

**CONFERENCE ON THE ROLE OF INTERNATIONAL INVESTMENT IN DEVELOPMENT,
CORPORATE RESPONSIBILITIES AND THE OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES, Paris, 20-21 September 1999**

**Analytical Summary of the discussions on Corporate Responsibilities
and the OECD *Guidelines* for Multinational Enterprises**

This paper summarises further consultations on the OECD Guidelines for Multinational Enterprises that took place during the Conference. It forms part of the Conference Proceedings that were issued as an OECD publication.

Conference participants discussed the importance of corporate standards and responsibilities, notably voluntary codes of conduct and *the OECD Guidelines for Multinational Enterprises*, at a time when the latter are undergoing comprehensive review. They acknowledged the value of the OECD's work in this field, in an increasingly globalised and interdependent world where MNEs are subject to closer public scrutiny and responsibility and accountability for their economic activities are becoming important factors. A number of key points emerged around the two main topics: i) "Corporate responsibility: the importance of standards and the role of voluntary codes of corporate conduct" and ii) "The OECD *Guidelines* for Multinational Enterprises".

i) Corporate responsibility

What is driving the development of codes of corporate conduct?

- *Companies have come under increasing pressure from consumers, non-governmental organisations and other stakeholders to adhere to more demanding behavioural norms*

Most of the participants pointed out that the need for voluntary codes of conduct is greater in an environment where distribution networks and supply relationships are increasingly globalised. Stakeholders have reflected this trend by examining the effect of business practices on matters beyond those previously of concern to those participating in company ownership and control. Consumers want to know that the products they buy are not made through ethically questionable means. Pressures for social and environmental regulation arise out of the market, and the best instrument of accountability is public opinion and the media. The time has long gone when companies were dealing merely with laws and legal compliance: self-regulation can be more challenging than mere compliance.

One NGO participant evoked three elements that society expects, as business's contribution to sustainable development nationally and internationally: environmental responsibility, maintenance and achievement of high social standards and a contribution to economic equity. Transparency and accountability are central.

- *Today's competition relies not only on prices or technical quality but on social quality too*

An NGO representative said that, over the last years, more and more MNEs have seen benefits flowing from an approach to their relationship with stakeholders that involves more transparency and recognition of responsibility. They take seriously constructive dialogue with stakeholders on their environmental and social performance. Such companies find that they are rewarded through improved reputation, a very valuable asset in the market place.

- *Some participants were of the opinion that codes of conduct are developing because of government failure*

A business representative as well as NGO representatives noted that some codes were a response to perceived policy failure of national governments to put in place or enforce basic employment or environmental standards.

Role of the codes of conduct

- *Communications vehicle or management tool?*

A business representative said that codes of conduct are another communication vehicle, projecting certain intentions and standards outwards from the company to be better understood by civil society.

An NGO representative disagreed with the view that codes of conduct should be seen only as a communication vehicle and public opinion exercise and felt that they should be used as a management tool in the everyday life of the enterprise to promote high standards of behaviour.

Monitoring and implementation

- *Management controls provide firms with an essential tool to make good on their ethical commitments*

Most participants agreed that management controls are essential elements of a code's effectiveness. Without agreed supervision and monitoring, individual codes of conduct are no more than statements of intent. Two control systems have been identified: the internal verification system and the external one (audit). There is no uniform internal management and verification process and the competence and independence of the external monitoring that exists varies greatly as well. There was divergence of opinion as to whether external verification is necessary.

- *and standardised management systems have emerged*

These systems typically consist of a code of conduct containing commitments to comply with the law and to engage in a process of continual improvement and of internal management procedures designed to make these commitments operationally effective. Two examples are ISO 14000 in the environment and SA 8000 for social standards. Specialised firms, large accountancy and consulting companies and NGOs have begun offering services (consulting, certification and auditing) designed to assist firms in doing this. The representative of the organisation which created the SA 8000 (CEPAA) described the code as one which sets specific performance standards with minimum requirements; this is what makes it verifiable. Its auditing techniques specify corrective and preventive action to be taken by the companies and it is based on "continuous improvement".

