



**OECD Guidelines for Multinational Enterprises**  
**REPORT BY THE CHAIR OF THE 2010 MEETING**  
**OF THE NATIONAL CONTACT POINTS**

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences in performing and promoting the implementation of the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines. This report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2009 - June 2010 period.

## I. Overview

### *Launching the update of the Guidelines*

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences promoting the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines. In addition, a back-to-back Roundtable with practitioners is organised to assist NCPs to better understand emerging issues and policy developments relevant to the Guidelines. This year’s annual meetings, the tenth since the 2000 Review of the Guidelines, went beyond the standard annual agenda. It was also on this occasion that the work on the update the Guidelines commenced.

This report reviews activities undertaken by adhering governments to promote and implement the Guidelines, over the June 2009 – June 2010 period. It is based on individual NCP reports and other information received during the reporting period and incorporates the results of this year’s Annual NCP Meeting. The report is divided into four additional sections: Section II – Institutional Arrangements; Section III – Information and Promotion; Section IV – Specific Instances; and Section V – Activities related to OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

On 30 April 2010, the 42 adhering governments to the Guidelines agreed on the terms of reference (TORs) for carrying out an update of the Guidelines “to ensure their continued role as leading international instruments for the promotion of responsible business conduct.”<sup>1</sup> At the 2010 Ministerial Council Meeting, Ministers “welcomed the formal launch of the update of the Guidelines and noted the important role they play in contributing to responsible business conduct, and thus to broad societal support for open markets.”<sup>2</sup> The aim is to complete the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting.

Two special back-to-back capacity-building sessions were organised on 28 June 2010, prior to the Annual NCP meeting, in co-operation with the International Labour Organization (ILO) and the Consensus Building Institute. The ILO session highlighted the relationship between international labour standards and the Guidelines and provided examples of how ILO can support NCP efforts to facilitate the resolution of disputes involving employment and industrial relations, the most widely used chapter of the Guidelines. The Consensus Building Institute session provided a forum to discuss basic elements of effective mediation and how mediation is being incorporated into the processes of other multilateral institutions around the world. This session also specifically addressed how the specific instance facility of the Guidelines could make better use of existing mediation techniques and ways of reinforcing NCP capacities in this area. These two capacity-building sessions, the results of which will be directly fed into the update of the Guidelines, were well received by all NCPs.

The 10th Annual OECD Corporate Responsibility Roundtable held on 30 June-1 July (morning) 2010 took the form of three “brainstorming” sessions on Human Rights, Supply Chains and Environment/Climate Change. These discussions provided the opportunity to solicit substantive input from various governments and stakeholders to clarify or provide further guidance on the application of the Guidelines in these three areas. They were supported by two key submissions prepared by Professor John Ruggie<sup>3</sup>, the Special Representative of the UN Secretary-General for Business and Human Rights (UNSRSG), a background paper on corporate supply chain practices by the research and consulting firm, Business for Social Responsibility (BSR) and a background paper based on a company survey by contributors to the OECD Investment and Environment Policy Committees on “Engaging the private sector

in support of a low carbon future”. A summary of these proceedings will be published in the 2010 edition of the “Annual Report on the OECD Guidelines for Multinational Enterprises”.

### ***Highlights of the 2009-2010 reporting period***

This year’s implementation cycle of the Guidelines witnessed a partial recovery from the financial and economic crisis—a recovery characterised by continuous attention to corporate responsibility. Concern for the renewed observance of ethical standards contained in leading international corporate responsibility instruments, coupled with less complacency with their shortcomings, increased. In this context, the role of the OECD Guidelines and the prospect of a new update enjoyed high level and widespread expressions of support.

The NCP reports show that NCPs have continued their efforts to further the effectiveness of the Guidelines. In some countries, the efforts have focused on improving institutional arrangements and increasing stakeholder inclusiveness. Norway, in particular, has reported considerable effort around the reform of their NCP structure, which serves to increase NCP independence and financing. Israel has increased stakeholder inclusiveness through the establishment of external steering committees and advisory panels comprised of businesses, employee organizations and civil society. Canada has developed a procedural guide for members of the Canadian interdepartmental Committee on the Guidelines, which includes a component around the management of specific instances.

Beyond expanding inclusivity and procedural transparency, a number of NCPs have also solicited feedback from key stakeholders. Italy, Norway, Peru, Poland and Spain have all taken action to request feedback focused on awareness of the Guidelines, effectiveness in practice and self-surveys aimed to measure corporate observance of the Guidelines. Through these activities, and other promotional initiatives, NCP outreach to businesses has grown significantly during this reporting period. Engaging with universities, and their departments focused on responsible business, has also gained popularity throughout 2009-2010. Currently about 42 percent of NCPs are actively working with regional universities. Benefits from these relationships include not only increased awareness of the Guidelines among young professionals, but also research assistance, especially around soliciting and aggregating corporate feedback.

During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review, which was carried out in the fall of 2009. The peer review, carried out by the NCPs of Canada, Chile, France, Japan and the United Kingdom, was regarded as a great success and a truly valuable learning experience by all NCPs involved. The final report was presented to the OECD Investment Committee Working Group on 24 March 2010, containing twenty-eight recommendations. Several lessons learned were drawn from the review process, such as the importance of overall promotional activities and several challenges relating to the NCP specific instance procedure. A number of NCPs also found the Independent Board structure of the Dutch NCP quite useful and suggested further exploration and consideration of the merits of this structure.

In addition, greater attention has been given to the synergies between the promotional activities of the Guidelines and other corporate responsibility instruments. This is apparent in the promotion of corporate responsibility like-tools in Germany, the leveraging of established UN Global Compact networks to further promote the Guidelines in Peru and Portugal and the implementation of the Canadian corporate responsibility strategy for the Canadian international extractive sector. A number of NCPs report to have promoted the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones as a companion instrument to the Guidelines and to closely follow the work on the new pilot project on due diligence in mining and mineral sectors.

The number of specific instance requests was slightly lower this past year than in the 2008-2009 implementation cycle of the Guidelines. 17<sup>4</sup> new specific instances were accepted for consideration by NCPs. A total of 10 Final Statements were issued by 6 NCPs. With 17 new cases raised, the total number of requests since the 2000 Review exceeds the 200<sup>5</sup> mark. Of these, 160<sup>6</sup> have been accepted for consideration and 138 have been concluded or closed. While a majority of the new cases continue to relate to employment and industrial relations under Chapter IV of the Guidelines, a growing number have come to involve Chapter II, as it pertains to Human Rights, as well as environmental issues covered by Chapter V. Specific instances raised across multiple NCPs have also increased. Addressing these cases seems to have become smoother and more productive as NCP roles have become more defined with the rise in cross-country instances. The rise of specific instances in non-OECD adhering countries has also continued. However, the most noticeable development during the reporting period was the increased recourse through mediation as a means for resolving specific instances. 9 specific instances were managed through mediation during this time frame, and in a majority of cases, resulted in positive outcomes for all parties involved.

