

# 2011 Update of the OECD Guidelines for Multinational Enterprises

Prof. Dr. Roel Nieuwenkamp

Chair of the Working Party of the  
OECD Investment Committee

# 1. 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)
- First round of negotiations in October 2010, 5th and last round on 29 April 2011



## 2.2 Adoption by the 2011 Ministerial Council Meeting



US Secretary of State, Ms. Hillary Clinton, at the adoption of the update:  
*“[I]f 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: Stakeholder engagement and decent living wage

### ***Enterprises should:***

***“Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”***

(Chapter II. General Policies, paragraph A.14)

***“(...) 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)



## 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 NCPs



## 3.5 Main results: IC's Proactive Agenda

- Focus on positive role MNEs can play in sustainable development
- Development of practical tools or guidance
  - Example: due diligence guidance for mining sector
- Development in co-operation with NCPs, BIAC, TUAC and OECD Watch
- The IC will use suggestions made this week when discussing its proactive agenda in October
- NCPs will function as antennas for the IC year round

Your input to the Investment Committee's proactive agenda on responsible business conduct will be most welcome.

Let's share ideas!