

2011 Update of the OECD Guidelines for Multinational Enterprises

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1. OECD Guidelines for Multinationals

- Most comprehensive set of guidelines for responsible business conduct
- All areas of corporate responsibility (labor, environment, corruption, taxation, etc)
- Government backed, binding for governments, non binding for MNE's
- 44 Members, including non OECD members (Braz, Arg, Col, Tun., etc)
- More non members process of adherence (Russia, Costa Rica)
- Most global supply chains covered

- Unique grievance mechanism (Problem solving by National Contact Points)
- NCPs promote the Guidelines and deal with notifications about company behaviour in specific instances.

OECD Guidelines for Multinationals

- Positioning OECD Guidelines within field of CSR
- UN Global Compact: private platform for action and discussion.
- ISO 26000: private tool to implement CSR (OECD Guidelines)
- OECD Guidelines: public normative standard (“soft law”)
 - binding for governments
 - only standard with grievance mechanism
- The three are complementary

OECD Guidelines for Multinationals

1. **Concepts and Principles**
2. **General policies**
3. **Disclosure**
4. **Human Rights**
5. **Employment and industrial relations**
6. **Environment**
7. **Combating bribery**
8. **Consumer interests**
9. **Science and technology**
10. **Competition**
11. **Taxation**

No other corporate responsibility instrument covers these four issues

Employment

- Respect the freedom of association and of representation by unions
- Do not discriminate against employees
- Abolish child labour
- Abolish forced labour
- Secure health & safety of employees
- Employ and educate local personnel if possible



Environment

- Protect the environment, public health and safety
- Establish and maintain an environmental management system including:
 - Data collection & analysis
 - Objectives
 - Monitoring & evaluation
 - Disclosure of performance
 - LCAs & EIAs
 - Continuous innovation
- Train employees on environmental, health and safety issues



Bribery

- Directly nor indirectly offer, promise or demand bribes or other undue advantages
- Refrain from channeling payments through civil servants, consultants or family members
- Appropriate remuneration of agents for legitimate services (facilitation payments)
- Establish a policy & (financial) controlling system against bribery and extortion and training of employees



2. Why the update

- Since 2000, the landscape of international business has rapidly changed.
→ Emerging economies, outsourcing, financial crisis, climate change
- At the UN, the debate on business and human rights was revived in 2008 by Special UN advisor John Ruggie with his 'Protect, Respect and Remedy' framework.
- Continuous criticism from civil society on the NCP system

What did the update process look like?

- Terms of Reference concluded after broad consultation with stakeholders
- Update was conducted by the Working Party of the OECD Investment Committee
- Regular consultation with stakeholders and experts
- Advisory Group consisting of key players
(major countries, business, unions and NGOs)

Adoption by the 2011 Ministerial Council Meeting



US Secretary of State, Ms. Hillary Clinton, at the adoption of the update:

“If you look at these guidelines, they will be helping us determine how supply chains can be changed so that it can begin to prevent and eliminate abuses and violence. We’re going to look at new strategies that will seek to make our case to companies that due diligence, while not always easy, is absolutely essential.”

3. Main results: Human Rights Chapter

John Ruggie: *States have the duty to protect human rights. Enterprises should*

Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

- Within the context of their own activities, **avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.**

- **Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.**

- Carry out human rights **due diligence** as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

Due Diligence and Supply Chain

- Scope of application of the Guidelines extended from investment to business relationships, including suppliers, agents and franchises
- Risk-based due diligence main tool to prevent adverse impact.

- Enterprises should:
- Carry out **risk-based due diligence** , (...), to identify, prevent and mitigate actual and potential adverse impacts (...), and account for how these impacts are addressed.
- **Avoid causing or contributing to adverse impacts** on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
- **Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.**

Due Diligence and Supply Chain

- No 'zero tolerance' requirement
- Nature and extent of DD: size, context, severity of adverse impact, etc.
- Prioritising
- Leverage
- Responses: disengagement at last resort
- Multistakeholder initiatives

Supply Chain Logic (Ruggie)

	Have Leverage	Lack Leverage
Crucial source/partner	<p>A.</p> <ul style="list-style-type: none">➤ Mitigate the abuse.➤ If unsuccessful	<p>B.</p> <ul style="list-style-type: none">➤ Seek to increase leverage.➤ If successful, mitigate abuse.➤ If unsuccessful, take steps to end the relationship; or be able to demonstrate efforts made to mitigate abuse, recognising possible consequences of remaining.
Non-crucial source/partner	<p>C.</p> <ul style="list-style-type: none">➤ Try to mitigate the abuse.➤ If unsuccessful, take steps to end the relationship	<p>D.</p> <ul style="list-style-type: none">➤ Take steps to end the relationship

Wages

Enterprises should:

“(...) in developing countries, where comparable employers may not exist,
provide the best possible wages, benefits and conditions of work (...).”

(Chapter V. Employment and Industrial Relations, paragraph 4.b)

- Might be tested in future specific instances

Stakeholder engagement

Enterprises should:

“(...) engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account (...).”

- Planning and decisionmaking
- Local communities

Project pro active agenda: Canada and Norway

NCP Procedural guidance

Conceptual improvements: NCPs must act in a manner that is impartial, predictable, equitable and compatible with the Guidelines. ('Ruggie criteria')

Practical improvements: additional guidance for the NCP procedure regarding:

- Issuing statements on cases at closing
- Dealing with parallel proceedings
- Indicative timeframes

Institutional improvements:

- NCP peer learning to enhance functional equivalence
- Proactive CSR agenda of the OECD Investment Committee
- Greater role for the OECD in promotion and supporting NCP's
- Commitment by ministers to provide adequate resources!

NCP Procedures

- Level playing field
- Good faith paragraph: “frivolous campaigns “?
- Mediation Manual
- Mediation training (Salzburg, Colombia?)

- Notification (not a complaint!)
- Initial assessment
- Problemsolving, conciliation, mediation
- Fact finding
- External mediator?
- Confidentiality
- Final statement
- Follow up

Future Work

- Substantive
 - Special guidance for particular sectors or type of enterprises (e.g. conflict minerals, financial institutions and due diligence in supply chains)
 - Implementation of the proactive agenda
- Outreach
 - Adherence: Ukr., Costa Rica, Jordan
 - Russia: adherence to OECD
 - India, China, South Africa

4. Relevance for Multinationals

- Serious implementation necessary: due diligence system!
- Focus on problem prevention and problem solving
- New guidelines will be tested in NCP
- Political pressure and campaign framed in these terms

Relevance for government

- Credible NCP
- Open attitude
- Predictable
- Related to further government actions

Thank you for your attention