



The OECD Guidelines for Multinational Enterprises

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Introduction

International investment has spearheaded the globalisation process, strengthening and deepening the ties that bind the world's regions together. Multinational enterprises (MNEs) are one of the main conduits through which investment is channelled and their evolution has reflected broader developments in OECD economies. The rise of service and knowledge-intensive sectors has been associated with a push by service and technology firms into the international market place. Although large multinationals continue to dominate international investment, numerous smaller firms now play a more visible role on the international scene. Advances in technology and in the design of organisations have increased the diversity of business forms and the complexity and speed of economic transactions. This has tended to blur the boundaries of the firm and to heighten the value of transparency in business activities.

The policy environment for international investment has generally become more favourable and countries now compete actively for such investments. Today, MNEs are an integral part of the international economy, as agents for beneficial investment flows and for diffusion of technology and as an important source of tax revenues. At the same time, public concerns remain about their activities and many initiatives are under way that aim to address these concerns. Since 1976 – when the *OECD Guidelines for Multinational Enterprises* (the Guidelines) were originally adopted as part of the Declaration on International Investment and Multinational Enterprises – the OECD has promoted co-operation in this field through a balanced framework of non-binding principles and standards addressed to governments and enterprises. The other elements of the Declaration contain commitments by governments to provide national treatment for foreign-controlled enterprises, to avoid conflicting requirements on enterprises and to co-operate regarding investment incentives and disincentives. Besides the OECD members, four non-OECD countries (Argentina, Brazil, Chile and the Slovak Republic, the latter having since joined the OECD) have adhered to the Declaration (including the Guidelines) and others that are willing and able to meet the disciplines set out in the Declaration would be welcome.

This Policy Brief describes what the Guidelines are and how they are implemented by the different parties involved. It also underlines the importance of the 2000 Review in making the Guidelines a more complete and better adapted instrument. However, this Policy Brief being necessarily general, a copy of the full texts should be consulted for a more comprehensive understanding of the matters covered by the Guidelines and how they relate to particular issues (see contact details at the end). ■

What are the OECD Guidelines for Multinational Enterprises?

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries (the OECD members plus Argentina, Brazil and Chile). They provide voluntary principles and standards for responsible business conduct, in a variety of areas including employment and industrial rela-

tions, human rights, environment, information disclosure, competition, taxation, and science and technology (see *The OECD Guidelines for Multinational Enterprises: Chapters*).

Although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enter-

prises. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

The Guidelines have several distinguishing features that helped them gain acceptance and continue to ensure they are supported. First, observance of the Guidelines is voluntary. Their non-binding nature, however, does not imply less commitment by adhering governments to encourage their observance. The active system under which the Guidelines are promoted and implemented attests to

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Chapters

Preface: *situates the Guidelines in a globalising world. The common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise.*

- I. **Concepts and Principles:** *sets out the principles which underlie the Guidelines, such as their voluntary character, their application world-wide and the fact that they reflect good practice for all enterprises.*
- II. **General Policies:** *contains the first specific recommendations, including provisions on human rights, sustainable development, supply chain responsibility, and local capacity building, and more generally calls on enterprises to take full account of established policies in the countries in which they operate.*
 - **Disclosure:** *recommends disclosure on all material matters regarding the enterprise such as its performance and ownership, and encourages communication in areas where reporting standards are still emerging such as social, environmental and risk reporting*
- III. **Employment and Industrial Relations:** *addresses major aspects of corporate behaviour in this area including child and forced labour, non-discrimination and the right to bona fide employee representation and constructive negotiations.*
- IV. **Environment:** *encourages enterprises to raise their performance in protecting the environment, including performance with respect to health and safety impacts. Features of this chapter include recommendations concerning environmental management systems and the desirability of precaution where there are threats of serious damage to the environment.*
- V. **Combating Bribery:** *covers both public and private bribery and addresses passive and active corruption.*
- VI. **Consumer Interests:** *recommends that enterprises, when dealing with consumers, act in accordance with fair business, marketing and advertising practices, respect consumer privacy, and take all reasonable steps to ensure the safety and quality of goods or services provided.*
- VII. **Science and Technology:** *aims to promote the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, thereby contributing to the innovative capacities of host countries.*
- VIII. **Competition:** *emphasises the importance of an open and competitive business climate.*
- IX. **Taxation:** *calls on enterprises to respect both the letter and spirit of tax laws and to co-operate with tax authorities.*

the importance adhering countries give the Guidelines.

