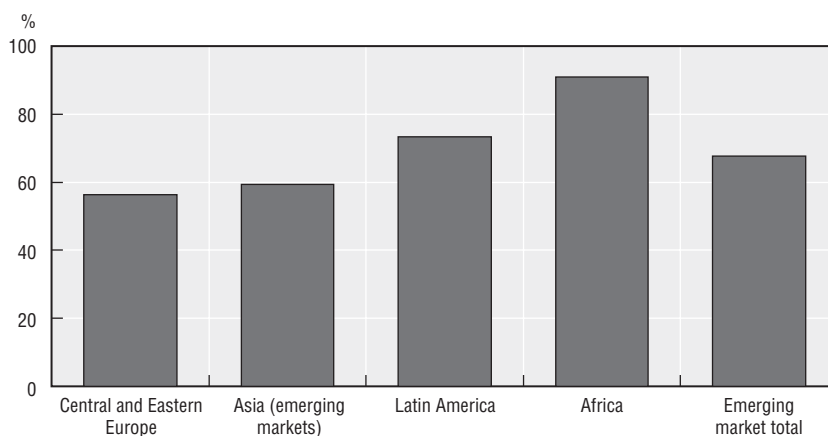
Some countries' companies report to a greater extent than others – all but one of the 16 South African companies analysed had a specific corporate responsibility website. Even at the lower end, 56 per cent of Central and Eastern European companies analysed did so too, in short a clear majority of companies in all regions, as Figure II.8 below indicates.

#### 4.2. Corporate Social Investment (CSI)

Corporate social investment is the term often used to describe a company's investment in a range of community activities. It includes, but goes beyond, the concept of corporate philanthropy. The statistics presented in this section rely on the following definitions of “partial” and “extensive” social investment:

- Partial – some evidence of donations to charitable causes or a community project.
- Extensive – evidence of involvement in a wide range of projects involving significant sums of money.

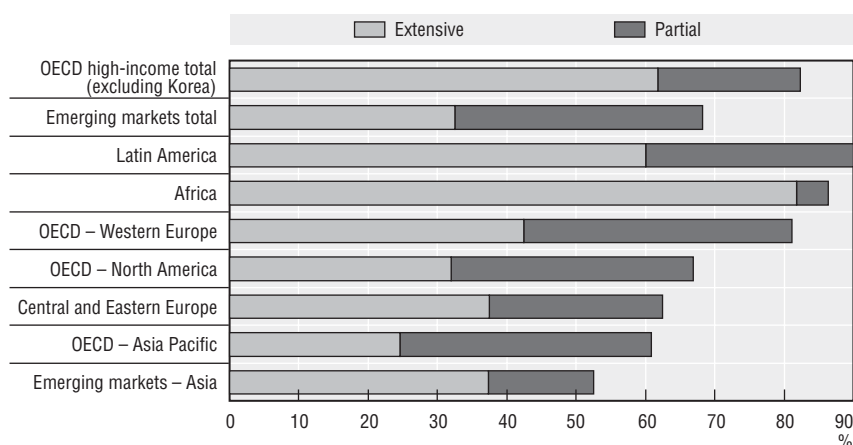
Figure II.8. **Companies with public corporate responsibility reporting**



As Figure II.9 shows, emerging market companies are almost as likely as high-income OECD countries to report on their corporate social investment and they are more likely to have extensive CSI programmes in place.

- 72.8 per cent of OECD companies reported CSI activities, compared to 68.5 per cent of emerging market companies.
- 36.4 per cent of OECD companies reported CSI activities which can be regarded as “extensive” (see box for definitions) compared to 50.4 per cent for emerging market companies.
- Africa and Latin America were the leading regions, followed by Europe.

Figure II.9. **Extent of reported Corporate Social Investment (CSI)**

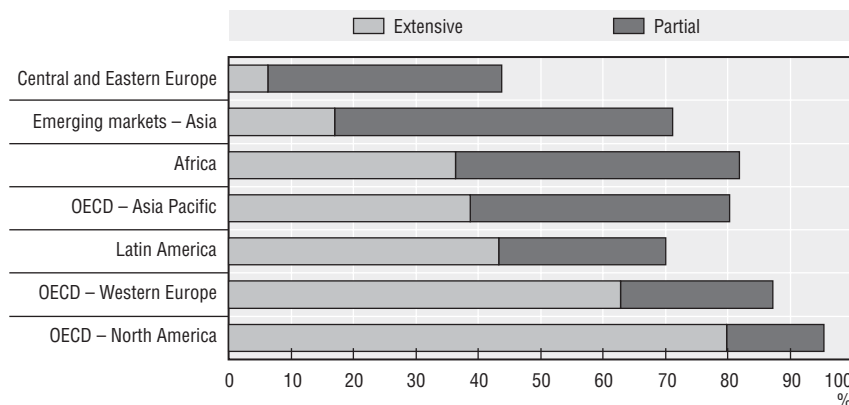


### 4.3. Anti-corruption, conflict of interest and business integrity

This section looks at the sample companies' policy statements in relation to the fight against corruption and promotion of business integrity. It classifies codes of ethics in this area as follows:

- **Partial** – a statement that a code of ethics exists, or a published code of ethics but one with minimal details or minimal coverage: such as a generic commitment to comply with laws and regulations, or a code with only partial applicability (for example applying only to board members but not to employees), or a code with only two or three substantial provisions.
- **Extensive** – a published code of ethics, applicable to all employees and containing a range of provisions: on issues such as bribery, facilitation payments, gifts, conflicts of interest

Figure II.10. **Published codes on fighting corruption and promoting business integrity**



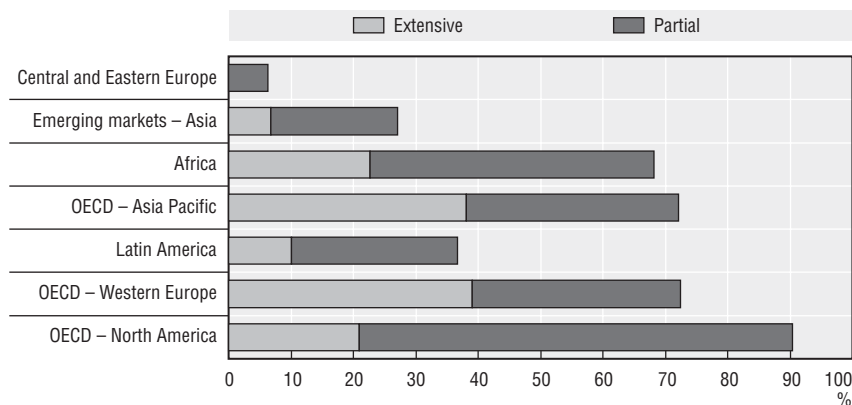
About one quarter (25.2 per cent) of the emerging market companies analysed have an extensive policies in place. However there are significant regional differences. Latin American and African (mainly South African) companies have relatively high propensities to develop ethics codes in this field, while Asian emerging market companies, in general, showed lower propensities to issue such statements.

An effective anti-corruption policy needs appropriate management systems to ensure compliance. The statistics reported here classify anti-corruption management systems as follows:

- Partial – company reports on its ethics management and claims that one or more of the following exist: employee training, “whistle-blowing” procedures/hotlines, compliance monitoring, or regular review of the code.
- Extensive – company reports on its ethics management and claims, that at least three of the following exist, and providing credible supporting material or examples: employee training, “whistle-blowing” procedures/hotlines, compliance monitoring, or regular review of the code.

As Figure II.11 indicates, the companies in the sample are less likely to make public statements about their management systems than they are to publish their anti-corruption policies.

- Thirty-nine per cent of the emerging market companies could be regarded as having extensive management systems.
- When taking into account companies’ reporting anything about their anti-corruption management practices, 79 per cent of OECD companies are found to have reported something, whilst only 34 per cent of emerging market companies could do so.

Figure II.11. **Extent of anti-corruption management systems**

The most advanced emerging market business sample in this area is that of South Africa, where the local corporate governance code (King II) requires the inclusion of policies and compliance systems in this area. All 16 of the companies analysed here had a code of ethics (and half of these could be described as extensive), and all but one had some form of management system in place to ensure compliance and 31.3 per cent of these could be regarded as extensive.

