

**The OECD Guidelines for Multinational Enterprises:
a potentially powerful multi-stakeholder tool for advancing corporate accountability**

Are the Guidelines an effective tool for advancing corporate accountability?

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TUAC and the OECD Guidelines - What is it all about?

TUAC, the Trade Union Advisory Committee to the OECD is

- an international trade union organisation
- financed by its members;
- independent from the OECD, however, having consultative status.

Its tasks are

- to inform affiliates about what is coming up on the OECD agenda (reports, surveys, policy recommendations) and
- to provide an input into the work of the OECD
- TUAC has also a track record in combating bribery and corruption
- It and the global union federations have contributed to OECD's work on bribery

The **OECD Guidelines for Multinational Enterprises (MNEs)** are

- recommendations to enterprises, made by OECD Member countries.
www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html –53k
www.itcilo.it/english/actrav/telearn/global/ilo/guide/oecd.htm - 47k –
- according to the revision of June 2000, the Guidelines now relate to many aspects of business operations, including: information disclosure, employment and industrial relations, the environment, bribery, consumer interests, science and technology, competition and taxation
- they apply both to domestic and foreign business operations of multinational companies with a home base in an OECD country respectively and 9 further adhering countries
- they do not cover companies operating from countries that have not signed up to them, e.g. Malaysia (Petronas), South Africa (SAB Miller), India (TATA) and China (Lenovo, SINOPEC), to name but a few.

As an instrument to strengthen corporate social responsibility in a broad sense and to make companies accountable, the *Guidelines* promise much.

- By moving beyond ill-defined unilateral codes of conduct, they provide a multilateral code governing business conduct.
- They extend the responsibility of contractors across the supply chain
- If properly implemented, they offer a monitoring mechanism that brings business operations under government scrutiny.
- The *Guidelines* provide an accessible way for trade unions and NGOs to raise their concerns regarding the conduct of globally operating corporations.

Regrettably however, operational problems do limit their effectiveness

Promotion and implementation of the guidelines

The ultimate responsibility for implementing the Guidelines lies with governments.

- They must appoint a National Contact Point (NCP).
- The NCP's are obliged to promote and encourage compliance with Guidelines and
- to respond to any allegations of company misconduct.
- Governments / NCP's must establish a forum where complaints can be lodged directly against MNE's that violate the Guidelines.
- Thus, a company may find its operations examined – whether or not it has endorsed the Guidelines.

Trade Unions and the complaint mechanism

Based on the new complaint mechanism, subsequent to the revision of the Guidelines, trade unions have filed 66 complaints

- More than half of the cases concern violations of trade union rights and roughly one quarter concerns restructuring (mostly company closures respectively lay offs)
- A few cases refer to other issues such as, health and safety, disclosure of information, environment. Only one case, a complaint against the Liberian Ship and Corporate Registry (LISCR), involved allegations regarding bribery and corruption.
- The complaints filed by trade union's concerned companies such as Marks & Spencer, Bosch, Siemens, Bata, Continental, Parmalat, Nestle, Honda, BAT, Swatch, Saint-Gobain, Bayer, General Motors (Brazil), Toyota, Bridgestone, Wackenhut, PepsiCo, Adidas and Ryan Air.
- By the end of September 2006, 26 cases remained to be resolved. 40 had been dealt with, though not all in a satisfying way.

Are the OECD Guidelines an effective tool for advancing corporate accountability? Or are they a failure?

The number of cases is inappropriate to assess the usefulness of the Guidelines

- The process of resolving problems does not necessarily lead to a complaint
- Already the possibility of complaint and the potential damage this would cause to their reputation often motivates companies to change their conduct and to respect the Guidelines even without a complaint being launched.

However, there are serious obstacles regarding an effective implementation of the Guidelines:

- The business uptake of the Guidelines has been very disappointing; according to a survey conducted in 2003 only 12 out the FTSE 100 actually referred to the Guidelines. Business federations like the CBI in the UK or BDI in Germany have played their part in slowing down company uptake.
- Most governments fail the acid test: implementation of the Guidelines has remained half-hearted, many NCPs are lacking the will as well as the ability to act.

Voluntarism, despite its limits, is not at the root of the problem!

The limitations to an effective implementation of the Guidelines can be summarised around two main deficits:

(1) There is a lack of due process:

- Procedures for the consideration of complaints are anything but clear (Complainants are not always given the opportunity to respond to comments on the case received by the NCP, the decision making process must be clarified, NCPs must maintain impartiality)
- Often complaints are not resolved in a timely and transparent manner (on average, NCPs take 13 month to deal with a case), companies have tried and often succeeded in obstructing the handling of complaints
- NCPs don't always act as an honest broker, the parties involved in a case are not treated equally (if a complaint has been filed, many NCPs would approach the company first in order to discuss an initial assessment and only then with the complainant)
- In investigating serious Guidelines-related issues, some NCPs don't act independently of other government interests.

(2) The applicability of the Guidelines has been narrowed

- The scope of the Guidelines has been limited to an investment link. That is in a contrast to the underlying principles. They apply to all business operations, including the supply chain.
- Many NCPs are reluctant to declare violations of the Guidelines.
- NCPs are not sufficiently prepared to use the Guidelines as an instrument for holding companies to account for breaches of the Guidelines.

What needs to be done in order to resolve operational problems?

Above all, governments and NCPs must make greater efforts to promote and implement the Guidelines. They must ensure

- that NCPs are adequately funded;
 - that NCPs must not operate as virtual entities but as a permanent interdepartmental office with stakeholder participation;
 - that NCPs have the ability to mobilise adequate expertise in order to conduct thorough investigations regarding alleged violations of the Guidelines;
 - that clear time frames for an initial assessment of cases as well as for the process of issuing a final statement and recommendations are established;
 - that complete and accurate records of all complaints cases are published annually.
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How and where to learn more about the OECD Guidelines?

- Global Union Research Network – GURN
Training material on the OECD Guidelines for Multinational Enterprise can be downloaded from <http://www.gurn.info/topic/oecdgdl/index.html> NEWS, March 2006, in English, French, German and Czech.

Key Reading:

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- TUAC's User's Guide in [Bulgarian](#) / [Chinese](#) / [Croatian](#) / [Czech](#) / [English](#) / [French](#) / [German](#) / [Latvian](#) / [Lithuanian](#) / [Macedonian](#) / [Portuguese](#) / [Russian](#) / [Spanish](#)
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- TUAC List of cases raised with National Contact Points, Feb 06 in English !

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