- *There was concern that these codes apply only to certain sectors*

Although this was confirmed by the CEPAA representative, additional work is under way to cover new sectors which are not covered today (i.e. mining, extraction and food industry).

- *and the cost of compliance to standardised codes could be high*

A number of participants called attention to the high cost of enforcement of these codes. There was a question of where these costs fall and a concern that they may fall on the suppliers in particular in the developing countries. The representative of CEPAA replied that there are real costs but these would be outweighed by long-run benefits. The same issue arises where environmental codes of conduct are considered; companies in developing countries see the environmental requirements as an additional cost, which might impinge on their competitive position. As a response to that problem, the idea was put forward to reduce the cost of the codes of conduct by linking the social and environmental improvements together, since they are not mutually exclusive.

Experience with codes of conduct

- *Positive contribution*

Although only anecdotal evidence is available, MNEs seem to have used codes as a powerful tool to enhance their credibility in explaining to existing or potential stakeholders that they expect and demand certain standards of behaviour. It was said that in some cases, the adoption of codes has led to improvement of working conditions with respect to child labour or health and safety at the work place.

- *Problems encountered*

It was noted that the multiplicity of codes of conduct could create a number of problems. 1) Because of their diversity they may prove expensive and inefficient; 2) there may be a lack of consistency which causes confusion; 3) monitoring and verification of individual codes may be weak and 4) some of them are not comprehensive enough to be credible. These arguments, according to the CEPAA representative constitute the main reason for the establishment of the SA 8000.

- *Assessment is difficult to make*

There was common agreement that, despite anecdotal evidence on their positive contribution, too little is really known to draw conclusions on their effectiveness. Corporate codes, however, constitute an important new approach that needs further study.

The development dimension

- *Relationship between governments and enterprises vis-à-vis codes of conduct*

A fundamental aspect raised by a representative of a developing country is to consider this relationship from the perspective of good governance and a proper legal environment. The codes of conduct cannot function in an environment where there is inadequate institutional capacity to deal in particular with problems of corruption and MNEs' behaviour.

The interface between voluntary and regulatory approaches

– Two approaches to corporate responsibility

A government representative said that there are two aspects of good corporate citizenship: compliance with national laws and regulations and adherence to ethical and environmental standards, even in cases where they are not required by the law of the host country.

To whom should this challenge be given? According to the voluntary approach, this task should be left to business and the proliferation of codes of conduct shows business responsibility. The regulatory approach sees in the big diversity of codes a lack of commitment, in particular in the absence of verification procedures and sanctions for non-compliance. In terms of creation of standards, government regulation can set only minimum or average standards. However, on a voluntary basis, the level of ambition can be higher; the companies can be encouraged to go beyond the set standards, even if they do not figure in legal codes.

A business representative wondered whether it wouldn't be better for a company to obey all the national laws in the countries in which it operates and achieve the desired results instead of having a meaningless corporate code that does not contribute to the improvement of standards.

– Partnership between governments, business, trade unions and civil society

Most participants were of the view that there is no dichotomy between voluntary approaches, such as corporate codes of conduct, and regulatory action taken by governments. They agreed that the response to the new challenge calls for a better understanding of the interaction of private entities and public policy. As a result, the best way to proceed could lie in complementary and mutually reinforcing efforts by governments, companies and other stakeholders in a spirit of shared responsibility and partnership.

ii) *The OECD Guidelines for Multinational Enterprises*

The *OECD Guidelines for Multinational Enterprises* are recommendations by OECD governments to multinational enterprises (MNEs) which establish behavioural norms for the activities of these enterprises. They aim to ensure that MNE activities are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between MNEs and government authorities. The *Guidelines* cover a broad range of MNE operations: employment and industrial relations, environment protection, information disclosure, competition, financing, taxation, and science and technology.

The *Guidelines* form a part of a wider and balanced package of OECD investment instruments (the 1976 OECD Declaration on International Investment and Multinational Enterprises), which are adhered to by the 29 OECD Members, as well as Argentina, Brazil and Chile. The Declaration includes the *Guidelines*, the National Treatment Instrument as well as instruments designed to avoid conflicting requirements on MNEs and promote co-operation in the area of international investment incentives and disincentives.