Also, the Guidelines' basic approach is balanced. The assumption is not that enterprises need to be "controlled" but that internationally agreed guidelines can help prevent misunderstandings and build an atmosphere of mutual confidence and predictability between business, labour and governments. A continuing, pragmatic approach has characterised the Guidelines process and helped make them work.

Although they are addressed to enterprises, the Guidelines need the support of the business community, labour representatives and non-governmental organisations in order to be effective. The countries adhering to the Guidelines will work with all of these actors and there is every reason to believe that constructive collaboration will develop to help the business community define and achieve appropriate standards of conduct. In addition, the post-Review period is likely to be one of expanding adherence to the Declaration of which the Guidelines are an integral part.

Several non-OECD members have already adhered to the Guidelines and others that are willing and able to meet the disciplines in the Declaration would be welcome.

Finally, the Guidelines are part of a package. They come under the OECD Declaration on International Investment and Multinational Enterprises, a broad political commitment adopted by the OECD Governments in 1976 to facilitate direct investment among OECD Members.

The Declaration on International Investment and Multinational Enterprises promotes a comprehensive, interlinked and balanced approach for governments' treatment of foreign direct investment and for enterprises' activities in adhering countries. The OECD instruments on international investment and multinational enterprises are one of the main means by which the OECD assists adhering countries in working towards a liberal regime for foreign direct investment, while at the same time ensuring MNEs operate in harmony with the countries where they are located. ■

What is the importance of the 2000 Review?

The recently concluded Review enabled the OECD to respond to the need for a thorough consideration of the Guidelines and to ensure their continued relevance and effectiveness in the rapidly changing global economy. New issues have gained prominence since the Guidelines were first issued in 1976 and the international consensus on appropriate business conduct is evolving rapidly, spurred in no small part by the efforts of multinational firms to define standards for themselves.

Public concerns about the impact of deepening globalisation on home and host societies meant that the most recent Review was conducted in a context of growing interest and visibility. The Review benefited from consultations with the business community, labour representatives, non-governmental organisations and non-member governments. Postings of the draft on the Internet and solicitation of public comment further increased the transparency and openness of the Review process. These sources all provided essential inputs to the development of the revised recommendations and procedures to enhance implementation. ■

What has changed?

Many features of the Guidelines have been maintained – observance by firms is still voluntary; the institutional structure of the follow-up procedures is broadly unchanged; and the Guidelines remain an integral part of the OECD Declaration.

In comparison with earlier reviews (1979, a "mid-term review" in 1982, 1984 and 1991) however, the changes to the text are far-reaching and reinforce the core elements – economic, social and environmental – of the sustainable

The Declaration on International Investment and Multinational Enterprises

The Declaration on International Investment and Multinational Enterprises comprises four instruments for international co-operation:

- The **Guidelines for Multinational Enterprises** represent a non-binding code of conduct of corporate behaviour addressed to the multinational enterprises;
- Under the **National Treatment** instrument, adhering countries commit themselves to treating foreign-controlled enterprises operating in their territories no less favourably than domestic enterprises in like situations;
- An instrument on **Conflicting Requirements** calls on adhering countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries;
- An instrument on **International Investment Incentives and Disincentives** provides for efforts among adhering countries to improve co-operation on measures affecting international direct investment.

development agenda. With the addition of recommendations relating to the elimination of child and forced labour, all internationally recognised core labour standards are now covered by the Guidelines. The environment section now encourages enterprises to raise their environmental performance, through such measures as improved internal environmental management, stronger disclosure of environmental information, and better contingency planning for environmental impacts. A recommendation on human rights has been introduced. New chapters on combating corruption and on consumer interests have also been added. The chapter on disclosure and transparency has been updated to reflect the *OECD Principles on Corporate Governance* and to recognise and encourage progress in enhancing firms' social and environmental accountability.

The revisions to the implementation procedures maintain the focus on the National Contact Points, as the key government institution responsible for furthering effective implementation of the Guidelines. The National Contact Points will continue to undertake promotional activities, handle enquiries on the Guidelines, and discuss matters covered by them, including implementation in specific instances. However, the Review provides more guidance to National Contact Points in fulfilling their role. The main revisions are:

- The roles and responsibilities of the National Contact Points are sharpened and clarified via Procedural Guidance attached to the Council Decision on implementation procedures;
- Annual meetings will be held to allow National Contact Points to share their experiences in promoting the Guidelines and to provide ways and means to encourage further observance of the Guidelines;

- Each National Contact Point will submit an annual report of its activities to the OECD Committee on International Investment and Multinational Enterprises (CIME).