Throughout the duration of this year's Annual Meeting, capacity building sessions and Corporate Responsibility Roundtable, NCPs placed a considerable emphasis on the unique value of the specific instance facility as a problem solving mechanism. They emphasised the importance of facilitating access to conciliation and mediation – either by the NCPs themselves or through a third-party resource – once a specific instance has been formally accepted for consideration by an NCP. NCPs also proposed that final statements should be used to acknowledge positive mediated outcomes where possible or to make helpful recommendations where appropriate, lending towards better fulfilment of the Guidelines' expectations. With regard to NCPs procedures, there is broad consensus that homogeneity should not be viewed as an end in itself, since NCPs need the flexibility built into the functional equivalence principle in order to adapt their procedures to national contexts and circumstances. Predictability, on the other hand, was clearly considered to be more important for ensuring due process. This part of the discussion focused on more structured timeframes of specific instance handling, further clarity in formally accepting and rejecting raised cases as well as resource constraints confronted by NCPs. There was also agreement that the mediation and “adjudication phases are mutually exclusive processes. In addition, the question was raised of whether NCPs should include in annual reports specific instances which are still in the initial assessment phase or where the NCP has decided after the initial assessment not to offer its good offices to assist the parties. Some countries for example, report such specific instances whereas other NCPs noted they did not. NCPs agreed that adequate consideration of procedural issues should be a central priority for the update of the Guidelines.

Outreach efforts to promote the Guidelines continued to expand throughout 2009-2010. Special focus has been in Asia, notably South East Asia, and by country, China, India, Indonesia and South Africa. A special chapter in the investment policy review of Indonesia was devoted to the role of the Guidelines in promoting responsible business conduct. Several emerging markets and other non-OECD countries also contributed to the consultation process leading to the launch on the update of the Guidelines.

The prospect of a new update of the Guidelines received high attention in other circles as well. In his latest report to the UN Human Rights Council on further steps to operationalize the “protect, respect and remedy” framework, the UNSRSG reiterated the potential of the NCP mechanism in providing effective remedy for human rights violations. He also indicated his intention to continue to liaise with the OECD on the update the Guidelines.<sup>7</sup> The consultation process on the update of the Guidelines also benefitted from written submissions by accredited stakeholders (BIAC, TUAC, OECD Watch), international organisations (IFC, ILO) and other stakeholders (Amnesty International, Consumers International, Global Reporting Initiative, International Bar Association and Transparency International) as well as various OECD bodies.<sup>8</sup> Senior OECD officials gave key note addresses at high level international meetings.

### *The next implementation year*

The Annual NCP Meeting of 29 June 2010 marked the tenth anniversary of the 2000 Revision of the Guidelines. Looking back at their experience over these past ten years, the NCPs acknowledged the importance of peer knowledge sharing and discussion of good practices, effective promotion of the Guidelines, reinforcement of the mediation capacities and resources of NCPs and clarification of their role in handling complex specific instances and/or parallel legal proceedings. They welcomed the fact that these issues were included in the terms of reference for the update and reiterated their readiness to actively contribute to this process. They also agreed that they should continue their efforts to improve their own performance, notably by drawing on the “good tips” resulting from the voluntary peer review of the Dutch NCP and recent successful mediated cases. They considered that more analysis of how NCPs have dealt with past specific instances could be helpful in considering options for improving the effectiveness of the specific instance facility during the update of the Guidelines and invited the Secretariat to circulate a compilation of the exemplary cases highlighted in past Annual NCP Reports for future reference.

Beyond NCP capacity building and refining procedural guidance, the update to the Guidelines will also address content updates related to two priority topics, namely, expanding the Guidelines’ guidance on human rights taking into account the “Protect, Respect and Remedy” framework developed by the UNSRSG and clarification of the application of the Guidelines to supply chain relationships.

## **II. Innovations in NCP structure and procedures**

Taking into account the structural changes that occurred in the June 2009 – June 2010 period, current NCP structures now consist of:

- 20 NCP single government departments;<sup>9</sup>
- 8 NCP multiple government departments;<sup>10</sup>
- 2 bipartite NCP;<sup>11</sup>
- 9 tripartite NCPs (involving governments, business and trade unions);<sup>12</sup>
- 1 quadripartite NCP (involving governments, business, trade unions and NGOs); and
- 2<sup>13</sup> mixed structure of independent experts and government representatives.<sup>14</sup>

The following institutional changes are reported to have been adopted or to be under active consideration:

- *Canada* is currently developing a number of documents, including a Terms of Reference for the Interdepartmental NCP Committee and a Procedures Guide, as part of a toolkit to increase the organisations vigour and operational effectiveness as a result of the Dutch Peer Review.
- *Chile* plans to decentralise their specific instance handling process and dedicate a special group to this function.
- *Czech Republic* has relocated NCP operations from the Ministry of Finance to the Ministry of Industry and Trade.

- *Egypt* has added the Ministry of Environmental Affairs to their Advisory Committee. They have also drafted, and translated into Arabic, the rules and procedures for the Specific Instances, aided by other NCPs and OECD Watch.
- In *Estonia*, the NCP has been restructured and is now found under the Economic Policy Division in the Economic Development Department allowing the Estonia NCP to take a more active role with enterprises. This is a move from the European Union and International Co-operation Department; both departments are housed under the Ministry of Economic Affairs and Communications.
- *Germany's* NCP is creating a handbook, to be finalised in conjunction with the update to the Guidelines, which should include information on the interrelation between the OECD Guidelines, ILO Tripartite Declaration and UN Global Compact. Additionally, Procedural Guidance explaining the handling of specific instance procedures in the German structure has been made available on the German NCP web page along with summarized reasoning for the rejection of specific instances.
- In *Hungary* the Secretariat of the Hungarian NCP was transferred from the Department of Enterprise Development to the Business Environment Department of the Ministry for National Development and Economy. Following the governmental changes in May 2010, the NCP Secretariat is acting in the Ministry for National Economy.
- *Israel* has established a Steering Group comprised of stakeholder representatives from civil society, as well as business and employee organizations. The Steering Group's objective is to create a detailed recommendation for the NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the MNEs Guidelines and to actively assist the NCP in its outreach efforts.
- *Italy* is reorganizing their NCP to broaden stakeholder associations with an increased focus on SMEs and supply chain implications.
- *New Zealand's* NCP has added the Ministry of Justice and the Ministry of Consumer Affairs to its Liaison Group.
- *Norway* is in the process of restructuring its NCP, with a focus on independence, as a result of their white paper titled, "Corporate Social Responsibility in a Global Economy". (Box 1)

**Box 1.1. A Follow Up on Norway's White Paper: Corporate Social Responsibility in a Global Economy**

As a follow-up to its January 2009 White Paper "Corporate Social Responsibility in a Global Economy", the Norwegian Government has evaluated possible models for re-organising and strengthening their NCP. A proposal outlining alternative models was sent as part of a public hearing last summer (July 2009) and it received comments from 22 different institutions/organisations.

The comments were carefully reviewed and reflected in a model for a re-organised NCP, which was approved by the Government on 15 April 2010. The re-organised NCP will consist of 4 members, including a leader, and serve as an Independent Board. As with the present NCP, the members will hold this as an additional assignment and not as a full time occupation; the members shall serve in their personal capacity. A Secretariat of 2 full time employees will be established.

The member selection process will be open and transparent. Relevant civil society organizations, employees, and employers organisations have been invited to suggest candidates. The Ministry of Foreign Affairs and the Ministry of Trade and Industry will appoint the leader of the NCP and, based on the suggested candidates, appoint the three remaining members.