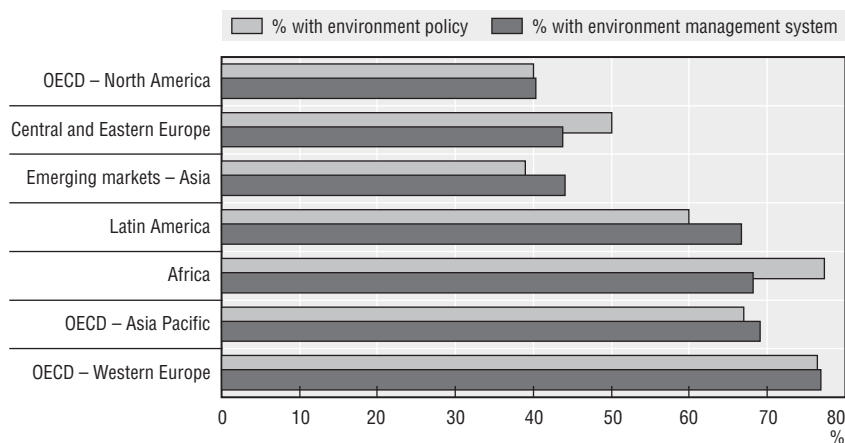
When focussing on a number of sectors most vulnerable to corruption allegations or business ethics difficulties, the research showed policies and systems of substance in:

- only two of the 12 emerging market Oil and Gas sector companies;
- only one of the six construction sector companies;
- only seven of the 22 banks.

#### 4.4. Environment

This section looks at corporate environmental policies and management systems based on methodologies that are linked to the EIRIS and FTSE4Good methodologies. These include:

- **Environmental policy** – The statistics keep track of a range of indicators: reference to key environmental issues facing the sector; allocated responsibility for the policy; commitment to using targets; to monitoring/audit; and to public reporting. Other indicators are: association with globally applicable standards (such as UNEP); commitment to involving stakeholders; addressing product or service impact; and to strategic moves towards sustainability.

Figure II.12. **Companies with any published information about environmental policies/EMS**

- **Environmental management systems (EMS)** – The statistics keep track of: ISO certification or a meaningful equivalent covering: having a policy; impact identification; setting targets in all key areas; documented structures and procedures; auditing; internal reporting and review. The proportion of the company covered by the system affects its rating.

The majority of emerging market companies in the sample publish details of their environmental policies (52 per cent) and environmental management systems (53.5 per cent). This is not substantially lower than the average for high-income OECD countries of about 59 per cent.<sup>16</sup>

Whilst leading Brazilian, Indian and South African companies have high levels of publication by global standards, Chinese and Malaysian firms appear

Table II.3. **Companies with environmental policies and EMS (larger emerging markets)**

Percentage of sample

	Number of companies assessed	% with published environmental policy	% with EMS
Brazil	11	81.8	90.9
China	19	31.6	36.8
India	10	80.0	80.0
Malaysia	12	33.3	33.3
South Africa	16	87.5	68.8



to pay less attention to this issue. This contrasts with the picture for Japan, where past research shows leading companies generally paying great attention to environmental management systems (see OECD 2001<sup>17</sup>).

Figure II.13, Figures II.14a and II.14b indicate what percentage of companies has “substantial” policies and management systems in place. The Figures show that:

- **a majority of high impact emerging market companies do not have substantial policies and systems in place** and that the same can be said for their developed country counterparts in OECD and North America.
- Table II.4 presents data on the companies in the sample that are from larger countries and that operate in high environmental impact sectors. Companies from India, Brazil and South Africa appear to be quite active in the environmental field. Only one of the 16 high impact Chinese companies in the sample had both a substantial environmental policy and a substantial EMS.

#### 4.5. Non-discrimination/Equal opportunity

This section looks at the samples companies’ published non-discrimination policies and management systems based on the following definitions:

- Policies: a partial policy is on which refers in general terms to equal opportunity, or which refers to non-discrimination on the grounds of gender and race; an extensive policy is more detailed regarding equal opportunities, such as one going beyond race and gender and including aspects such as disability or age referred to in ILO standards, or a policy which explicitly covers company’s global operations.

Figure II.13. **Companies in high environmental impact sectors with substantial policies/EMS in place**

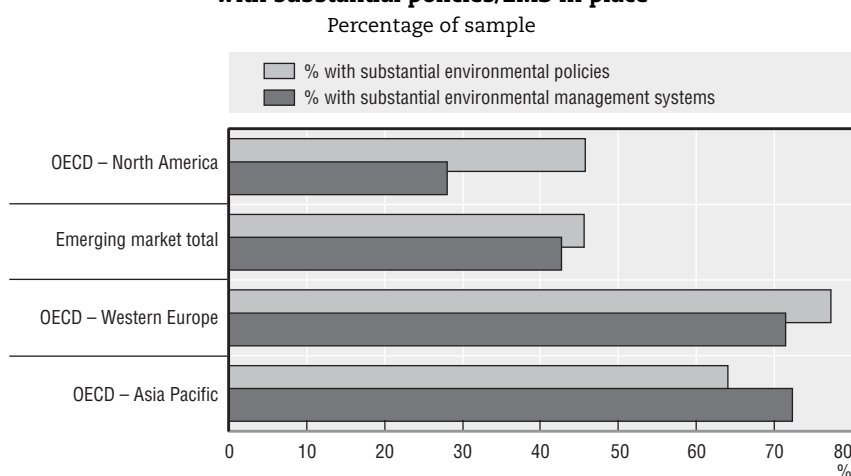
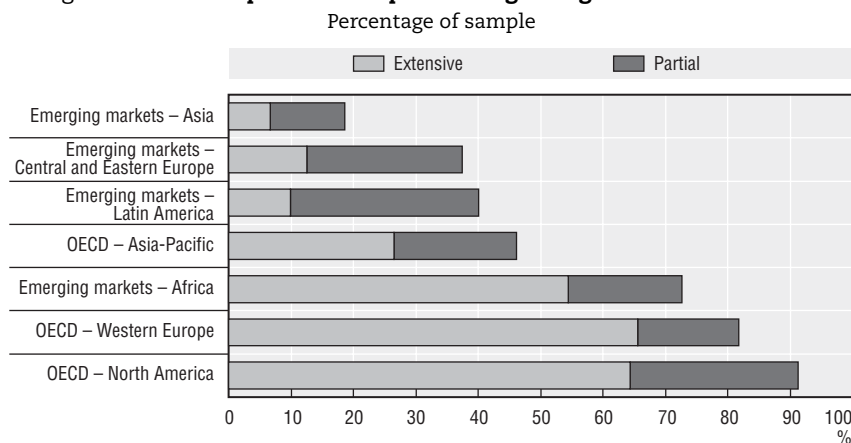
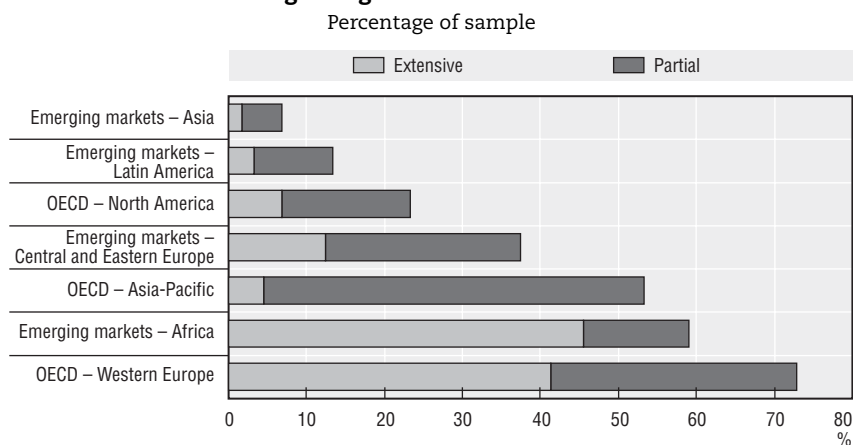


Figure II.14a. **Companies with policies regarding non-discrimination**Figure II.14b. **Companies with management systems regarding non-discrimination**Table II.4. **Companies with “substantial” environmental policies and EMS**

	Number of high impact companies	With a “substantial” environmental policy	With “substantial” EMS
Brazil	8	5	5
China	16	2	1
India	6	5	5
Malaysia	5	3	2
South Africa	7	6	5

Source: OECD calculations using FTSE data.

- Non-discrimination management systems: An extensive system includes more than one of the following: publishing some information on workforce composition (by gender or race, etc.); indicating that over 10 per cent of managers are women, or a significant percentage from ethnic minorities; publishing details of flexible or family-friendly working arrangements, such as childcare, flexitime, or family benefits beyond statutory requirements; a senior person or section within the company responsible for equal opportunities. A “partial” system includes any one of the first three elements listed above.

