

2011 Update of the OECD Guidelines for Multinational Enterprises

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Contents

1. Short background of the MNE Guidelines
2. Update process
3. What are the main results?
4. Relevance for the EU

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
- Unique grievance mechanism (Mediation by National Contact Points)
- NCPs promote the Guidelines and deal with complaints about company behaviour in specific instances.
- 42 Members, including non OECD members (Braz, Arg, etc)
- More non members process of adherence (Russia, Columbia, Costa Rica)
- Essential complement for open trade and investment policies

2. How has the update come about?

- 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 Professor John Ruggie with his 'Protect, Respect and Remedy' framework.
- Continuous criticism from civil society on the NCP system
- First discussions among adhering countries on a possible update in mid 2009.
- Adoption of the Terms of Reference for an update on 4 May 2010

2.1 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 (human rights, reporting)
- Advisory Group consisting of key players
(major countries, business, unions and NGOs)
- Specialised chapters were dealt with by specialised OECD bodies
(e.g. labour issues, environment, anti-bribery, taxation)

2.2 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.”

3.1 Main results: Human Rights Chapter

- New chapter IV: Human Rights
- In line with the work of Professor 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.*

3.2 Main results: 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.***

3.3 Main results: best possible 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

3.4 Main results: NCP Procedures

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 complaints procedure regarding:

- Issuing statements on cases when closed;
- 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!

3.5 Future Work

- Substantive
 - Special guidance for particular sectors or type of enterprises (e.g. financial institutions and, with ILO, due diligence in supply chains)
 - Implementation of the proactive agenda
- Outreach
 - Intensification of cooperation with emerging economies and partner organisations (OHCHR, ILO, UN GC, IFC, GRI)
 - Regional NCP coordination
- Peer learning/capacity-building

4. Relevance for the EU

- Implementation and promotion **BINDING** for 24 EU governments
- Inclusion in National Action Plans and peer learning/ review mechanism
- External policy of the EU: references in FTA's/ BIT's, outreach
- Good to play an active role in outreach, pro active agenda and peer reviews