There was general agreement that the *Guidelines* could be seen as a vehicle for balancing government and corporate responsibilities combining elements of voluntary and regulatory approaches. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing their own codes of conduct. A business representative noted that the *Guidelines* were designed to be supranational and supracorporate: not specific to a country or to a company. They are drafted at the level of generality that would afford maximum portability (moving from country to country, being compatible with a broad range of regulatory systems).

a) *Review of the Guidelines*

Context of the Review

- *The new Guidelines should reflect changes in the world economy*

While participants agreed that the *Guidelines* continue to have an important role, the text and implementation procedures need updating to reflect important changes in the world economy and to ensure the *Guidelines*' relevance and effectiveness. Service and knowledge intensive industries have become more important relative to mining and manufacturing, many more firms are engaged in international business, strategic alliances and closer relations with suppliers and contractors have become more important. Although large enterprises still account for a major share of international investment, small and medium sized companies now play a significant role, MNEs have also emerged in non-OECD countries.

A trade union representative noted that the period when the *Guidelines* were adopted (seventies and eighties), was a period of governmental activism. Today, there are at least two different worlds with regard to how people see the role of MNEs. On the one hand, MNEs could be in the forefront of good employment practices by engaging in negotiations and encouraging partnerships with trade unions and, on the other hand, there could be a "race to the bottom": competition with regard to suppression of core labour standards. He referred to cases where countries try to attract FDI by proposing low wages, child labour and barring strikes and labour unions. International standards such as the *Guidelines* are a key to development because they contribute to the "race to the top".

- *The Review process is designed to be open and inclusive*

While OECD governments will take final responsibility for the text and the implementation procedure, it was understood and appreciated that the input being solicited from non-member governments, business, labour, NGOs and others is welcome. Frequent consultations are and will be taking place to ensure that the views of the different constituencies will be heard and considered.

Suggestions for new text

- *Labour and environmental standards are key issues*

There was general agreement that these areas were amongst the most desirable to change in this Review. Most of the participants said that the changes should reflect recent developments, such as the ILO Declaration on Fundamental Principles and Rights at Work establishing core labour standards (freedom of association, the right to collective bargaining, abolition of child and forced labour), the Rio Declaration on environment and other international instruments elaborated jointly by governments, private sector and civil society.

- *Sustainable development*

An NGO representative mentioned that society today expects business to contribute to sustainable development. Many participants invited the OECD to include the notion of sustainable development in the text of the *Guidelines* as reflecting today's approach of economic development and responsibility for both developed and developing countries.

– *Information disclosure*

An NGO representative made the link between the *Guidelines* and the OECD principles on corporate governance, in particular in the light of the approach of the latter on disclosure of information: they encourage companies to disclose their policies on ethical, environmental and other public policy issues and they encourage them to provide information on issues relevant to employees and other stakeholders. He proposed that the *Guidelines* go even further in this respect: they should encourage companies to be involved in a more interactive process with stakeholders in determining what the priorities for information should be. They should encourage companies to report on their performance on environmental, social and other issues, involving stakeholders in this evaluation. They should also encourage the development of independent verification and auditing of the area of non-financial disclosure based on new models, i.e. the new AA1000 accountability standard that deals with environmental reporting and auditing methodology.

The same participant said that the test of whether corporate governance is good is whether it is delivering the objectives set out by the *Guidelines*, i.e. whether a company achieves high social, environmental and other standards. In institutional terms, some consideration could be given to the linkage between the *Guidelines* process and implementation and the new joint work programme between the OECD and the World Bank to promote and promulgate the corporate governance principles. In this context, it would be interesting to have a discussion on the *Guidelines* – content, implementation, translation into corporate governance structures, possibly through appropriate forum on stakeholder issues within the corporate governance programme.

– *Competition policy*

It was said that the text of the competition chapter would also need updating to reflect new developments in this area.

Suggestions to enhance the profile of the Guidelines and improve their effectiveness

– *Implementation: observation of the Guidelines by MNEs*

The *Guidelines* provide a standard for responsible business conduct which may supplement national laws. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing their own practices. Most participants agreed that the *Guidelines* Review should look at improving the implementation of the *Guidelines*.