The special case of South African companies and their high weight in the African sample influences the data for Africa in Figure II.14a and II.14b. South African legislation requires companies to take active steps to improve the representation of black people (and to some extent women too) in management, as well as in share ownership, and in the procurement process. This approach also forms part of the South Africa’s corporate governance code. Thus, the high propensities in the African sample to deal with this issue in both policies and management practices appears to reflect pressures coming from legislation and securities market arrangements.

Apart from South Africa, emerging market companies show relatively low awareness of equal opportunity issues.

- 40 per cent of Latin American, 37.5 per cent of CEE and 18.7 per cent of Asian emerging market companies analysed have an equal opportunities policy – but mostly only a “partial” one.
- The same number of CEE companies (37.5 per cent), but a far lower percentage of Asian emerging market (6.8 per cent) and Latin American (13.3 per cent) companies show evidence of monitoring their employment demographics, as a proxy for the extent to which they have systems in place. In the main this involves publishing a breakdown of male and female employees.

#### **4.6. Women on company boards**

Information on the percentage of women sitting on company boards, whether in executive or non-executive positions, may shed light on gender discrimination.

Studies of developed markets indicate that Scandinavian countries, as well as the United States, have the highest percentages of women on the board – over 21 per cent in the case of Norway. At the other extreme are the Mediterranean countries of Portugal (0.8 per cent), Italy (2.6 per cent) and Spain (3.8 per cent) and Japan boards having only 0.4 per cent women (EIRIS, 2004).

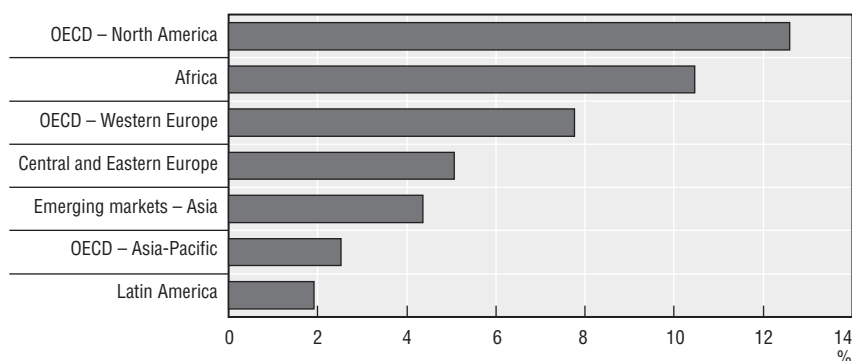
The data from the emerging market companies show Latin American companies at similar levels to their Mediterranean counterparts. It also shows

low levels of women's participation in the governance of companies in Asian emerging markets. Of the companies analysed, women comprise:

- 10.5 per cent of board members in Africa;
- 5.1 per cent in Central and Eastern Europe;
- 4.4 per cent in Asian emerging markets;
- 1.9 per cent in Latin America.

Figure II.15. **Per cent women on company boards**

Average of companies in sample



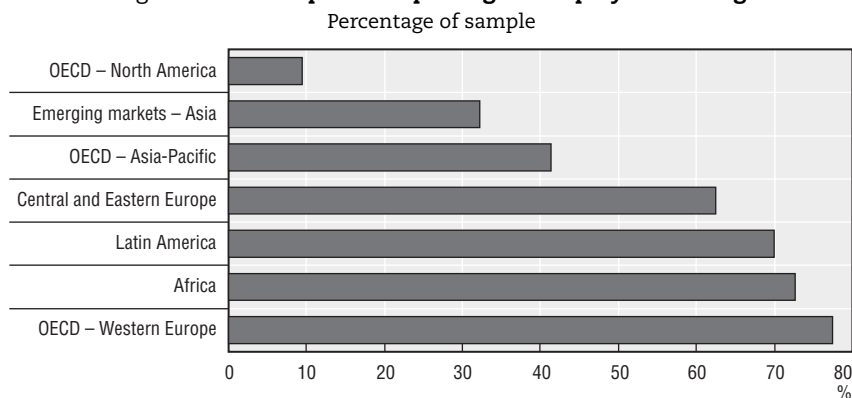
### 15.7. Training

There is no clear distinction between emerging market and high income OECD companies regarding policies and practices in relation to employee training. Over 70 per cent of companies from Latin America, Africa and Western Europe publish at least some information on employee training, with CEE not far behind (at 62.5 per cent).

### 16.8. Occupational Health and Safety (OHS)

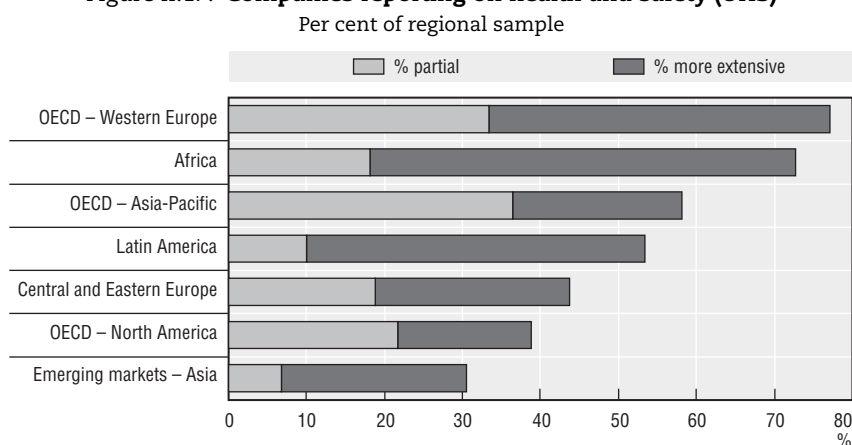
This section presents statistics on occupational health and safety reporting practices based on the following definitions:

- “Partial” – means at least one of the following is publicly reported by the company;
  - ❖ senior responsibility assigned for OHS;
  - ❖ one or more significant H&S awards;
  - ❖ details of H&S training;
  - ❖ key OHS indicators (such as accident rates).
- “More extensive” means two or more of these are publicly reported.

Figure II.16. **Companies reporting on employee training**

As shown in Figure II.17, the lowest propensities to report publicly on health and safety are found in the samples for high income North America and for the Asian emerging markets and the highest – over 70 per cent of companies – in both Western Europe and Africa.

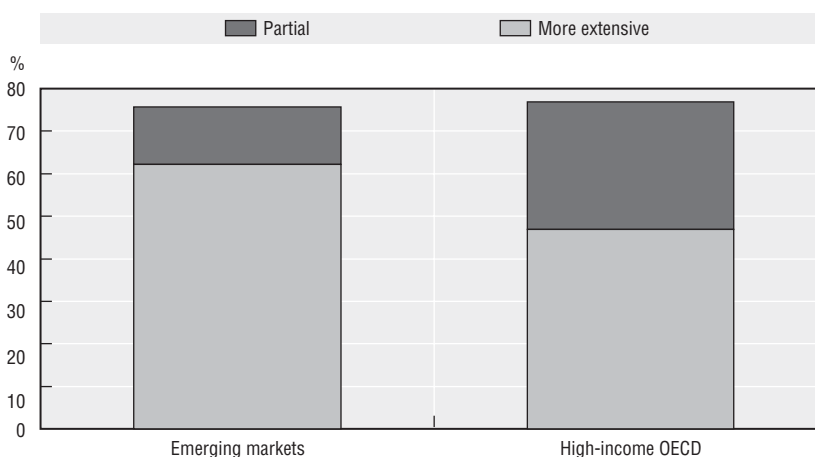
Some sectors are more exposed than others in relation health and safety. Of the emerging market companies assessed, 37 (or 29.2 per cent) are in the following sectors – Construction, Forestry and Paper, Mining, Oil and Gas, and Steel and Other metals. Of these higher-risk companies, 13.5 per cent provide “partial” information, and almost two-thirds (62.2 per cent) publicly report at

Figure II.17. **Companies reporting on health and safety (OHS)**

the “more extensive” level. One-quarter of the high exposure companies (24.3 per cent) do not mention the issue at all on their websites or in their annual reports. Six out of 7 Chinese companies in higher-risk sectors make no mention of health and safety.

However, as Figure II.18 shows, the overall record of emerging market companies in respect of reporting on OHS is stronger than that of high-income OECD companies in the same sectors.