The Review has also clarified the CIME's broad oversight role. The CIME will continue to provide clarifications of the meaning of the Guidelines, as necessary, in specific instances and in response to requests or queries from adhering governments, business or labour representatives. It will serve as a forum for addressing all matters covered by the Guidelines and will oversee their implementation. The new Procedural Guidance attached to the Council Decision also provides guidance for exchanges of views on the activities of National Contact Points and for calling on experts to assist in any matter covered by the Guidelines.

Finally, with regard to non-adhering countries, the revised Guidelines make clear that the recommendations represent good practice wherever enterprises operate, not just within the OECD area. The Review recognises, however, that the particular circumstances of individual host countries need to be taken into account and that the implementation procedures need to be adapted to the greater difficulties that arise for National Contact Points when looking into matters covered by the Guidelines in non-adhering countries. ■

What is the institutional mechanism for implementing the Guidelines?

The institutional set-up for promoting and implementing the Guidelines is described in the *OECD Council Decision* and its *Procedural Guidance*.

It consists of three main elements: the National Contact Points; the OECD Committee on International Investment and Multinational Enterprises (CIME); and the advisory Committees to the OECD of business and labour federations, the Business and Industry Advisory Committee and the Trade Union Advisory Committee respectively. Other parties may also be involved.

The **National Contact Point** – often a government office – is responsible for encouraging observance of the Guidelines in its national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The National Contact Point:

- Handles enquiries about the Guidelines;
- Discusses matters related to the Guidelines and assists in solving problems that may arise in this connection (see “Implementation in Specific Instances” below);
- Gathers information on national experiences with the Guidelines and reports annually to the CIME.

Because of the central role it plays, the effectiveness of the National Contact Point is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The recently concluded Review has enhanced the accountability of National Contact Points by calling for annual reports of their activity, which will serve as a basis for exchanges of view on the functioning

of the National Contact Points among the adhering governments.

The CIME, comprising all OECD Member countries and observers, is the OECD body responsible for overseeing the functioning of the Guidelines and it is expected to take steps to enhance their effectiveness. This responsibility applies not only to the Guidelines but to all the elements of the Declaration on International Investment and Multinational Enterprises. Regarding the Guidelines, its responsibilities include:

- Responding to requests from adhering countries on specific or general aspects of the Guidelines;
- Organising exchanges of views on matters relating to the Guidelines with social partners and non-members;
- Issuing “clarifications” as necessary (see “Clarifications” below);
- Reviewing the Guidelines and/or the procedural Decisions so as to ensure their relevance and effectiveness;
- Reporting to the OECD Council on the Guidelines.

The non-binding nature of the Guidelines precludes the CIME from acting as a judicial or quasi-judicial body. Nor should the findings or statements made by a National Contact Point (other than interpretations of the Guidelines) be questioned through a referral to the CIME.

The CIME has also established a Working Party on the Declaration. It meets two to three times a year to consider questions relating to the Guidelines, and makes recommendations to the CIME.

As the Guidelines are addressed to enterprises, business and labour input is especially important. The CIME regularly consults with the **Business and Industry Advisory Committee (BIAC)** and the **Trade Union Advisory Com-**

mittee (TUAC) on matters relating to the Guidelines and on other issues concerning international investment and multinational enterprises.

BIAC and TUAC are accredited to the OECD as official advisory bodies and have as their members business and labour federations in each of the adhering countries. BIAC and TUAC both have secretariats in Paris that are in regular contact with the OECD and Member country delegations.