In addition to dealing more effectively with specific instances, this revised structure will also enable the NCP to put more emphasis on information activities regarding the Guidelines. The re-organised NCP is expected to be launched by the summer/fall of 2010 and will be provided with substantially increased financial resources enabling it to make use of independent advice and expertise. The anticipated outcome of this re-organisation is a strengthened and more independent NCP.

- *Peru* has added two Ministers to its Steering Council, growing from 5 to 7 Ministers, with the addition of the Minister of Trade and Tourism and the Minister of Production. The NCP is also planning to organize joint activities with the UN Global Compact Peruvian Chapter to promote the OECD Guidelines; more than 60 companies based in Peru are actively participating in this initiative.
- *Portugal's* NCP is working with Association on Business Ethics (APEE), the Portuguese focal point for UN Global Compact, to promote the OECD Guidelines through its established network Global Compact Portuguese Network (RPGC).
- *United States* is reconsidering the structure and functioning of its NCP, working more towards independence from investment policy. This change was catalyzed by the TOR update, further consultations with stakeholders will be held in the upcoming months.
- *United Kingdom* introduced new follow-up procedures, in September 2009, to reflect actions taken by parties following Final Statements, which were used for the first time in December 2009.
- The *European Commission*, with the entry into force of the Lisbon Treaty on 1 December 2009, is competent for EU foreign direct investment as part of common commercial policy (Treaty on the Functioning of the European Union (TFEU), article 207(1) and article 3(1)). The European Commission has launched the implementation process of this new competence, which will take into account Corporate Social Responsibility and the OECD Guidelines. Directorate General (DG) Trade Unit B1 is responsible for investment issues and overall coordination of corporate social responsibility for DG Trade and follows the work of the OECD Investment Committee.

### III. Recent developments in information and promotional activities

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities. During the reporting period, NCPs continued to engage in various activities designed to enhance the value of the Guidelines. This section summarizes the main activities described in the individual NCP reports.

#### III.a Selected promotional activities

In addition to the activities reported in paragraphs 21 and 22 below, promotional developments worth underlining include:

- *Argentina – Focused on responsible business.* Several corporate responsibility related events were held in Argentina this past year, focusing on responsible business and promotion of the Guidelines: September 2009 NGO's, Norwegian and Argentinean enterprises participated in a Corporate Responsibility seminar, October 2009 focus was on multi-sector alliances with regard to contribution to competitiveness, innovation and sustainable development, December 2009 and May 2010 the CEDHA (Centre for Human Rights and Environment) and INCASUR ( National Institute of Studies and Social Formation of the South) organised two NGO forums.
- *Austria – Promoting business and human rights.* On 17 June 2009, the Oesterreichische Kontrollbank AG (OeKB) hosted a discussion, where Professor John Ruggie, UNSRSG, delivered a keynote about "Business and Human Rights".
- *Brazil – Initiative to inform.* The Brazilian NCP is planning to focus attention on comprehensively disseminating the OECD Guidelines to MNEs through the use of a consolidated database, which will contain contact details for all Brazilian MNEs and the name of the individual responsible for their CSR department.
- *Canada – Globally funding corporate responsibility initiatives.* The Department of Foreign Affairs and International Trade Canada (DFAIT) created a CSR Fund in 2009 to assist Canadian offices in Canada and abroad with client CSR promotion and facilitate engagement with host-governments, communities, indigenous organizations, NGOs and other stakeholders in CSR-related initiatives through CSR seminars, the development of mining toolkits and the other CSR tools. In 2009 the CSR Fund, totaling \$180,000, was used for 35 CSR-related projects at Canadian missions around the world. This year, the CSR Funds resources have been increased to \$250,000, which is being used for 49 CSR-related projects.
- *Chile – Targeting trade and transparency.* The Chilean NCP hosted several meetings with multinational companies with regards to trade, transparency, and integration impact.
- *Denmark – National outreach.* The Danish Contact Point has become a repeat guest lecturer at the University of Copenhagen on a course in international labour law and CSR. The Danish NCP Secretariat also conducted a presentation for the Permanent ILO Committee of the Danish Ministry of Employment as well as for 12 representatives from NGO's.
- *Egypt – Championing the Guidelines through foreign investment and universities.* Egypt has continued to act as a regional representative for the Guidelines. While continually promoting Guideline awareness, they have liaised with the Chairman of General Authority for Investment (GAFI) to include NCP publications with materials distributed to potential foreign investors, and with the Gerhart Center for Philanthropy and Civic Engagement at the American University in Cairo (AUC), which has launched a corporate sustainability capacity building program. On 23

March 2010 the government held the Third Annual CSR Conference in Cairo focused on “Transparency & Reporting on CSR practices, Towards Sustainable Competitive Environment”.

- *Estonia – Engaging responsibly through commerce and industry.* In autumn 2009 in the Gazette of the Estonian Chamber of Trade and Industry published an article introducing the Guidelines and the functional principles of the NCP, including the contacts of the Estonian NCP and references to the work of other NCPs. In March 2010 the Estonian NCP organized a workshop for Estonian entrepreneurs in order to present the OECD Guidelines.
- *France –Consulting with NGOs.* A meeting with about thirty NGOs was held on 9 September 2009 to discuss the revision of the Guidelines and take into consideration NGO perspectives on the evolution of the NCP, especially with regards to the specific instance handling process.
- *Germany – Aiming to strengthen responsible business on an international scale.* The German NCP has promoted the Guidelines during this reporting period through presentations, lectures, preparation of speeches and active participation in responsible business-related events organized by stakeholders and multistakeholder initiatives, governments, universities, et al. The Guidelines are highlighted in the context of the German Governmental Reports on Human Rights and, with specific reference to the *Risk Awareness Tool*, in the Governmental Report on Crisis Prevention. Additionally, work on a handbook for German companies has begun to further promote the Guidelines and give special guidance to small and medium sizes enterprises with interpreting and implementing the Guidelines in their commercial activities abroad.
- *Italy – Promotional partnering.* On 10 February 2010, the results of the two research projects, assigned in 2009 to Bocconi University in Milan and to LUISS University in Rome, were presented at the Ministry of Economic Development which was open to interested stakeholders. On 27 April 2010, the Italian NCP partnered with “Istituto Tagliacarne” to host the initial meeting resulting from the research project: “Stakeholders’ information and awareness: the OECD Guidelines and CSR principles”.
- *Korea – Targeting responsible business.* In December 2009, the Korean NCP participated in a corporate responsibility forum for Korean companies, hosted by the National Assembly. Participants were briefed on the activities of the NCP and its future policy direction.
- *Peru – Profiling the Peruvian NCP.* On 16 April 2010, Peru consolidated their NCP, ProInversión, through a series of workshops and a formal presentation of the OECD Guidelines. This event was attended by over 100 representatives from the Peruvian and foreign business communities, the diplomatic community and other stakeholders interested in Peru’s implementation of the Guidelines. As part of the promotional activities, the NCP prepared and distributed a survey on the investment climate in Peru and the OECD Guidelines among the workshop attendees. The survey confirms the positive contribution of the Guidelines in further enhancing the positive investment climate of Peru. Reasons for this included the fact that the Guidelines can help settle solutions between stakeholders, generate confidence, provide good examples and establish guidance on responsible business conduct.
- *Portugal – Responsible investing abroad.* Portugal’s NCP is currently analysing and evaluating Portuguese direct investment abroad against OECD Guidelines and OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones amongst targeted Portuguese multinationals, investors and enterprises that operate in specific and relevant markets, generating further awareness and promotion of the tools.