Figure II.18. **Higher-risk companies reporting on health and safety (OHS)**  
Per cent of sample



## Notes

1. See <http://news.ft.com/reports/ft500> for 2004 listing.
2. The OECD views the primary contribution of business – its core responsibility – as the conduct of business itself. The role of business in society is to develop investments so as to yield competitive returns to the suppliers of capital. In so doing, companies create jobs and produce goods and services that consumers want to buy. However, corporate responsibility goes beyond this core function. Companies are expected to obey the various laws that are apply to them and, as a practical matter, must respond to societal expectations that are not written down in law books.
3. See *Corporate Responsibility: Private Initiatives and Public Goals* (2001).
4. Reference to these initiatives does not constitute an endorsement of them.
5. See [www.sustainability-indexes.com/html/other/faq.html](http://www.sustainability-indexes.com/html/other/faq.html) for more details on the DSI methodology.

6. Quotes are from the “Frequently Asked questions” section of the DJSI website: [www.sustainability-index.com](http://www.sustainability-index.com). See this website for details of the methodology.
7. According to the GRI, companies are encouraged to register where they “... have referred to or followed the Sustainability Reporting Guidelines in preparing their sustainability, social, or environmental report”. They are not obliged to do so as GRI is a voluntary initiative and “inclusion in the database does not certify the report’s conformance to the Guidelines” ([www.globalreporting.org](http://www.globalreporting.org)).
8. This number excludes reporting organisations which are public agencies, non-profits, universities and similar.
9. The Chinese figures have been qualified by some observers. For example, ASRIA, in its 2003 report on SRI in Asian emerging markets, states that “verification of the quality of these standards in China is still an issue” (p. 17).
10. For the criteria see [www.jse.co.za/sri/background\\_criteria/background\\_criteria.doc](http://www.jse.co.za/sri/background_criteria/background_criteria.doc).
11. Although data was collected by KPMG regarding the extent to which each company made comprehensive or only partial disclosure against the complete range of issues covered by King II, the published report does not provide detailed breakdowns.
12. All emerging market data in this section based on original research designed and undertaken by J. Baskin with assistance from M.R. Castro (Feb./Mar. 2005). OECD data adapted from closest comparable aggregates of EIRiS data, and from a forthcoming EIRiS publication providing a snapshot of CSR in developed countries. Note that in all cases:
  - OECD Western Europe excludes Iceland and Luxembourg
  - OECD Asia Pacific does not include Korea
  - OECD North America covers United States and Canada. Mexico is included under emerging markets.
  - Africa covers companies from Egypt, Morocco, and South Africa.
  - Latin America covers companies from Argentina, Brazil, Chile, Colombia, Mexico, and Peru.
  - Emerging markets Asia includes companies from China, India, Indonesia, Malaysia, Pakistan, Philippines, and Thailand.
  - CEE includes companies from Czech Republic, Hungary, Poland, and Russia, and also Turkey.

All of the original data used in this section can be made available by the OECD Investment Division on request.

13. Using the World Bank definitions of income category (see Box I.1).
14. The base index used for selecting companies is the FTSE All-World index. In the version used in this study (October 2004) the Index covers 2 879 companies in 47 countries/markets. A number of these companies are double lines of stock and can be excluded from analysis.

The All-World index covers 586 companies in 21 emerging markets – approximately 22 per cent have been analysed for this study. The index also covers 1 838 companies in high-income OECD countries, and relevant existing data for comparison has been used for 1 740 companies (or over 96 per cent of these). The missing 4 per cent of the latter are those for which no reliable data was available. 455 companies from 5 high-income countries on the All-World index are not covered in this study, either because the countries are not OECD members (Singapore, Taiwan, Hong Kong and Israel) or, in the case of Korea, because adequate data was not available.

The emerging market companies were selected using the following rule of thumb – the publicly-listed companies with the largest market capitalization (after investibility weighting) from the FTSE All World index – basically the largest 20 per cent of companies from each country, but not less than 3 and not more than 20 companies from each country. For practical reasons only 2 Russian companies were finally included.

15. See [www.ftse.com/indices\\_marketdata/classification\\_handbook2003v2.pdf](http://www.ftse.com/indices_marketdata/classification_handbook2003v2.pdf) for a summary of the definitions used. There may be two slight biases in the sample, which fortunately offset each other. A higher percentage of the emerging market companies than the OECD high-income companies are classified as large. Larger companies are generally more likely to be CR reporters than their medium-sized counterparts. The emerging market companies also have a higher percentage of Telecom companies in the sample. Telecoms companies are generally weaker CR reporters than other sectors in emerging markets, but not in high-income OECD countries.
16. The figures are not entirely comparable in that whilst both this study and the OECD comparator data used rely on public information sources, the OECD data also benefits from information provided by companies in response to a survey. This may inflate the OECD figures slightly, especially in relation to environmental management systems.
17. OECD (2001), Chapter 6.

## References

- Association of Figureeered Certified Accountants (ACCA) – “The state of corporate environmental and social reporting in Malaysia 2004”, Malaysia, 2004.
- Al-Khater,K and Naser, K – “Users’ perceptions of CSR and accountability: evidence from an emerging economy”, *Managerial Auditing Journal*; 2003, Vol. 18 Issue 6/7, 2003.
- Alternatives Économiques – “Des sociétés à responsabilité limitée, Numéro 230, Paris, Novembre 2004.
- Asian Corporate Governance Association/CLSA – “Spreading the Word: changing rules in Asia”, Hong Kong, Sept. 2004.
- ASRIA – “SRI in Asian Emerging Markets”, Hong Kong, October 2003.
- Association of Russian Managers / UNDP – “Report on Social Investments in Russia 2004”, 2004, available from [www.amr.ru/publicdoc\\_518.html](http://www.amr.ru/publicdoc_518.html).
- Association for Social Responsibility in Asia [www.asria.org](http://www.asria.org).
- Atta, Hajara – “Ethical Rewards: an Examination Of The Effect Of Islamic Ethical Screens On Financial Performance and Of Conditioning Information On Performance measures”, MSc Dissertation, University of Durham, Department of Economics and Science, September 2000.
- Bauer, K – “The Use of Corporate Social Responsibility as a Public Relations Strategy considering Latin America as an example”, Unpublished thesis, Wiesbaden, Germany, June 2004.
- Berglof, E. and A. Pajuste – “Emerging Owners, Eclipsing Markets?” Available at: [www.worldbank.org/html/pddtrans/aprilmayjun03](http://www.worldbank.org/html/pddtrans/aprilmayjun03).



- BOVESPA, “Novo Mercado.” Available at: [www.bovespa.com.br](http://www.bovespa.com.br) (Portuguese) or [www.bovespa.com.br/indexi.htm](http://www.bovespa.com.br/indexi.htm) (English).
- Cappellini, P. and Giuliani, G.M. – “The Political Economy of Corporate Responsibility in Brazil: social and environmental dimensions”, UNRISD, October 2004.
- CLSA Emerging Markets – “Make Me Holy... But Not Yet,” February, 2002. Available at: [www.clsa.com](http://www.clsa.com).
- CLSA Emerging Markets – “Saints and Sinners: Who’s Got Religion”. Available at: [www.clsa.com](http://www.clsa.com).
- Centre for Social Markets (CSM) – “Corporate Social Responsibility: perceptions of Indian business”, London/Calcutta, 2001.
- Conference Report – “CSR: creating greater competitive advantage”, Malaysia, June 2004.
- De Cleene, S and Sonnenberg – “Socially responsible investment in South Africa (2nd edition)”, African Institute of Corporate Citizenship, Johannesburg, Sept. 2004.
- EIRiS – “Less than one in ten company directors are women”, press release, April 2004. [www.eiris.org](http://www.eiris.org).
- EWMI/MAKK – “A survey of CSR of the largest listed companies in Hungary”. Joint study by East-West Management Institute (EWMI) and Hungarian Environmental Economics Centre (MAKK), Budapest, March 2004.
- Failaka International – “Islamic Equity Funds: Analysis and Observations on the Current State of the Industry,” March 5, 2002. Available at: [www.failaka.com/Failakapercent20Research.html](http://www.failaka.com/Failakapercent20Research.html).
- Fundación Empresarial para la Acción Social (FUNDEMÁS)/Programa Empresa Salvadoreña para la Responsabilidad Social (EMPRESAL) – “Situación actual de la Responsabilidad Social Empresarial en El Salvador”, March 2004.
- Gledson de Carvalho, Antonio – “Efeitos da Migracao para os Niveis de Governanca da BOVESPA,” 2003. Available at: [www.bovespa.com.br](http://www.bovespa.com.br).
- Gundermann, Iris – “Donations without Impact. Responsibility without Transparency: CSR in Mexico”, published in Spanish in Ganar-Ganar, July/August 2004.
- Gupta, Ananda and Aruna Das Gupta – *Corporate Social Responsibility: The Indian Context in Representations of Social Responsibility* (Ed. David Crowther and Renu Jatana), The ICAI University Press, Hyderabad, India, 2005.
- Haslam, Paul – “The Corporate Responsibility System in Latin America and the Caribbean”, FOCAL Policy Paper, Canada, 2004.
- Instituto Ethos [www.ethos.org.br](http://www.ethos.org.br).
- International Finance Corporation (IFC) – “Towards Sustainable and Responsible Investment in Emerging Markets: a review and inventory of the social investment industry’s activities and potential in emerging markets”, October 2003.
- International Business Leaders Forum (IBLF) – “A decade in Russia”. International Business Leaders Forum (IBLF), July 2003.
- Johnson, Simon, Peter Boone, Alasdair Breach, and Eric Friedman – “Corporate Governance in the Asian Financial Crisis”, William Davidson Institute Working Papers Series, 1999.