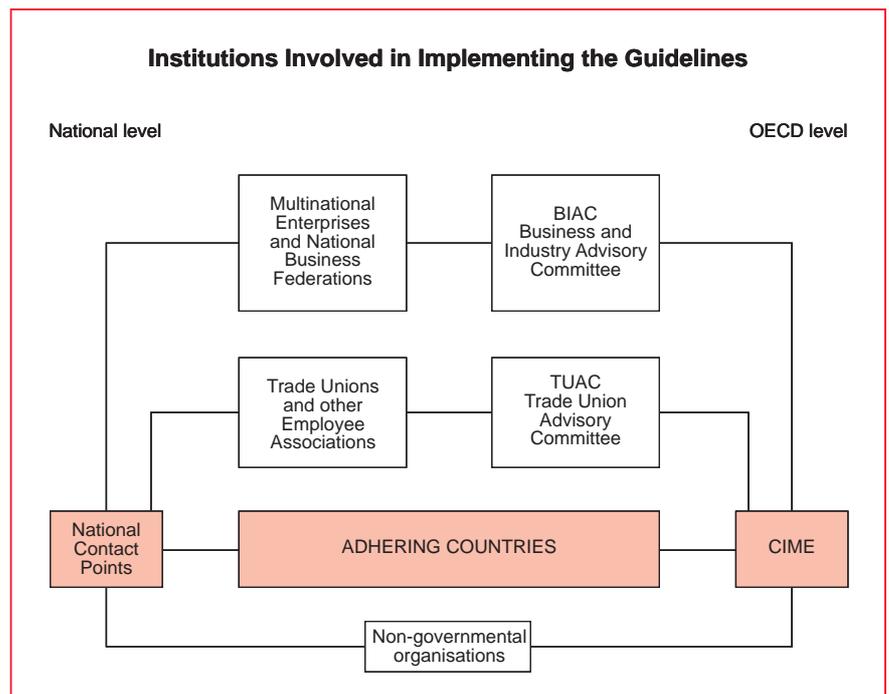
BIAC and TUAC may request consultations with the National Contact Points on issues related to the Guidelines. BIAC and TUAC can also raise such issues directly with the CIME. In addition, they are responsible for informing their member federations about developments in the Guidelines and for seeking their members’ inputs in Guidelines implementation procedures. They may also participate in promotional activities organised by the National Contact Points or by the CIME on a national, regional or multilateral basis.

Non-governmental organisations (NGOs) were first involved in the 2000 Guidelines review. They may request consultations with the National Contact Points on issues related to Guidelines. They may also participate in promotional activities organised by the National Contact Points or by the CIME on a national, regional or multilateral basis.

The OECD has committed itself to periodically inviting BIAC, TUAC, and other NGOs to express their views on matters covered by the Guidelines in the future. ■

How are the Guidelines implemented?

The OECD Council Decision and Procedural Guidance describe the various manners by which the governments of adhering countries have agreed to promote the implementation of the



Guidelines by enterprises operating in or from their territory. ■

Information and promotion

Although the CIME itself may organise promotional activities like symposiums, seminars or other conferences, information and promotion of the Guidelines is essentially the role of National Contact Points. The National Contact Points' functions associated with information and promotion are fundamentally important to enhancing the profile of the Guidelines.

National Contact Points are required to make the Guidelines better known and available by appropriate means, including in national languages. On-line information may be a cost-effective means of doing this. English and French language versions are available from the OECD, and website links to the OECD Guidelines website are encouraged. As appropriate, National Contact Points will also provide prospective investors, both inward and outward, with information about the Guidelines. In their efforts to raise awareness of the Guidelines, National Contact Points will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, employee organisations, other non-governmental organisations, and the interested public. ■

Implementation in specific instances

When issues arise concerning implementation of the Guidelines in relation to specific instances of business conduct, the National Contact Point is expected to help resolve them. Generally, issues are dealt with by the National Contact Point in whose country the issue has arisen, but further contacts at the bilateral level may

be pursued between National Contact Points in adhering countries.

After making an initial assessment of whether the issues raised merit further examination, the National Contact Point will offer its good offices to help the parties involved to resolve the issues. Where no agreement can be reached on the issues raised, the National Contact Point will then issue a statement or make recommendations as appropriate.

Any person or organisation may approach a National Contact Point to enquire about a matter related to the Guidelines. ■

Clarifications

As the Guidelines are drafted in general terms, so as to apply in all adhering countries with their diversity of legal systems and practices, "clarifications" of the meaning of the Guidelines may be necessary in specific circumstances. The purpose of the clarification is to provide additional information about whether and how the Guidelines apply to a particular business situation. Although clarifications may arise in connection with the activities of a specific enterprise, they are not intended to assess the appropriateness of that enterprise's conduct.

The Guidelines clarification procedure works as follows. If a party is uncertain about the Guidelines' applicability in a particular context, that party should approach the National Contact Point. Enterprises, business and labour organisations and any other interested party may raise such issues. If an enterprise is directly concerned, the National Contact Point should contact the enterprise to inform it that an issue related to the Guidelines has been raised. The National Contact Point, business and labour representatives and other interested parties then try to clarify the matter. It might be appropriate for

the National Contact Point to contact other National Contact Points if the issue under consideration concerns more than one adhering country.

Whenever a National Contact Point gives its opinion as to the relevance of the Guidelines in specific instances, it keeps in mind the international character of the Guidelines and the need to avoid conflicting national interpretations. Where there is any doubt or where there are divergent views, the matter should be brought to the attention of the CIME before the NCP gives a final answer. Final responsibility for clarifications lies with the CIME, but it relies on the National Contact Points to assume as much as possible of the task of ensuring that the meaning of the Guidelines is clear in each national context.