- *Poland – Incorporating feedback.* On 29 September 2009, PAIiIZ, in cooperation with British-Polish Chamber of Commerce (BPCC) and the Responsible Business Forum (FOB) and the Foundation CentrumCSR.PL, organized a conference on the OECD Guidelines for Multinational Enterprises to discuss the newly launched OECD PNCP's programme "Implement OECD Guidelines – Responsible Business 2009". The aim of the programme is to promote responsible business practice as demonstrated by international companies operating in Poland who follow the guidelines as part of their responsible business strategies. The program should also encourage companies active in Poland to implement OECD guidelines and to promote them in everyday business practices.
- *Slovenia – Maximising impact through NGOs.* Slovenia's NCP established working contacts with non-governmental organizations (such as the Chamber of Commerce of Slovenia, the Employers' Federation and trade unions) in order to discuss additional promotion activities for the Guidelines.
- *Spain – Encouraging the Guidelines abroad and soliciting feedback.* This year the Spanish NCP presented the Guidelines to the Advisory Commission on International Trade Negotiations chaired by the Secretary of State for Trade, an event that was open to social partners, NGOs and other civil society organizations. The NCP also presented the Guidelines as part of a panel discussion on "Business and Human Rights" organized by Amnesty International Spain. Additionally, this year the NPC began conducting a survey among the top 200 Spanish companies investing abroad, to determine how well the Guidelines are known to the audience they serve. The survey also asked companies to indicate additional information that they would like to find within the text of the Guidelines and with the functioning of the NCP.
- *Sweden – Building and promoting a CSR-tool.* In December 2009, the Swedish Trade Federation launched its new CSR-tool towards member companies called "Responsible Business Management". The concept consists of a brochure and workshops covering four areas: the responsible employer, good market ethics, taking responsibility for the environment and the climate and responsible purchasing and supply chain management. Throughout 2010 they have carried out several activities for the Swedish SMEs in the responsible business arena, including participation in seminars on how companies can practically incorporate ethical and environmental practices and adhere to the Guidelines in the day-to-day business.
- *Switzerland – Utilizing publications.* In April 2010, the Swiss NCP published a flyer for multinational companies summarising the Guidelines as well as the role of the NCP. The flyer has been disseminated through several internet pages of the Swiss Government, Swiss embassies and different business associations, and is available in the three official languages of Switzerland as well as in English.
- *United Kingdom – Leveraging technology.* The UK NCP carried out an awareness campaign on the Guidelines, including an electronic bulletin sent to 35,000 decision makers within large companies, advertising on news websites, and direct mailing of the UK NCP booklet to some 1,150 large multinational companies in the UK. This booklet has proved to be a useful tool in raising awareness of the Guidelines, with over 3,300 copies circulated to stakeholders since it was published in October 2009, at various meetings, events and seminars. The booklet has also been translated into French and Spanish: all three versions of the booklet are available in electronic format on the UK NCP website.
- *European Commission –Targeting Asia.* European Commission Delegations to Japan and Singapore have been particularly active in promotion of the OECD Guidelines. In March 2010, the delegation participated in the 20st GISPRI (Global Industrial and Social Progress Research

Institute) Conference entitled "Evolving CSR – societal roles of companies in the new market economy" which gathered approximately 200 businesspeople. The Delegation in Singapore organised a seminar entitled "CSR – Its place in business and world" in conjunction with the Institute of Southeast Asian Studies in March 2010. The Delegation also works with the ASEAN network on responsible business.

Other promotional activities undertaken by NCPs during the reporting period included:<sup>15</sup>

- 76% of NCPs have liaised with companies via contacts or presentations to individual companies or business associations, individual consultations and organisation of meetings with national partners.
- 22% of NCPs have utilized newsletters, articles in the press or other promotion through the media.
- 51% have participated in conferences with non-governmental actors.
- 63% have developed promotional material and mailings.
- 100% have established an NCP website.
- 42% of NCPs have liaised with universities in promotional support of the Guidelines.

Promotional activities within governments include:<sup>16</sup>

- 54% of NCPs utilize promotion through presentations to government departments or agencies by high-level officials.
- 17% promote and train embassy and consular staff.
- 51% of NCPs focus on Trade and Investment promotion missions and activities.
- 15% of NCPs Promote to overseas development agencies.
- 68% are answering questions from Parliaments, Ombudsmen or other government bodies and are promoting the Guidelines to foreign embassies.

### ***III.b National Contact Points Peer Review***

During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review. The NCPs of Canada, Chile, France, Japan and the United Kingdom participated in the Dutch NCP Peer Review, which was carried out in the fall of 2009, and presented to the OECD Investment Committee Working Group on 24 March 2010.

The objectives of the peer review were to: (I) evaluate the structure, practice, effect and results of the Dutch NCP; (II) to create a learning process for all participating NCPs; (III) to assess issues which may serve as useful input into any possible future revision of the OECD Guidelines; and (IV) to provide a review report which may be used as input for the Dutch NCP's preparation of its own evaluation report for the Dutch Parliament by the end of 2010. Apart from these four goals, the project has proved to be a valuable, ad-hoc learning platform for all participating NCPs.

The peer review team carried out the review through a series of meetings with stakeholders, a questionnaire survey, review of documents and discussions. A final report was issued in March 2010, containing twenty-eight recommendations relating to: (I) the structure of the NCP; (II) the NCP's promotional activities; and (III) the NCP's dealing with specific instances. The peer review report is available at the website of the Dutch NCP<sup>17</sup>.

Several lessons learned were drawn from the review process, such as the importance of overall promotional activities and several challenges relating to the NCP specific instance procedure. A few of the highlighted challenges relating to the specific instance procedure are establishment of clear and appropriate timelines for initial assessments, examination and issuing final statements, management of parallel procedures, (local) fact finding and the need for better protection of persons or organisations logging complaints where fear of retaliation over the notification exists. A number of NCPs also found the structural change in the Dutch NCP to an Independent Board, of great interest and deserving further reflection. Finally, although the main goal of a peer review is evaluative in nature, much of the additional value of this NCP peer review was the peer learning platform that was promoted during the six month peer review process. This experience was well received by all parties involved; the review team would like to encourage other NCPs to also initiate knowledge sharing and mutual learning events, either through general review or more thematic discussions.

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

Adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Twenty-eight NCPs report that such links exist.