- Klapper, Leora F. and Inessa Love – “Corporate Governance, Investor Protection, and Performance in Emerging Markets”, World Bank Policy Research Working Paper 2818, April 2002.
- KPMG (2003) – “Integrated Sustainability Reporting in South Africa”, 2003.
- KPMG (2004) – “2004 Survey of Integrated Sustainability Reporting in South Africa”, Johannesburg.
- Kumar, Rita , Murphy, David F and Balsari, Viraal – “Altered Images: the 2001 state of corporate responsibility in India poll”. TERI-Europe/New Academy of Business, 2001.
- The Leadership Forum – “Corporate Social responsibility: results of the survey in the Czech Republic”, Prague, Nov. 2003. Available from [www.ewmi.hu/activities\\_pfs\\_cee\\_czech.php](http://www.ewmi.hu/activities_pfs_cee_czech.php).
- Leeds, Roger, and Julie Sunderland – “Private Equity Investing in Emerging Markets”, Journal of Applied Corporate Finance, Vol. 15, No. 4, Spring 2003.
- Monks, Robert A.G. – “The New Global Investors: How Shareowners Can Unlock Sustainable Prosperity Worldwide”, Capstone Publishing Ltd. UK, 2001.
- Monson, Kristina – “Responsible business practice: lessons from Ghana, India and Trinidad and Tobago”, Research by Business and Community Foundation India, Empretec Ghana Foundation, Tyler Consulting Ltd. of Trinidad and Tobago (2002).
- Organisation for Economic Cooperation and Development – *Corporate Responsibility: Private Initiatives and Public Goal*, Paris, 2001.
- Peinado-Vara, Estrella – “Corporate Social Responsibility in Latin America and the Caribbean”. InterAmerican Development Bank, Sustainable Development Department Technical Papers Series, June 2004.
- Rea, John – “US Emerging Market Funds: Hot Money or Stable Source of Investment Capital?,” ICI Perspective, Volume 2, No. 6, December 1996.
- Simpson, Susan – “From transition to accession: the experience of Corporate Social Responsibility in Central and Eastern Europe”, IBLF, London, 2002.
- SustainAbility/International Finance Corporation – “Developing Value: The Business Case for Sustainability in Emerging Markets”, SustainAbility Ltd., UK 2002.
- SustainAbility/United Nations Environment Programme – “Buried Treasure: Uncovering the Business Case for Corporate Sustainability”, SustainAbility Ltd. UK 2001.
- Trnková, Jana – “Corporate Responsibility in the Czech Republic: survey results and case studies”, Prague, Feb. 2004.
- Zadek, S., Sabapathy, J., Døssing, H. and Swift, T. – “Responsible Competitiveness: corporate responsibility clusters in action”, The Copenhagen Centre/Accountability. January 2003.

## **Multilateral Influences on the OECD Guidelines for Multinational Enterprises\***

\* This paper was prepared by Kathryn Gordon and Clelia Mitidieri of the OECD Investment Division as background in support of the discussion at the Roundtable on Corporate Responsibility on 14 June 2005.

## 1. Introduction

The *OECD Guidelines for Multinational Enterprises* (the “Guidelines”) are one of many inter-governmental instruments that seek to promote economic, social and environmental progress. The OECD Guidelines do this by establishing concepts and principles for responsible business conduct that help “to ensure that the operation of [multinational enterprises] is 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”<sup>1</sup>. While the Guidelines recommendations are voluntary for companies, adhering governments are committed to promoting them among multinational enterprises that operate in or from their territories. This inter-governmental feature and the Guidelines’ unique follow up mechanism for promoting appropriate behaviour in a wide range of areas (human rights, labour, environment, anti-corruption, consumer protection, etc.) are what distinguish the Guidelines from many other international corporate responsibility instruments.<sup>2</sup>

The Investment Committee has stated on a number of occasions that the Guidelines draw on an existing framework of international instruments. For example, an April 2003 statement by the OECD Investment Committee on the scope of the Guidelines states that: “... the Guidelines are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with responsible business conduct. These principles reflect common values that underlie a variety of international declarations, recommendations and conventions as well as the laws and regulations of governments adhering to the Guidelines.”<sup>3</sup>

This document explores in greater detail the issue of the links between the Guidelines and the broader multilateral framework that is relevant to international business.<sup>4</sup> It is designed to support discussions at the OECD Roundtable on Corporate Responsibility, which is held every year in conjunction with the Annual Meeting of the National Contact Points (NCPs). NCPs are offices located in each of the 39 governments adhering to the Guidelines. The NCPs are responsible for promotion and implementation of the Guidelines in the national context. The purpose of the Corporate Responsibility Roundtables is to enhance understanding and implementation of the *OECD Guidelines for Multinational Enterprises*. It is hoped that the 2005 Roundtable will help to identify broad axes

for future development of cooperation between the Guidelines institutions and non-adhering countries and for the Committee's outreach in the area of corporate responsibility. The summary will help to inform Investment Committee and NCP presentations of the Guidelines in a non-member context.

This paper provides background information of relevant to the first session of the Roundtable, which address the following question: do the Guidelines express concepts and principles that are relevant for all companies or for companies from high income countries? Broadly described, the paper's findings note that: 1) non-adhering countries are very likely to subscribe formally to the same multilateral instruments that have influenced the Guidelines, indicating that the Guidelines may promote (within the context of OECD work on investment) concepts and principles that are much more widely subscribed to; 2) non-adhering countries have also undertaken their own initiatives that seek to make the concepts and principles expressed in multilateral instruments meaningful in more specific contexts (e.g. regional human rights and anti-corruption initiatives); 3) the degree to which the Guidelines draw on broader (non-OECD) instruments depends on the chapter and the recommendation under consideration.

National governments, private sector actors (business associations, NGOs, etc) and international organisations have all made important contributions to the set of instruments relevant for international organisations. However, this paper looks at those instruments issued by international and regional multilateral institutions – that is, it looks at the part of the framework that has emerged from formal multilateral dialogue among governments. This is because it seeks to explore the degree to which non-adhering countries formally adhere to instruments whose content is closely related to that of the Guidelines and to look at what non-adhering countries are doing to advance related concepts and principles. (The other background paper prepared for this roundtable – *Corporate Responsibility Practices of Emerging Market Companies – A Fact-Finding Study* – looks at private initiatives undertaken by businesses based in non-adhering countries.)

The paper seeks to provide background information on the following issues:

- What multilateral instruments have influenced or supported the Guidelines (that is, they establish concepts and principles that echo and support the Guidelines' recommendations)?
- To what extent do countries that do not adhere to the Guidelines adhere to and promote the same multilateral instruments that the Guidelines draw on?
- Are there inter-governmental initiatives undertaken by non-adhering countries that advance the same goals as the Guidelines?

## **2. The multilateral influences of the guidelines – Whose values do they express?**

This section provides background information on the first two questions posed above. What multilateral instruments are relevant to the recommendations made in the Guidelines and to what extent can it be said that non-adhering countries adhere to these instruments?

### **2.1. Statistical indicator – formal rates of adherence**

During the 2000 Review of the Guidelines, negotiators tried to make the revised instrument as self-contained as possible – this meant that they kept external references to a minimum. Thus, the Guidelines incorporate a broad range of influences that may not be specifically acknowledged in the text and commentaries. Nevertheless, 15 inter-governmental instruments are mentioned in the Guidelines texts or in Commentary.<sup>5</sup> All 15 instruments are linked to the UN system and its specialised agencies. These include, for example, the Universal Declaration of Human Rights, various ILO instruments, the Rio Declaration and the UN Guidelines on Consumer Policy. Many of the instruments cited in the Guidelines are addressed, in the first instance, to governments. However, they all establish concepts and principles that are relevant for the conduct of business.