A request for clarification may be referred to the CIME by government authorities or by TUAC or BIAC. The CIME discusses the matter, and consults with BIAC and TUAC. If an enterprise is directly concerned, it also may express its view to the CIME orally or in writing or through BIAC. After these deliberations, the CIME may provide a clarification of how the Guidelines apply in a situation like the one in question. However, the CIME's examination of the need for, and eventual provision of, a clarification concerns the application of the Guidelines to the issue raised. The clarification is not a judgement on the behaviour of an individual enterprise – hence, clarifications that arise in connection with individual firms do not refer to them by name. ■

Implementation in non-adhering countries

The 2000 Review of the Guidelines recommends observance of the Guidelines by enterprises wherever they operate, and not only in the

OECD area. Hence, the Council Decision and Procedural Guidance also provide for implementation of the Guidelines in non-adhering countries. For instance, with regard to information and promotion, National Contact Points are expected to respond to

enquiries from governments of non-adhering countries. In the case of specific instances arising in non-adhering countries, the 2000 Review recognises that effective implementation of the Guidelines in such circumstances may be more difficult. Nonetheless,

National Contact Points are encouraged to take steps to develop an understanding of the issues at stake, for instance through contacts with the management of the firm in the home country or with officials in the non-adhering country. ■

What to remember about the OECD Guidelines for Multinational Enterprises

- The Guidelines are the only comprehensive, multilaterally endorsed code of conduct for multinational enterprises;
- The Guidelines establish principles covering a broad range of issues in business ethics including information disclosure, employment and industrial relations, environment, corruption, consumer interests, science and technology, competition, and taxation;
- The Guidelines are non-binding for enterprises. Nonetheless, governments have committed themselves to promoting their observance and effective implementation;
- The Guidelines are not aimed at introducing differences in treatment between multinational enterprises and domestic enterprises, but reflect good practice for all;
- The Guidelines are designed to prevent misunderstandings and build an atmosphere of confidence and predictability between business, labour, governments and society as a whole;
- The Guidelines are supported by OECD governments, as well as several non-member countries;
- The Guidelines are supported by both business and labour organisations, as well as several non-governmental organisations.

For further information

More information about the text and implementation procedures of the OECD Guidelines for Multinational Enterprises can be obtained from:

- The OECD Guidelines website at www.oecd.org/daf/investment/guidelines/index.htm
- From the OECD Secretariat by e-mail: daf.contact@oecd.org

or by post:

OECD
DAFFE/CMIS (Guidelines)
2, rue André Pascal
75775 Paris Cedex 16
France

You may also get in touch with the National Contact Points of the adhering countries (contact details on the OECD Guidelines website), who will provide you with additional information on the Guidelines.

Further reading

- The full OECD Guidelines for Multinational Enterprises are available online at www.oecd.org/daf/investment/guidelines/index.htm.
- Corporate governance at OECD, visit www.oecd.org/daf/corporate-affairs/.
- Corporate Responsibility: Private Initiatives and Public Goals, OECD 2001.
- “Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” (1998 Aarhus Convention) at www.unep.org/press/docs/cep43e.pdf.
- Deciphering Codes of Corporate Conduct: A Review of their Contents (March 2000), working paper available at: www.oecd.org/daf/investment/working-papers.htm#1999/2.
- Even-Granboulan, Geneviève, *Éthique et Économie – Quelle morale pour l’entreprise et le monde des affaires?* L’Harmattan (Paris) 1998.
- Forum on the OECD MNE Guidelines: five perspectives from government, business, labour, NGO and non-OECD representatives, in *OECD Observer*, No. 225, March 2001.
- ILO Declaration on Fundamental Principles and Rights at Work 1998, at www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm.
- North American Agreement for Labour co-operation (NAALC): www.naalc.org/english/infocentre/NAALC/NAALC3.htm.
- Office of the Compliance Advisor Ombudsman of the International Finance Corporation (of the World Bank Group), at: www.ifc.org/cao/. Operational Guidelines at: www.ifc.org/cao/english/english/guidelines/guidelines.html.
- Thomas, Terry, and Eyres, Bill, “Why an Ethical Business is Not an Altruistic Business” in *Visions of Ethical Business*, No. 1, Oct. 1998, Financial Times Management, London.
- World Bank Inspection Panel Operating Procedures at: www.worldbank.org/html/ins-panel/operating_procedures.html#IIA.