– *Institutional aspects of follow-up*

Although the *Guidelines* are not legally binding, OECD Governments are committed to promoting their observance. The OECD Committee on International Investment and Multinational Enterprises (CIME) acts as a forum of consultation, clarification and review. The establishment of National Contact Points (NCPs) is a binding obligation for participating countries; they have the task of promoting local awareness of the *Guidelines* and assist in dealing with issues that arise in the application of the *Guidelines* by MNEs. Through the Advisory Bodies to the OECD – the Business and Industry Advisory Council (BIAC) and Trade Union Advisory Council (TUAC) – both business and trade unions have endorsed the *Guidelines* and participate in the follow-up procedures to make the *Guidelines* work.

– *Specific proposals on implementation*

A government representative noted that the main challenge of the implementation is to reinforce the *Guidelines*' effectiveness as a non-binding instrument. Transparency and accountability of the MNEs' operations are important elements. The questions on how to encourage enterprises to comply with the *Guidelines*, the role of CIME and the NCPs, how to involve NGOs at the national and international level, are all to be answered in the review of implementation procedures.

A business representative stated that the *Guidelines* are effective only if they are reflected in the self-imposed disciplines of a company's management and its relationship with its different stakeholders (employees, shareholders, customers and suppliers). The *Guidelines* should be considered a useful benchmark for performance and their implementation should not be turned into a judicial or a quasi-judicial procedure for attacking and blaming businesses or governments. Business supports an improvement of the *Guidelines*, in particular in a context where new small companies enter the market place and need to be inspired by the same disciplines as the larger established companies.

A trade union representative gave full support to the Review. He considered that, although a new consensus is needed on updating the text, improving the implementation procedures is the key to success. Ideas include more vigorous promotion of the *Guidelines*, more active and efficient National Contact Points and a more transparent way of dealing with particular cases of non-observance of the *Guidelines*.

Another government representative proposed that when an issue relating to the behaviour of a specific enterprise arises, the enterprise could be named and the relevant decision published. He also proposed to replace consensus in the CIME decision-making by the majority principle and activate the role of the National Contact Points by giving them an interministerial and tripartite (participation of governments, business and trade unions) character.

An NGO representative suggested that the *Guidelines* should be given more "teeth" without changing their non-binding nature and suggested the following: a) linkage to official advantages, i.e. the *Guidelines* could form the basis for screening procedures for advantages given to companies investing overseas; b) use by "ethical" fund managers to screen companies they wish to invest in, and c) linkage to corporate risk measurement, i.e. compliance with the revised *Guidelines* could be a starting point for measuring a company's environmental, social and reputation risks.

A representative from the academic community proposed a public, non-adversarial enquiry procedure that would enable interested parties to present views to an appropriate body or committee which would then prepare a report on a company's responsibilities in a given field. Some companies may prefer to submit problems to this kind of public enquiry procedure voluntarily rather than engage in adversary legal procedures.

b) *The Role of the Guidelines beyond the OECD area*

Currently limited application

- *In the current situation, it is not clear that the Guidelines are addressed to the activities of their MNEs operating in non-Member countries*

Given the increasingly global operations and the expanding universe of MNEs, the role of the *Guidelines* outside the OECD area is also under discussion in the current Review. At present, the *Guidelines* clearly apply to the activities of enterprises operating in the territories of OECD-member countries, but it is not so

clear that they are addressed to the activities of the same enterprises when they operate in non-Member countries. They do not apply to the activities of enterprises having no activity in the OECD area.

Rationale for applying the Guidelines worldwide

- *To recommend a high worldwide standard for MNE behaviour*

In practice, as pointed out by two representatives from non-Member countries -- one a government and one a trade union representative-- many MNEs apply their standards worldwide and the *Guidelines* may be said to encourage “good corporate practice” in all countries. Not to confirm this principle might imply that OECD members apply a double standard, endorsing norms of corporate conduct that are lower than those of the *Guidelines* as long as they are applied outside the OECD area.