The fifteen instruments are described in Annex 1. Fourteen of these instruments are associated with multilateral processes in which many countries participate.<sup>6</sup> Through these processes, countries – adhering or non-adhering – may formally associate themselves with the fourteen instruments. By participating in these processes, these countries help to build and reinforce the multilateral framework that, among other things, has influenced the recommendations in the Guidelines.

This section takes the set of multilateral instruments that is explicitly cited in the Guidelines as its starting point and then documents the extent to which non-adhering countries formally adhere to these instruments. In particular average rates of formal adherence to these instruments are calculated for a set of 20 countries that does not adhere to the Guidelines.<sup>7</sup> These calculations provide a rough statistical indication of the degree to which the multilateral sources of the Guidelines can be said to express globally held values – that is, values that are held in common by adhering and non-adhering countries alike. The twenty countries were chosen to cover all major regions and to include both large and small countries. Together, these countries cover 53 per cent of the world's population. The sample also includes countries with which the Investment Committee has conducted outreach or analytical work (e.g. China, India, Russia and South Africa).

For each country, formal adherence to the multilateral instruments mentioned in the Guidelines was determined based on information provided on the websites of the relevant UN Secretariats. The average “rate” of adherence was then calculated. The average rate for the non-adhering countries was 13.5 formal adherences to the instruments mentioned in the Guidelines. This is roughly equivalent to saying that, on average, one out of every two countries in the sample does not adhere to one of the 14 instruments mentioned in the Guidelines. Thus, this indicator suggests that non-adhering countries have a relatively high rate of adherence to the multilateral instruments mentioned in the Guidelines.

It should be noted that formal acceptance does not necessarily indicate *de facto* observance of these standards. For example, three of the non-adhering countries that formally adhere to all external standards mentioned in the Guidelines have also appeared on lists of “fragile” states.

## **2.2. Multilateral influences – Chapter by chapter**

This section looks at the sources of the Guidelines recommendations on a chapter-by-chapter basis. It notes that: 1) non-OECD multilateral instruments are important influences for many Guidelines recommendations; 2) some Guidelines recommendations do not appear to be associated with non-OECD multilateral instruments; and 3) OECD instruments are the main multilateral sources for some chapters (*e.g.* in the area of tax and disclosure).

Table II.5 provides a more detailed look at the multilateral texts that are cited in the Guidelines related to the content of the Guidelines’ chapters. Broadly described, there appear to be three types of links between the Guidelines chapters and multilateral instruments.

### **2.2.1. Chapters that are closely linked to non-OECD multilateral instruments**

Some of the Guidelines chapters – especially the Employment and Industrial Relations and Environment chapters – contain recommendations that are closely linked to non-OECD multilateral instruments (basically from the UN and its specialised agencies such as the ILO). However, none of the chapters are wholly derived from non-OECD multilateral instruments. Table II.5, for example, shows that 7 out of the 8 recommendations in the Environment Chapter are supported by analogous texts in other UN instruments (though sometimes the texts are not strictly identical). The exception is Recommendation 8, which asks companies to “contribute to the development of environmentally meaningful and economically efficient public policy...”. While this reflects language used in several private environmental codes,<sup>8</sup> this recommendation does not appear in multilateral environmental instruments.

Table II.5. **Multilateral sources of the Guidelines' chapters**  
Instruments explicitly cited in the Guidelines

<i>OECD Guidelines for Multinational Enterprises</i>	Established International Framework mentioned in the OECD Guidelines
Preface	1948 Universal Declaration of Human Rights; 1995 Copenhagen Declaration for Social Development; 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; 1999 OECD Principles of Corporate Governance; 1999 OECD Guidelines for Consumer Protection in the Context of Electronic Commerce; 1995 OECD Transfer Pricing Guidelines for MNEs and Tax Administrations.
I. Concepts and principles	
II. General policies	1948 Universal Declaration of Human Rights and 1999 OECD Principles of Corporate Governance (1999 version).
III. Disclosure	1999 OECD Principles of Corporate Governance.
IV. Employment and industrial relations	1977 ILO Tripartite Declaration of Principles concerning MNEs and Social Policy and 1998 ILO Declaration of Fundamental Principles and Rights at Work; ILO Conventions: No. 29 of 1930 concerning Forced and Compulsory Labour and No. 105 of 1957 on the Abolition of Forced Labour; No. 111 of 1958 concerning Discrimination with respect to Employment and Occupation; No.182 of 1999 concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour; No.138 of 1973 concerning Minimum Age for Admission to Employment; ILO Recommendations: No. 94 of 1952 concerning Consultation and Cooperation between Employers and Workers at level of Undertaking and No. 146 of 1973 concerning Minimum Age for Admission to Employment
V. Environment	1992 Rio Declaration on Environment and Development and Agenda 21; 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
VI. Combating bribery	1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997 OECD Revised Recommendation on Combating Bribery in International Business Transactions, 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.
VII. Consumer interests	1999 Revised UN Guidelines for Consumer Protection; 1999 OECD Guidelines for Consumer Protection in the Context of Electronic Commerce; 1980 OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data
VIII. Science and technology	No OECD or external references.
IX. Competition	1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C (98)35/Final; 1995 Recommendation of the Council Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/Final; <i>Making International Markets More Efficient Through Positive Comity in Competition Law Enforcement</i> . Report of the OECD Committee on Competition Law and Policy.
X. Taxation	1995 OECD Transfer Pricing Guidelines for MNEs and Tax Administrations; Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises.



**Table II.6. The Environment Chapter of the Guidelines – Parallel Texts from Other Multilateral Instruments**

Recommendation from Environment Chapter	Multilateral sources (including instruments developed after the 2000 Review)
1. Environmental management systems	Johannesburg Plan of Implementation; Agenda 21; Aarhus Convention.
2. Information, Communication, Consultations.	Rio Declaration (Principle 10 and 19); Agenda 21. Convention on Biological Diversity (article 14.c); Aarhus Convention.
3. Environmental Assessment and Decision-Making.	Rio Declaration (Principle 17) Convention of Biological Diversity (Article 14); Framework Convention on Climate Change (Article 4f); 1991 Espoo Convention on Environmental Impact Assessment in a Trans-boundary Context.
4. Precautionary approach.	Rio Declaration (Principle 15); Framework Convention on Climate Change (Article 3.3).
5. Contingency plans; accident and emergency planning.	Rio Declaration (Principle 18); Convention of Biological Diversity (Article 14.d). Agenda 21 (various chapters).
6. Continual improvement.	Rio Declaration (possibly Principle 8, but no explicit reference to continual improvement). Agenda 21 (Chapters 30 and 36).
7. Training and education for employees.	1972 Stockholm Declaration (Principle 19); Agenda 21 (Chapter 30); Convention of Biological Diversity (article 13); Framework Convention on Climate Change (article 6).
8. Contribution to the public policy process in relation to the environment.	No non-OECD multilateral source found.

### **2.2.2. Chapters that were linked mainly to OECD instruments at the time of the 2000 Review, but which are now also covered by external instruments**

Progress is an important theme of Investment Committee work on corporate responsibility.<sup>9</sup> The international framework that underpins at least part of the Guidelines shows evidence of progress – the multilateral elements of this framework have been developing over a period of several decades. In at least one case (Chapter 6 on Combating Bribery), the international framework appears to have “caught up” with the Guidelines recommendations. The United Nations Convention against Corruption – opened for signature in late 2003 – is considered to be a major milestone in the development of the international anti-corruption framework, which complements the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Chapter 6 of the Guidelines cite only OECD anti-corruption instruments (plus a report by the International Chamber of Commerce, a business association). However, since the 2000 Review of the Guidelines, the United Nations Convention against Corruption (UNCAC) has come into existence (as well

as a number of other instruments, including the African Union Convention on Preventing and Combating Corruption). The UNCAC provides a very broad blueprint for anti-corruption systems including concepts and principles that are relevant for the public sector, for private business and for other actors in national anti-corruption systems. This blueprint appears to cover substantially all of the recommendations of Guidelines Chapter 6.

As of mid-May 2005, the UNCAC had been signed by 120 countries (including 84 non-adhering countries) and have been ratified by 20 States from non-adhering countries (out of a total of 22).<sup>10</sup> Thus, while the UNCAC has not yet entered into force, multilateral support for the material in Chapter 6 of the Guidelines has been very much strengthened since the 2000 Review.

### ***2.2.3. Chapters that are based largely on OECD instruments***

Table II.5 suggests that several Guidelines Chapters are based largely on OECD instruments or on influences that are not explicitly identified in the texts and commentaries. Thus, their recommendations do not have obvious counterparts in multilateral instruments that non-adhering countries would normally adhere to and it there are no a priori grounds for believing that non-adhering countries subscribe to the concepts and principles set forth in these chapters.