**Table 1.1. 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 Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Austrade websites.
Austria	Export credits	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export Credits	The Export Development Canada (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	Investment promotion	The Foreign Investment Committee is the agency which promotes 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 Czech Republic. The Czech NCP co-operates closely with Czech Invest.
Denmark	Export credits	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the OECD Guidelines and encourages exporters to act in accordance with the OECD Guidelines.
Egypt	Investment promotion	The General Authority for Investment and Free Zones (GAFI) is the Egyptian investment promotion agency. GAFI is under the Ministry of Investment. ENCP maintains a close ties with GAFI. Through GAFI ENCP and the Guidelines brochures are distributed.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export credit guarantees and investment insurance	Finland's Export Credit Agency, Finnvera, calls the attention of guarantee applicants" to the Guidelines through its web pages and CSR report.
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	Companies applying for investment guarantees are referred to the Guidelines directly by the application form. In the application process, they have to confirm awareness of this reference by signature. The reference also provides a link to further information on the Guidelines.
Greece	Investment promotion	The <i>Guidelines</i> are available on the portal <a href="http://www.mnec.gr">www.mnec.gr</a> as well as on the websites of the Ministry of Foreign Affairs ( <a href="http://www.agora.gr">www.agora.gr</a> ), the Invest in Greece Agency ( <a href="http://www.investingreece.gov.gr">www.investingreece.gov.gr</a> ), the General Secretariat of Consumers Affairs ( <a href="http://www.efpolis.gr">http://www.efpolis.gr</a> ), the and the Export Credit Insurance Organization (ECIO) ( <a href="http://www.oaep.gr">www.oaep.gr</a> ).
Hungary	Investment promotion	The site of Investment and Trade Development Agency has links to the Ministry for National Economy, EXIMBANK, MEHIB, and other ministries where important OECD documents on bribery, anti-corruption, export credits are available. Cross links support the quick search for relevant OECD documents.
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.
Italy	Export credits	The Italian NCP is in regular contact with SACE (the Italian association in charge of insuring export credit) and contributes to its activities.
Japan	Trade-investment promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the Ministry of Foreign Affairs (MOFA); Ministry of Health, Labour and Welfare (MHLW); and the Ministry of Economy, Trade and Industry (METI). The Japan External Trade Organization (JETRO) website, the ASEAN-Japan Centre website and the Nippon Export and Investment Insurance (NEXI) website are also linked to the summary, full texts of the Guidelines, introduction of the Japanese NCP activity including its procedures and promotion.
Korea	Trade-investment promotion	OECD Guidelines can be found at the MKE (Ministry of Knowledge Economy) website ( <a href="http://www.mke.go.kr">www.mke.go.kr</a> ). MKE promotes trade and investment.

Lithuania	Investment promotion	<p>“Invest Lithuania” Agency (<a href="http://www.businesslithuania.com">http://www.businesslithuania.com</a>) operates in the Republic of Lithuania and provides information on the Lithuanian business environment to foreign investors. It has prepared an information package that is passed to all foreign investors considering investing within the territory of Lithuania. The Lithuanian NCP (at the Ministry of Economy) co-operates closely with the “Invest Lithuania” Agency. Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19<sup>th</sup> of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy:  <a href="http://www.ukmin.lt/en/investment/invest-promotion/index.php">http://www.ukmin.lt/en/investment/invest-promotion/index.php</a></p>
Mexico	Investment Promotion	<p>The Mexican NCP is located within the Directorate General for Foreign Investment in the Ministry of Economy, which is responsible for Mexico’s participation in the Investment Committee as well as in different international organisations, among other activities. The guidelines can be found on the website. Mexico’s investment promotion agency - PROMEXICO - works in close co-operation with this Department.</p>
Netherlands	Export credits and investment guarantees	<p>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.</p>
New Zealand	Export Credit promotion	<p>New Zealand’s Export Credit Office (ECO) mentions the OECD MNE Guidelines on its website. The ECO also provides a link to both the OECD Guidelines and the New Zealand NCP’s website.</p>
Norway	Guarantee Institute for Export Credits (GIEK)	<p>GIEK has developed its own social responsibility policy which is posted on its website. For more information please see:  <a href="http://www.giek.no/giek_en/default.asp?menu=610&amp;page=277&amp;cells=0">http://www.giek.no/giek_en/default.asp?menu=610&amp;page=277&amp;cells=0</a></p>
Poland	Investment promotion	<p>The Polish NCP is located in the investment promotion agency (PAIIZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIIZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.</p>
Portugal	Exports and Investment Promotion	<p>AICEP – Portugal Global is a Business Development Agency responsible for the promotion of exports, the internationalisation of Portuguese companies, especially SMEs and for inbound foreign investment. The Guidelines are part of the information given to all companies.</p>
Romania	Romanian Agency for Foreign Investments (ARIS)	<p>The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP’s webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (<a href="http://www.mae.ro">www.mae.ro</a>) and the Romanian Agency for Foreign Investments (ARIS) (<a href="http://www.arisinvest.ro">www.arisinvest.ro</a>). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCP’s web page include:</p> <ul style="list-style-type: none"> <li>• Policy framework for Investment;</li> <li>• OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.</li> </ul> <p>Romanian Agency for Foreign Investment edited, among other specific promotional materials, the brochure entitled “Frequently Asked Questions - An Overview”, including a separate chapter on Romanian National Contact Point and OECD Guidelines for Multinational Enterprises.</p>

Slovenia	Promotion and awareness of OECD Guidelines	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Slovene NCP has just been reconstructed and will perform various promotional activities mostly in second half of the year 2009 (e.g. translation into Slovene language, first public appearance, printing and distribution of Guidelines).
Slovak Republic	Investment promotion	NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in Slovak language at Ministry's webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both business environment and investment opportunities. The investors entering the Slovak republic who had been awarded with governmental incentives are to commit themselves to keep the Guidelines (part of the awarding decision).
Spain	Investment guarantees	CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) 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 environment, the rules on bribery, the OECD Guidelines for MNE's and the Swedish Partnership for Global Responsibility.
Switzerland	Export credits insurance	The Swiss Export Risk Insurance (SERV) promotes corporate responsibility principles. On its website, it provides information regarding the Guidelines and their implementation mechanism ( <a href="http://www.serv-ch.com">www.serv-ch.com</a> ).
Turkey	FDI	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for investment policy making. The Treasury's website provides information on the Guidelines.
United Kingdom	Export credits and investment insurance	The Export Credits Guarantee Department's (ECGD) website contains links to the website of the UK National Contact Point.
United States	Export and import credits and investment guarantees	The Export-Import Bank of the United States provides information on the Guidelines to applicants for their programmes in support of U.S. business activities abroad.

In response to a recommendation made by the Joint Committee on Human Rights of the UK Parliament, in the light of evidence to it from Professor John Ruggie, UNSRSG, the UK Government is seeking multilateral agreement to a formal requirement that Export Credit Agencies should take into account whether to provide support for a company that has received a negative final statement from a National Contact Point under the OECD Guidelines for Multinational Enterprises in their decision-making. To that end it has proposed that appropriate text should be included in the next version of the OECD Council Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits, which is currently under consideration by the OECD Export Credits Group.

### **III.d OECD Investment Committee work**

As a result of the continuous high political profile of the Guidelines and renewed NCP commitments to encourage more effective use of the Guidelines, the Committee continued to actively promote the Guidelines and support peer learning on a number of issues.

*Preparing for an update of the Guidelines.* The past implementation year on the Guidelines saw a strong mobilisation of the Investment Committee and its Working Party on the preparation for an update of the Guidelines. At the 2009 Annual Meeting, with the tenth anniversary of the 2000 Review of the Guidelines approaching, NCPs recommended that “adhering governments to the Guidelines review the experience gained with a view to defining terms of reference for a possible update of the instrument”. At

the 24-25 June 2009 OECD Council Meeting at Ministerial level, ministers from OECD and non-member countries welcomed “further consultation on the updating of the OECD Guidelines to increase their relevance and clarify private sector responsibilities”.