- *Value added from the application of the Guidelines outside the OECD area*

From the point of view of non-member economies, the application of worldwide standards by leading international companies may provide direct benefits in terms of corporate integrity, disclosure of information, employment conditions and environmental and product stewardship. There may also be valuable benefits via demonstration effects for local companies, training of personnel and assistance in the development of local and national laws, regulations and practices.

- *New emerging MNEs in developing countries*

The *Guidelines* were adopted in a period where the majority of the MNEs were from OECD countries. In the current situation, new MNEs emerge from previously developing countries which are not OECD members. To exclude these enterprises from the application of good business standards would create an unbalanced and unfair situation for MNEs of OECD member countries.

Challenges that this outreach may bring

- *There was support for applying the Guidelines worldwide but there were no definite answers on how to proceed*

Participants agreed that there should be an open dialogue and continuing debate with the participation of non-members.

- *Introduction of new principles*

A business representative said that if the *Guidelines* were extended to developing countries, there would be a number of challenges. The notions of transparency, a level playing field, accountability in governance, good governance and regulation, partnership with civil society, business and governments are not well established in many of these countries. Corruption is often an issue too. In order to promote and implement the *Guidelines* outside the OECD region, a broad political foundation is necessary and the challenge is open.

- *Respecting the sovereignty of host countries*

Calling on companies to apply OECD standards on behaviour worldwide is viewed by some as invading the sovereignty of countries that have not adhered to the *Guidelines* and do not participate in their follow-up procedures. Some participants responded to this concern with the following arguments: a) the

Guidelines apply to companies and not countries and therefore do not force any change in host country policies; b) the *Guidelines* do not override the domestic laws of host countries because they are not legally binding and they do not change the principle that MNEs are subject to the laws and regulations of the country in which they operate; c) the principle that advantages given to foreign investors (subsidies, guarantees) can legitimately be subject to environmental and social conditions is already established in both national agencies and multilateral bodies (MIGA, IFC), and d) the *Guidelines* are a set of transparent plurilateral standards which cannot be unilaterally altered by any government.

– *Institutional aspects*

A participant from academia drew attention to the institutional aspects of this extension. The implementation machinery of the *Guidelines* operates within the framework of the OECD. There is a symmetry among the several actors involved, their functions and their institutional presence: the governments, the only actors that are represented in CIME with full-decision making responsibilities; the MNEs but also the BIAC and TUAC. If the geographical scope of the *Guidelines* were to expand, it would be reasonable that all the actors concerned would have to be represented within the institutional machinery for their implementation. Non-member governments as well as business and labour representatives from non-member countries, could then be asked to participate in the functioning of CIME, perhaps as observers or associate members, when the committee deals with matters related to the implementation of the *Guidelines*. A difficulty which might occur in this respect is to separate cleanly *Guidelines* related issues from other CIME issues. Matters of clarification and monitoring appear easier to deal with in this respect, than questions involving review of the *Guidelines* which may raise problems.

– *Adherence to the Guidelines only or to all parts of the 1976 Declaration?*

Under current arrangements, formal adherence to the *Guidelines* (with participation in monitoring and follow-up) is possible only if the non-Member concerned also joins in all parts of the 1976 Declaration on International Investment and Multinational Enterprises and meets all the relevant requirements including a “major player” and “mutual benefit” test. There was no clear view on the possibility of allowing non-Members to adhere only to the *Guidelines* and on the criteria that they would apply.

– *Informal arrangements*

A challenge will be to devise suitable arrangements for on-going or *ad hoc* co-operation with interested non-members that do not formally adhere to the *Guidelines*. It is possible that non-members, especially those that attract substantial foreign investment, or are themselves home countries to MNEs, will be interested in supporting the purposes of the *Guidelines* and will wish to participate in their implementation even in informal ways.

An NGO representative noted that one way could be to use existing diplomatic channels which represent a resource for home country contact points. “External” contact points could therefore be established in embassies through which host country actors could initiate *Guidelines* cases. Another method would be to incorporate mechanisms for implementing the *Guidelines* as protocols to the existing network of 1 900 bilateral investment treaties (BITs) and regional investment agreements; these protocols would define modalities for investigating cases and resolving any breaches of the *Guidelines*.