Chapter 10 – on Taxation – is probably the most prominent example of a chapter that is based only on OECD multilateral instruments. The commentary to Chapter 10 mentions the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Authorities and the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises. These focus on the application of the arms length principle to evaluate the transfer pricing practices of associated enterprises. The MNE Guidelines recommendations in Chapter 10 encourage international business to follow the guidance in the OECD Transfer Pricing Guidelines in order to ensure that their transfer prices reflect the arm's length principle.

These recommendations reflect a multilateral process that mainly involves OECD members involved in the discussions of the Committee on Fiscal Affairs. However, Argentina, China, Russia and South Africa are observers on the Committee on Fiscal Affairs. The Committee also engages in bilateral dialogue with non-OECD countries on transfer pricing policy issues. Thus, while these recommendations reflect, for the most part, dialogue among OECD countries, other countries, to varying degrees can influence and participate in the discussions.

### 3. Regional multilateral initiatives involving non-adhering countries

Recently, in an official response to a request for clarification on the application of the Guidelines, the Investment Committee stated that it “recognises that many different actors – other agencies within adhering and non-adhering governments, other international and regional organisations as well as non-public actors such as business associations, trade unions and NGOs – are working in their own ways to uphold the values and principles from which the Guidelines are derived and which they reinforce. They are seeking to level the playing field by making these meaningful in the day-to-day operations of a broad cross-section of companies. The implementation procedures of Guidelines are just one among many such processes and NCPs should seek to complement other processes”.

This section provides background documentation relevant to the third question posed in the introduction to this paper: Are there inter-governmental initiatives in the non-adhering world that advance the same goals as the Guidelines? This documentation supports the point made by the Investment Committee in its clarification. It shows that non-adhering countries are also, in their own ways, seeking to “uphold the values and principles from which the Guidelines are derived”.

The section focuses on two sets of multilateral regional initiatives in the areas of human rights and corruption that have official inter-governmental monitoring mechanisms. Other examples from national policies adopted by non-adhering countries and in the private sector could also have been cited. (The other paper prepared for the Roundtable, documents initiatives by non-adhering businesses and business associations.)

Box II.3 briefly describes the regional human rights systems put in place by the Organisation of American States,<sup>11</sup> the Council of Europe,<sup>12</sup> the African Union and the League of Arab States. These involve charters, declarations, conventions and associated dialogue and monitoring processes – they represent regional efforts to construe the meaning of human rights principles and to reinforce their application in the regional context. The following points are noteworthy:

- The regional human rights instruments have many points in common with broader international principles, but they also exhibit distinctive features that would seem to reflect special regional interests or concerns. For example, the OAS Declaration deals with duties as well as rights of individuals. The African Union Charter covers the rights of “peoples” (that is, not just rights of individuals) and also deals with both duties and rights. The Arab Charter on Human Rights explicitly invokes a religious basis for human rights principles.

### **Box II.3. Regional Human Rights Systems – Selected initiatives**

#### **The Organisation of American States and the American Human Rights System**

The American Declaration of the Rights and Duties of Men (adopted by the Ninth International Conference of American States in April 1948) is the first international document listing universal human rights and proclaiming the need to protect them. The American Declaration pre-dates the Universal Declaration by several months and includes both rights and duties of individuals.

The American Convention of Human Rights of 22 November 1969 (in force 18 July 1978) focuses mainly on civil and political rights and offers more detailed definitions of such rights than the American Declaration does. It created the Inter-American Court of Human Rights. The Court and the Inter-American Commission on Human Rights (established by the OAS Charter) are the principal institutions for human rights protection in the American System. An additional Protocol to the American Convention on human rights in the area of economic, social and cultural rights was adopted in 1988 (in force 16 November 1999).

#### **The Council of Europe and the European Human Rights System**

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (in force 3 September 1953) constitutes the concrete expression at European level of a collective guarantee for rights set out in the Universal Declaration of Human Rights. States parties are required to respect human rights, the rule of law and the principles of pluralist democracy. Acceptance of both the convention and the compulsory jurisdiction of the European Court of Human Rights established by the Convention has are requirements for being member of the organisation.

The European Social Charter of 18 December 1961 (in force 26 February 1965; Revised in 1996; Revised Charter came into force in 1999) protects human rights and freedoms. The Charter establishes a supervisory mechanism through the European Committee of Social Rights guaranteeing the respect of its provisions by the States parties. It covers the following rights: housing, health, education, employment, legal and social protection, movement of persons and non-discrimination.

### Box II.3. **Regional Human Rights Systems – Selected initiatives** (cont.)

#### **The African Union and the African Human Rights System**

African Charter on Human and Peoples' Rights (adopted in June 1981; in force 21 October 1986) covers economic, social and cultural rights as well as civil and political rights. It stipulates rights of both individuals and peoples. The rights to peace, to a healthy environment, to development and to self-determination are also included. Furthermore, the Charter sets out individual duties to family, to society and to the State as well as to other legally recognized communities, including the international community. It established the African Commission of Human and Peoples' Rights.

The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (adopted in June 1998; in force 15 January 2004). The Protocol establishes the African Court on Human and Peoples' Rights.

#### **The League of Arab States and the Arab Human Rights System**

The Arab Charter on Human Rights of 15 September 1994 (not yet ratified, not in force- under revision- last draft adopted by the Arab Standing Committee for Human Rights in January 2004): the Charter was adopted by the Council of the League of Arab States and covers civil and political rights as well as economic, social and cultural rights. Follow up by States involves periodic submission of report to the Committee of Experts on Human Rights. The Arab Charter invokes a religious basis for human rights, referring to "the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Shari'a and the other divinely-revealed religions..."

Sources: See [www.coe.int](http://www.coe.int); [www.oas.org](http://www.oas.org); [www.africa-union.org](http://www.africa-union.org) and [www.arableagueonline.com](http://www.arableagueonline.com).

- The regional dialogue and monitoring processes are still evolving and are at different states of maturity. The OAS and the COE systems are very long-standing processes (the American Declaration on the Rights and Duties of Men was agreed to in 1948 and the COE Convention was adopted in 1950). The other two systems are of more recent origin.

Regional multilateral initiatives in the anti-corruption field also attest to the rapid evolution of the international anti-corruption framework that was highlighted earlier in relation to the UN Convention against Corruption. Box II.4 describes regional, multilateral anti-corruption initiatives undertaken by the African Union, the Council of Europe, the Organisation of American States<sup>13</sup> and the Southern African Development Community. As with human

#### **Box II.4. Regional anti-corruption conventions – Selected multilateral processes**

##### **Organization of American States (OAS): Inter-American Convention against corruption, 1996**

The Inter-American Convention against Corruption (IACC) is the first international convention against corruption ever adopted (from 6 March 1997). It has been ratified by 29 countries, and is broader in scope than the European and OECD instruments. The IACC provisions can be broadly classified into three groups: Preventive Measures; Criminal Offences; and Mutual Legal Assistance.

##### **Council of Europe Criminal Law Convention on Corruption, 1999**

The Convention is drafted as a binding legal instrument and applies to a broad range of occupations and circumstances. It contains provisions criminalizing a list of specific forms of corruption, and extending to both active and passive forms of corruption, and to both private and public sector cases. The Convention also deals with a range of transnational cases: bribery of foreign public officials and members of foreign public assemblies is expressly included, and offences established pursuant to the private-sector criminalization provisions would generally apply in transnational cases in any State Party where a sufficient portion of the offence to trigger domestic jurisdictional rules had taken place.

The Group of States against Corruption (GRECO) monitors the observance of the Guiding Principles in the Fight against Corruption (peer review monitoring mechanism) and, in the future, the implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption, including the Civil Law convention (for those countries who will have ratified).

##### **Council of Europe Civil Law Convention on Corruption, 1999**

This is the first attempt to define common international rules for civil litigation in corruption cases. Where the *Criminal Law Convention* seeks to control corruption by ensuring that offences and punishments are in place, the *Civil Law Convention* requires States Parties to ensure that those affected by corruption can sue the perpetrators civilly, effectively drawing the victims of corruption into the Council's anti-corruption strategy. The Civil Law Convention is narrower than its criminal law counterpart in the scope of the forms of corruption to which it applies, extending only to bribery and similar acts. It came into force in November 2003.