In October 2009, the Working Party of the Investment Committee considered a preliminary list of issues for an update during the session and decided on an extensive process of consultation, which included stakeholders, interested non-adhering countries, concerned international organisations and OECD bodies. Comprehensive consultations with BIAC, TUAC, OECD Watch and other stakeholders were organised in October and December 2009, back-to-back with the Global Forum on International Investment, and again with BIAC, TUAC and OECD Watch in March 2010. Consultations with major non-adhering emerging economies and other countries were also held in December 2009. In addition, written contributions were received from international organisations (IFC and ILO), accredited (BIAC, TUAC, OECD Watch) and several other stakeholders (Amnesty International, Consumers International, Global Reporting Initiative, International Bar Association and Transparency International) as well as from OECD bodies (Committee on Consumer Policy, Committee on Employment, Labour and Social Affairs, Environment Policy Committee, Committee on Financial Markets, Committee on Fiscal Affairs, Corporate Governance Committee and Working Group on Bribery in International Business Transactions).

The terms of reference for the update were developed by the Working Party of the OECD Investment Committee at its March 2010 session, where non-OECD adhering governments to the Declaration had full participant status. The TORs were approved under the written procedure on 30 April 2010 by all adhering governments at the level of the Investment Committee in its enlarged session. At their Ministerial Council Meeting of 27-28 May 2010, Ministers “welcomed the formal launch of the update of the Guidelines and the note the important role they play in contributing to responsible business conduct, and thus to broad societal support for the open markets”.<sup>18</sup>

The purpose of the update of the Guidelines is to ensure their continued role as a leading international corporate responsibility instrument for the promotion of responsible conduct. The terms of reference cover substantive, procedural and institutional issues related to the Guidelines. Priorities for the update include more elaborated guidance on the application of the Guidelines to human rights, including if deemed appropriate, in a dedicated chapter of the Guidelines, the clarification of the application of the Guidelines to supply chains and the improvement of the implementation of the Guidelines to enhance awareness, visibility and a more widespread use and effective use of the Guidelines, including in non-adhering countries. The work on the update was scheduled to start on the occasion of the June 2010 Annual Meeting of the National Contact Points (NCPs) with the broad aim of completing the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting. Consultations with stakeholders and non-adhering countries will be integral to the update process.

*Co-operation with other corporate responsibility instruments.* On 27 October 2009, it was announced that “following its participation in the 2009 Annual Meeting of the National Contact Points, the UN Global Compact invited its Local Network Focal Points in countries that adhere to the OECD Guidelines for Multinational Enterprises to actively explore collaborative opportunities with NCPs. Additionally, Focal Points were encouraged to seek advice and guidance from NCPs, particularly regarding follow-up procedures for OECD Guidelines implementation.” The Amsterdam Global Conference on Sustainability and Transparency, organised by the GRI on 26-27 May 2010, highlighted the importance of the Guidelines as a benchmark for reporting corporate responsibility actions. The Chair of the Working Party of the Investment Committee, the CSR Ambassador of Norway and a representative of the OECD Secretariat were invited as guest speakers to a special session dedicated to the Guidelines.<sup>19</sup>

*Promoting responsible business conduct in Asia.* The “Regional Conference on Corporate Responsibility: Why Responsible Business Conduct Matters,” organised by the OECD and ESCAP in

close cooperation with ILO, the UN Global Compact and the GRI, was held in Bangkok from 2–3 November 2009. The conference attracted more than 200 participants from 16 countries across Asia and the Pacific with a focus on how to ensure that the private sector could be most effectively harnessed to drive long-term economic growth, environmental sustainability and social progress. Discussion included the respective roles of governments, business and other stakeholders in promoting RBC in OECD and ESCAP contexts, best practices from OECD and non-OECD countries in engaging in RBC activities and relating them to corporate governance, as well as the supporting role of the leading international corporate responsibility initiatives in promoting international responsible business. The conference also addressed the plans to update the Guidelines in 2010. The discussions confirmed that the Guidelines are well placed to assist Asia-Pacific firms strengthen trust and harmony in societies where they work and thus make them more profitable and sustainable. The results of this event were presented by Vice-Chair of the Investment Committee to the Committee on Trade and Investment of the Economic and Social Commission for Asia on 6 November 2009. OECD Watch organised a back-to-back capacity building and training seminar with representatives of Asian NGO community 4-6 November 2009.

### **III.e Other promotion by the OECD**

*High level interventions by the OECD on the role of the Guidelines.* On 10 November 2009, in Stockholm, the Deputy Secretary-General Aart de Geus delivered a key note speech at the 2009 EU Conference on Corporate Social Responsibility. The speech highlighted the Guidelines and their contribution to Professor Ruggie’s “Protect, Respect and Remedy Framework” for Business and Human Rights.

The OECD Deputy Secretary-General Richard Boucher participated in the Ministerial Session of the UN Global Compact Leaders Summit 2010, on 23 June 2010, in New York, NY. The DSG delivered remarks regarding the OECD and UN Global Compact partnership emphasising ways in which governments can support and incentivize businesses to incorporate poverty reduction into their business models. He also called for an active participation of the UN Global Compact in the update of the Guidelines. DSG Boucher also chaired a discussion on the Guidelines and responsible business conduct at the USCIB Global Investment Conference in Washington in March 2010<sup>20</sup>.

Officers of the Investment Committee and its Secretariat accepted invitations to promote the Guidelines at several international meetings over the period. Selected promotional events attended and activities undertaken include:

- The French CSR Ambassador represented the OECD at the 8<sup>th</sup> meeting of ISO/TBM/WG SR held in Copenhagen, Denmark on 5-17 May 2010 which approved the version WG SR N191 of Draft International Standard (DIS) version of ISO 26000, Guidance on social responsibility and agreed to send it to the Editing Committee for editing, and then to forwards it to ISO/CS no later than 30 June 2010 for registration as FDIS for ballot.<sup>21</sup>
- On 23 March 2010, the Egyptian Government held the Third Annual CSR Conference in Cairo, which focused on “Transparency & Reporting on CSR practices, Towards Sustainable Competitive Environment”. The OECD was represented by the Netherlands’ NCP and addressed reporting and disclosure under the OECD Guidelines.
- On 16 April 2010, the OECD presented the Guidelines in a workshop held by ProInversión, which served to consolidate ProInversión as the new Peruvian NCP. The workshop addressed topics including implementation experiences, the role of the National Contact Point and the importance of the Guidelines for the consolidation of the Peruvian investment climate.

- The OECD dialogue and co-operation with the economies of Southeast Asia continued. In May of 2009 a publication titled “Active in Southeast Asia” was disseminated promoting the Guidelines as they pertain to Corporate Governance in reference to state-owned enterprises (SOEs) and how to improve governance frameworks in the Asian economic, legal and regulatory context.
- The OECD worked with Indonesia on their approach to encouraging responsible business conduct at the 48<sup>th</sup> Meeting of the ASEAN Coordinating Committee on Investment in Penang, on 22 April 2010.
- The Guidelines were also recognized in the “King Report on Governance for South Africa” (King III) published in 2009, by the Institute of Directors in Southern Africa in regards to their international importance in addressing sustainability issues.<sup>22</sup>

Since March 2006, the OECD Investment Newsletter, published three times a year, has kept the larger investment policy community and other stakeholders informed about ongoing Investment Committee work on the Guidelines. In addition, the Secretariat answered numerous queries about the Guidelines from the media, universities and other interested parties, and continued to improve the OECD website dedicated to the Guidelines.

#### **IV. Active use of the “specific instance” facility**

##### ***IV.a Number of specific instances***

224<sup>23</sup> requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been filed: Argentina (6), Australia (3), Austria (5), Belgium (12), Brazil (18), Canada (9), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (12), Germany (12), Hungary (1), Ireland (2), Israel (1), Italy (5), Japan (4), Korea (7), Mexico (3), Netherlands (19), New Zealand (2), Norway (6), Peru (1), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (12), Turkey (3), United Kingdom (21), and United States (26).

Appendix E shows that 160 specific instances have been actively taken up and considered to date by NCPs.<sup>24</sup> 138 of these have been concluded or closed. Most specific instances dealt with Chapter IV (Employment and Industrial Relations). A rising number of cases also involved violation of human rights, a majority of them within the resources sector. Complaints relating to Chapter V (Environment) have also increased over the past few years. The only Guidelines chapter that has not been referenced in the context of a specific instance is Chapter VIII (Science and Technology). Smoother and more productive consultations among NCPs stand out as significant developments during the reviewed period. In particular, the New Zealand NCP reports working closely with assistance from Germany and Australia, on a recent initial assessment involving the employment practices of an enterprise in the telecommunications sector in New Zealand. The rise of specific instances in non-OECD adhering countries has also continued. The most noticeable development during the reporting period, however, was the increased recourse to mediation as a means for resolving specific instances. 9 specific instances were managed through mediation during this time frame, in a majority of cases resulting in positive outcomes for all parties involved.

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

*Australia* – In July 2007, the Australian NCP received a request regarding alleged non-observance with several provisions of the OECD Guidelines by mining company Cerrejon Coal in Colombia. Cerrejon Coal is jointly owned by BHP-Billiton, Anglo-American and Xstrata. The complaint to the Australian NCP

related specifically to BHP-Billiton but because of the joint ownership the Australian NCP consulted with the Swiss and UK NCPs to resolve this specific instance. This instance was suspended pending a report commissioned by the mining company's management and shareholders to review the firm's social engagement. The company appointed an independent facilitator in August 2008, and by December 2008, an agreement was reached between the company and the residents of Tabaco in regard to legacy issues and a way forward. The settlement included a package of compensation and sustainable projects. In this context, it was agreed that the issues relating to Tabaco have been satisfactorily resolved. The agreement between Cerrejon and the former residents of Tabaco is a significant, positive outcome that has been welcomed by all parties.

There are several other communities which may need to be resettled and with which formal agreements are still being considered, but the process of consultation is proceeding. As a follow up to the mediation procedures in February 2009, it was confirmed that Cerrejon would agree to engage an independent facilitator to work with individual communities to provide an oversight role where the communities were seeking independent support.

*Argentina* – The specific instance regarding ACCOR, a corporate services company, was brought to the attention of the Argentinean NCP on 28 November 2007, by National Deputy, Dr. Héctor P. Recalde and his legal representative, Dr. Hugo Wortman Jofre. The instance cited Chapters II (General Policies), IV (Employment and Industrial Relations) and VI (Combating Bribery) of the OECD Guidelines. This specific instance was concluded on 5 March 2009, through cooperative means on behalf of both parties, which the NCP finds mutually satisfactory. The outcome was published in two broadsheet newspapers of nation-wide circulation.

*United Kingdom* – In 2009, the UK NCP published four final statements. Two of these statements, concerning the activities of UNILEVER PLC in Pakistan, reflect the successful outcome of mediation sponsored by the UK NCP. The alleged breaches of Chapter II (General policies) and Chapter IV (Employment and Industrial Relations) were brought to the OECD, the first instance in October 2008, and the second in March 2009, by a trade union (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)). The UK NCP accepted the complaints and commenced a conciliation/mediation process between the parties using an independent mediator in an effort to reach a mutually acceptable resolution. The result of the independent conciliation mediation process was an exemplary success as both parties undertook specific commitments with regard to the issues presented.

## **V. Implementation of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones**

Adhering countries have continued to disseminate and promote the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. The United Kingdom provides explicit reference and links to the tool in the business and human rights toolkit sent by the British Foreign & Commonwealth Office to its overseas posts to assist them in the handling of complaints they may receive on the behaviour of UK companies in weak governance zones. Germany references the Risk Awareness Tool in its government reports on crisis prevention and Norway included reference to the tool in its 2009 white paper "*Corporate Social Responsibility in a Global Economy*". Sweden has translated the tool into Swedish for wider dissemination to Swedish enterprises operating in weak governance zones, and the Swedish Minister for Trade has strongly emphasized the importance of the tool in the Swedish Parliament. More adhering countries have added the Risk Awareness Tool to their NCP or corporate responsibility websites (Switzerland, New Zealand).

Developing countries are increasingly making active use of the OECD Risk Awareness Tool to shape their own policies. The International Conference on the Great Lakes Region (ICGLR) has recognized its usefulness as a source of guidance for the implementation of the ICGLR Protocol against the illegal exploitation of natural resources.<sup>25</sup> The Government of the Democratic Republic of the Congo agreed to use it to enhance transparency and accountability in the extractive sector.

In his 2010 report, the Special Representative of the UN Secretary General on business and human rights, Professor John Ruggie, highlighted the Risk Awareness Tool as a notable case where governments provided meaningful assistance to enterprises operating in conflict-affected areas.<sup>26</sup> The Tool was also included in the list of cross-sectoral intergovernmental initiatives listed in the Draft ISO 26000 Guidance on Social Responsibility.<sup>27</sup>

The OECD Secretariat has continued to actively promote the Risk Awareness Tool. The OECD Deputy Secretary-General Aart de Geus stressed the due diligence approach taken in the Risk Awareness Tool at the EU Conference on Corporate Social Responsibility which was held in Stockholm on 10 November 2009. The OECD Secretariat was invited to join the “Task Force” on the illegal exploitation of natural resources in the Great Lakes Region,<sup>28</sup> and participated in meetings in both OECD and African countries, building support for the implementation of the OECD Risk Awareness Tool in the mining sector.

#### ***V.a Pilot project on due diligence in the mining and minerals sector***

On 6 October 2009 the Investment Committee and the Development Assistance Committee approved a joint project to implement the Risk Awareness Tool in the mining and minerals sector.<sup>29</sup> An OECD-hosted multi-stakeholder working group was set up with the mandate to develop practical due diligence guidance for responsible business conduct in conflict-affected and high-risk areas. The working group consists of OECD member and partner countries, international organisations, industry and trade organisations, mining companies, mineral trading and processing companies, brand end-user companies and civil society organisations.

The OECD Secretariat convened a private sector consultation on 8 December 2009 that mobilised views from leading mining, smelting and trade organisations and informed the development of further work on due diligence in the mining and minerals sector by the OECD-hosted working group. The working group agreed to structure its work around two pillars: develop due diligence guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas, with particular regard to the Democratic Republic of Congo (DRC), and undertake a stock taking of due diligence tools in the mining sector. The OECD will coordinate this exercise in order to identify possible gaps and inform future work for developing practical guidance on responsible mining.