### **Box II.4. Regional anti-corruption conventions – Selected multilateral processes (cont.)**

#### **SADC – The Southern African Development Community Protocol on Corruption, 2001**

SADC-The Southern African Development Community Protocol on Corruption was adopted by all 14 SADC Heads of States and Governments at the Summit held in Malawi in August 2001. It represents the first anti-corruption treaty in Africa and was ratified by 8 of 14 SADC members States. It promotes the development of anti-corruption mechanisms at national level and the harmonization of anti-corruption legislations in Africa as well as the cooperation between States in the fight against corruption.

#### **African Union Convention on Preventing and Combating Corruption and Related Offences, 2002**

African heads of state adopted the African Union Convention on Preventing and Combating Corruption at the Second Ordinary Session of the Assembly of the African Union in July 2003. Its main objectives are to strengthen the laws on corruption by listing offences that should be punishable by domestic legislation; to outline measures to be undertaken to enable the detection and investigation of corruption offences; to indicate mechanisms for the confiscation and forfeiture of the proceeds of corruption and related offences; to organize mutual assistance in relation to corruption and related offences; and to encourage the education and promotion of public awareness on the evils of corruption.

*Note:* The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is not included in this box. Implementation and enforcement of this legally binding Convention, which is open to accession by non-OECD countries, is ensured through the comprehensive and thorough monitoring process to which the 36 governments Parties are committed.

*Source:* UN Global Compact, *Background Information on the Fight against Corruption*, November 2003 (except for update for entry into force of Council of Europe Civil Law Convention and the text on the South African Development Community Protocol on Corruption).

rights, the regional anti-corruption initiatives reflect global principles (*e.g.* criminalisation of bribery of public officials), but also exhibit distinctive regional approaches to the issues they deal with and in the degree of development and nature of their follow-up mechanisms. For example, the African Union Convention contains language on a broader range of issues (*e.g.* respect for human rights and for democratic institutions, and condemnation of impunity) that reinforce the effectiveness of anti-corruption law enforcement.

## ANNEX

### *Information Sources about Multilateral Instruments Cited in the Guidelines*

#### **The Universal Declaration of Human Rights**

For more information, see: [www.un.org](http://www.un.org); [www.ohchr.org](http://www.ohchr.org).

#### **The Copenhagen Declaration for Social Development**

For more information, see: [www.un.org/esa/socdev/wssd/agreements](http://www.un.org/esa/socdev/wssd/agreements).

#### **ILO Standards**

- a) **The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977 Tripartite Declaration).**

For more information, see: [www.ilo.org/public/english/employment/multi/history.htm](http://www.ilo.org/public/english/employment/multi/history.htm).

- b) **The ILO Declaration of Fundamental Principles and Rights at Work (1998 Declaration)**

For more information, see: [www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE).

- c) **ILO conventions and recommendations:**

- **Convention 29 of 1930 and 105 of 1957 on Elimination of all Forms of Forced or Compulsory Labour;**
- **Convention 111 of 1958 on Principle of non-discrimination with respect to Employment and Occupation;**
- **Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers on the level of Undertaking;**
- **Convention 182 of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;**



● **Convention 138 of 1973 and Recommendation 146 of 1973 concerning Minimum Age for Admission to Employment).**

For more information, see: [www.ilo.org/public/english/standards/norm/whatare/index.htm](http://www.ilo.org/public/english/standards/norm/whatare/index.htm).

**The Rio Declaration on Environment and Development and Agenda 21**

For more information, see: [www.un.org/esa/sustdev/documents/agenda21/index.htm](http://www.un.org/esa/sustdev/documents/agenda21/index.htm).

**The UN Guidelines on Consumer Policy**

For more information, see: <http://r0.unctad.org/en/subsites/cpolicy/english/guidelines.htm>.

**The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus)**

For more information, see: [www.unece.org/env/pp/](http://www.unece.org/env/pp/).

## Notes

1. First paragraph of the Preface to the *OECD Guidelines for Multinational Enterprises*.
2. See the Roundtable Summary in the 2001 Annual Report on the *OECD Guidelines for Multinational Enterprises* for a discussion of how the Guidelines fit into the broader field of global CR instruments.
3. See Chapter VI of the 2003 Annual Report on the *OECD Guidelines for Multinational Enterprises*.
4. Several other global initiatives – Global Reporting Initiative, several business association codes of conduct (e.g. International Chamber of Commerce), UN Global Compact – are relevant to the Guidelines. They are not considered here because they are not expressions of multilateral dialogue among sovereign nations. This paper assumes that adherence by sovereign nations to multilateral instruments can be taken as sign of commitment by to the concepts and principles established in those instruments.
5. In addition, a number of private initiatives are cited, such as the ISO standards on environmental management and the International Chamber of Commerce's *Report on Extortion and Bribery in Business Transactions*.
6. The fifteenth instrument is the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*. This Convention is regional in scope and is only open to members of the UN Economic Commission for Europe.
7. The twenty non-adhering countries are: Bangladesh, China, Colombia, Democratic Republic of Congo, Egypt, India, Indonesia, Ivory Coast, Jordan, Malaysia, Morocco, Nigeria, Russia, Singapore, Syria, South Africa, Thailand, Ukraine, United Arab Emirates and Venezuela.
8. See Table 5 (Environmental content of codes) of the OECD publication, *Corporate Responsibility: Private Initiatives and Public Goals*.

9. See for example, Executive Summary and Chapter 1 of *Corporate Responsibility: Private Initiatives and Public Goals*; also see summary of 2001 Roundtable discussion published in the *2001 Annual Report on the OECD Guidelines for Multinational Enterprises*.
10. As of mid-May 2005, the parties to the Convention consist of Algeria, Belarus, Benin, Croatia, Djibouti, Egypt, El Salvador, Hungary, Jordan, Kenya, Madagascar, Mauritius, Mexico, Namibia, Nigeria, Peru, Romania, Sierra Leone, South Africa, Sri Lanka, Turkmenistan and Uganda.
11. Twenty one countries that do not adhere to the Guidelines that adhere to the OAS Convention on Human Rights: Barbados, Bolivia, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay, Venezuela. Some OAS members have not ratified the Convention – for example, Canada and US (the US has signed it).
12. Eighteen countries that do not adhere to the Guidelines are members of the Council of Europe. They are: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Liechtenstein, Malta, Moldova, Monaco, Russia, San Marino, Serbia and Montenegro, Macedonia and Ukraine.
13. Twenty eight countries that do not adhere to the Guidelines adhere to the Inter-American Convention against corruption: Antigua and Barbuda, Bahamas, Barbados (signed only), Belize, Bolivia, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St Vincent and Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

## References

- OECD 2004, *Annual Report on the OECD Guidelines for Multinational Enterprises: Encouraging the Contribution of Business to the Environment*.
- OECD 2003, *Annual Report on the OECD Guidelines for Multinational Enterprises: Enhancing the role of Business in the Fight against Corruption*.
- OECD 2002, *Annual Report on OECD Guidelines for Multinational Enterprises: Focus on Responsible Supply Chain Management*.
- OECD 2001, *Annual Report on OECD Guidelines for Multinational Enterprises: Global Instruments for Corporate Responsibility*.
- OECD 2001, *No longer business as Usual: Fighting Bribery and Corruption*.
- OECD 2001, *Corporate Responsibility: Private Initiatives and Public Goals*.
- United Nations Global Compact 2003, *Background Information on the Fight Against Corruption*.

## APPENDIX A

# 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;
<b>Consultation Procedures</b>	V.	That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
<b>Review</b>	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 Appendix 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 B

*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.

## **I. 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.

## **II. 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.

### III. 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.

## **IV. 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.

## V. 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.
5. 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.
  6. 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.

## VI. 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.

## **VII. 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.

## **VIII. 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.

## IX. 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.
2. 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.
3. 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.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

## X. 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*

### **I. 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 CIME 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.

#### **D. 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.

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

## CORPORATE RESPONSIBILITY IN THE DEVELOPING WORLD

This book provides an account of what the 39 adhering governments have been doing to enhance the contribution of the *OECD Guidelines for Multinational Enterprises* to the improved functioning of the global economy. In five years, the Guidelines have consolidated their position as one of the world's principal instruments in the field of corporate responsibility.

The Guidelines are recommendations to international business for conduct in such areas as labour, environment, consumer protection and the fight against corruption. The recommendations are made by the adhering governments and, although they are not binding, governments are committed to promoting their observance. This publication also provides an overview of corporate responsibility in the developing world. Many developing countries have officially adhered to the multilateral instruments underpinning the concepts and principles of the OECD Guidelines and there is growing engagement by non-OECD business communities in many areas of corporate responsibility.

A solid basis exists for using the Guidelines to build mutual trust between OECD and non-OECD regions.

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