Since then, members of the OECD-hosted working group have engaged into constructive dialogue through an OECD-hosted web platform to develop draft due diligence guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas.

As a result of a multi-stakeholder expert meeting held on 28 April 2010, the OECD hosted a working group and invited experts adopted a five step due diligence framework articulated as follows: strengthen company management systems, including chain of custody tracking system over the mineral supply chain; identify facts and assess risk in the supply chain; design and implement mitigation strategies by establishing improvement plans or discontinuing engagement with suppliers; ensure independent third-party audit; report on supply chain due diligence and findings. Participants commended the draft guidance and recognised its added-value as providing a global framework on responsible supply chain management of conflict commodities encompassing all actors involved, beyond mineral, country or regional specific initiatives.

The UN Group of Experts on the Democratic Republic of the Congo relied on the OECD draft guidance's definition of risk-based due diligence and endorsed the proposed draft due diligence five step framework in its 2010 interim report to the UN Security Council.<sup>30</sup>

The International Conference on the Great Lakes Region (ICGLR) recognised the OECD guidance as a key contribution to ICGLR efforts to combat the illegal exploitation of natural resources in the Great Lakes Region. ICGLR countries recognised that the OECD guidance on due diligence is complimentary and will feed into the ICGLR initiative on certification that will be submitted to the Summit of the ICGLR 11 Heads of States in Kinshasa. The OECD and the ICGLR will jointly organise a conference to be held in Nairobi, Kenya on 29-30 September 2010 to finalise the draft due diligence guidance on responsible supply chain management of conflict minerals. This event will bring together key players in the supply chain of tin-tantalum-tungsten and gold as well as representatives of OECD, partner countries, international and civil society organisations. A final draft will be presented to the OECD Investment Committee for approval in fall 2010.

This work also contributes to further advancing G20 Pittsburgh commitments to fight corruption, money laundering, terrorist financing and the illicit outflow of capital from developing countries.

## NOTES

- <sup>1</sup> Available at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
- <sup>2</sup> 2010 Ministerial Conclusions, C/MIN(2010)6/FINAL, paragraph 12.6.
- <sup>3</sup> John Ruggie, “Updating The Guidelines for Multinational Enterprises Discussion Paper,” and “The Corporate Responsibility to Respect Human Rights in Supply Chains”. Both papers were presented at the 10<sup>th</sup> OECD Roundtable on Corporate Responsibility
- <sup>4</sup> Specific instance counts are based on the information provided in the NCP Annual Reports by 40 of the OECD Guideline adhering countries, NCP Annual Reports are outstanding from Iceland and Luxembourg.
- <sup>5</sup> The number of specific instances raised reflects those numbers reported in NCP Annual Reports. Not all NCPs report cases which have not been formally accepted.
- <sup>6</sup> Four additional specific instances were added from the UK NCP, these instances were raised during the 2004 – 2005 reporting period and though included in the total specific instances raised count, they are not reflected in the new instances for the 2009 – 2010 reporting period.
- <sup>7</sup> “Business and Human Rights: Further steps toward the operationalisation of the “protect, respect and remedy framework”, A/HRC/14/27 (9 April 2010), paragraphs 13 and 98.
- <sup>8</sup> Committee of Consumer Policy, Committee for Employment, Labour and Social Affairs, Environment Policy Committee, Committee on Financial Markets, Committee on Fiscal Affairs, Corporate Governance Committee, and the Working group on Bribery in International Business Transactions
- <sup>9</sup> Argentina, Australia, Austria, Chile, Czech Republic, Egypt, Germany, Greece, Hungary, Ireland, Israel, Italy, Mexico, New Zealand (with a Liaison Group consisting of government, business and trade unions representatives), Peru, Poland, Slovak Republic, Spain, Switzerland and United States.
- <sup>10</sup> Brazil, Canada, Iceland, Japan, Korea, Portugal, Turkey and United Kingdom.
- <sup>11</sup> Romania and Morocco’s NCP is comprised of government and business representatives.
- <sup>12</sup> Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Slovenia and Sweden. Several of these also have multiple governmental department NCPs.
- <sup>13</sup> Finland and Norway are currently in the process of restructuring their NCPs to reflect a mixed structure of four independent appointed experts, including a leader, and two full-time secretariats, all localized outside of the government, while administrative responsibility and financial resources for the NCPs will rest with the government.
- <sup>14</sup> In 2007, the Dutch NCP has been changed from an interdepartmental office to a mixed structure consisting of four independent experts and four advisors from four ministries.
- <sup>15</sup> Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period. Iceland and Luxembourg NCP Annual Reports are outstanding.

16 Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period. Iceland and Luxembourg NCP Annual Reports are outstanding.

17 The Netherlands National Contact Point, "Peer-Review," The Netherlands National Contact Point website, <http://www.oecdguidelines.nl/get-started/peer-review/>

18 Available at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

19 The Global Reporting Initiative (GRI), "The Amsterdam Global Conference on Sustainability and Transparency," Amsterdam GRI Conference website, <http://www.amsterdamgriconference.org/glance>, accessed July 2010

20 See Annex 1.4 for a transcript of these two speeches which are also available online at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

21 International Organization for Standardization (ISO), "News and Media," International Organization for Standardization website, <http://www.iso.org/iso/pressrelease.htm?refid=Ref1294>, <http://www.iso.org/iso/pressrelease.htm?refid=Ref1299>, and <http://www.iso.org/iso/pressrelease.htm?refid=Ref1321>, accessed July 2010

22 The Institute of Directors in Southern Africa (IoDSA), "King Code of Governance Principles" (King III), IoDSA website. <http://african.ipapercms.dk/IOD/KINGIII/kingiiiireport/>, accessed July 2010

23 Specific instance counts are based on the information provided in the NCP Annual Reports by 40 of the OECD Guideline adhering countries, NCP Annual Reports are outstanding from Iceland and Luxembourg. The number of specific instances raised reflects those numbers reported in NCP Annual Reports. Not all NCPs report cases which have not been formally accepted.

24 The number of specific instances actively taken up by NCPs is the number of specific instances listed in Appendix E, adjusted for specific instances that are listed more than once on the list because more than one NCP was involved and more than one NCP reported on the specific instance in the list.

25 [www.oecd.org/daf/investment/mining](http://www.oecd.org/daf/investment/mining).

26 See Report of the UNSGSR "Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework", A/HRC/14/27 (9 April 2010), footnote 30,

27 Draft International Standard ISO 26000 Guidance on Social Responsibility (ISO/DIS 26000), Table A1: Examples of cross-sectoral initiatives, Section 1: Intergovernmental initiatives.

28 The "Task Force" on the illegal exploitation of natural resources in the Great Lakes Region was set up to foster exchange of information on current initiatives, identify gaps and make recommendations for decision-making bodies where possible. The Task Force, initially composed of the United Nations, the United States, the European Commission and EU member states now includes other interested countries and international organisations. For the time being, the Office of the Special Representative for the Great Lakes Region of the European Union (EUSR), Roeland van de Geer, is acting as the Task Force's Secretariat.

29 [www.oecd.org/daf/investment/mining](http://www.oecd.org/daf/investment/mining).

30 See Interim report of the Group of Experts on the Democratic Republic of the Congo, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009) [S/2010/252 (25 May 2010), paragraphs 67-68-69].