

# INFORMATION MEETING WITH NON-MEMBERS ON THE OECD DECLARATION FOR INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES AND THE GUIDELINES FOR MULTINATIONAL ENTERPRISES

Paris, 12 December 2000

## Aide-Mémoire

1. This one-day information meeting was organised by the Committee on International Investment and Multinational Enterprises (CIME) in co-operation with the centre for Co-operation with non-Members (CCNM) and was open to attendance by representatives of OECD members, non-Members, the business community, employee organisations, other non-governmental organisations and regional and international organisations.
2. The purpose was to make the Declaration on International Investment and Multinational Enterprises and in particular one of its components—the newly revised Guidelines for Multinational Enterprises—better known to non-Member countries and to provide an occasion for dialogue, in view of possible future adherence of these countries to the instrument. Twenty eight non-Members were represented<sup>1</sup>.
3. The business community was represented by the Business and Industry Advisory Committee to the OECD (BIAC), the employee organisations by the Trade and Union Advisory Committee to the OECD (TUAC) and the non-governmental organisations by the Northern Alliance for Sustainability (ANPED). A number of international and regional organisations were also present: the International Labour Organisation (ILO), the International Monetary Fund (IMF), the Organisation of American States (OAS), the United Nations Environmental Programme (UNEP) and the United Nations Industrial Development Organisation (UNIDO).
4. Following the agenda set out in CCNM/DAFFE(2000)115/PROV, the discussion was organised in three sessions. The first consisted of an introduction to the Declaration on International Investment and Multinational Enterprises and was chaired by Mr. Manfred Schekulin, Vice-chair of the CIME. The second concerned the Results of the 2000 Review of the OECD Guidelines and was chaired by Mr. Marinus Sikkel, Chair of the Working Party of the Guidelines. The third focused on the relevance of these instruments for non-adhering countries and was chaired by Mr. Wesley Scholz, Head of the United States delegation to the CIME. Delegates introduced the instruments and business, employee and non-governmental organisation representatives, presented their positions. In accordance with the themes

---

<sup>1</sup> The non-Member participating countries were: Azerbaijan, Cameroon, Chinese Taipei, Colombia, Croatia, Egypt, Estonia, Haiti, Indonesia, Israel, Jamaica, Kazakhstan, Kenya, Latvia, Liberia, Lithuania, Malaysia, Mongolia, Peru, Russia, Singapore, South Africa, Tunisia, Ukraine, Uzbekistan, Venezuela, Vietnam and Yugoslavia.

outlined in an “issues paper” drafted by the OECD Secretariat [CCNM/DAFFE(2000)116], questions by participants and discussion followed each presentation<sup>2</sup>.

### **Session I - Introduction: The OECD Declaration on International Investment and Multinational Enterprises**

5. This introductory session explored the results of the Review of the Guidelines in their broader context, and explained the general philosophy and balanced approach to international investment issues embodied in the OECD Declaration.

6. An OECD delegate introduced the Declaration as an instrument which tries to improve the investment climate and optimise the positive contributions enterprises and trans-border investment flows can make to economic, social and environmental development. He built his presentation around the balanced approach of the Declaration and its four components: the newly revised Guidelines for Multinational Enterprises, National Treatment, Conflicting Requirements and International Incentives and Disincentives. He stressed that the Declaration is based on the general philosophy of the OECD that an appropriate form of international co-operation is often more effective for attaining certain objectives than legally binding frameworks. The approach of the Declaration is based on:

- a balance between the shared expectations of the adhering governments for the behaviour of the business community and the responsibility of governments to promote a favourable climate for international investment;
- a balance between stable common philosophy and basic principles of the Declaration on one hand, and the flexibility to reflect national circumstances and changes in international scene on the other;
- balances between multinational enterprises and between multinational enterprises and their domestic counterparts.

7. The same delegate insisted that the Declaration represents a real political commitment and was dynamic in nature and content. Adhering governments express their willingness to consult one another on the matters set out in the Declaration but also to engage in an open dialogue with other stakeholders: business, labour unions, non-governmental organisations, non-adhering countries. Finally, reviewing the Declaration is an important means for making it effective and relevant in a constantly changing world.

8. During the discussion, business noted its strong support for the comprehensive approach of the Declaration stressing the importance of all four components as a package in confidence building.

9. The representative of a non-adhering county acknowledged the importance of the Declaration for small countries, in particular its contribution to creating a predictable and stable environment for FDI.

---

<sup>2</sup> Other supporting documentation included : the Guidelines Ministerial Booklet, available on the OECD Guidelines Web site at <http://www.oecd.org/daf/investment/guidelines/minbooke.pdf>; CCNM/DAFFE(2000)115/ADD1 and DAFFE/IME/WPG(2000)11/REV3.

## **Session II – Results of the 2000 Review: OECD Guidelines for Multinational Enterprises**

10. This session went into further detail about the Guidelines for Multinational Enterprises. It focused on changes brought about as a result of the 2000 Review, in particular to the text, concerning geographical scope and implementation procedures. The social partners explained their role in this exercise and reiterated their support to the revised Guidelines.

### ***-- Presentation of the text***

11. The Chair of the Working Party of the Guidelines and a number of other delegates made a presentation on each of the chapters of the revised Guidelines. The Chair insisted upon the fact that, although the Guidelines are a voluntary instrument, they cannot easily be ignored because they are supported by 33 governments, business federations, labour unions and NGOs. They apply to all enterprises, including SMEs and domestic ones. Most of the MNEs nowadays take their responsibilities seriously and have adopted their own codes of conduct, which in many respects go beyond the Guidelines. However, there are always a few that may be tempted, under heavy pressure of competition to adopt inappropriate standards. The Guidelines make clear that governments don't appreciate such an attitude. They complement and reinforce various forms of private efforts.

12. Delegates from countries already adhering to the Guidelines introduced the textual innovations that the revised Guidelines brought compared to the old ones. The new additions to the text are: MNEs' contribution to sustainable development; respect of human rights; MNE's encouragement of suppliers, subcontractors and business partners to apply principles of corporate conduct compatible with the Guidelines; respect of core labour standards (child labour, forced labour, freedom of association and collective bargaining and non-discrimination in terms of race, religion, gender etc.); establishment of environmental management systems, the precautionary principle; and new chapters on bribery and consumer interests. Chapters of particular interest to developing countries, such as bribery, competition, science and technology, consumer interests and taxation, were introduced by the representative of a non-OECD adhering country.

13. An international organisation representative wondered about possible conflicts and dilemmas MNEs could face between requirements of the Guidelines and domestic law. In response, it was made clear that the Guidelines do not impose conflicting requirements. National law prevails but the Guidelines encourage MNEs to do better than national laws if possible, without conflicting with them. For example, in the case of child labour, even though it might not be expressly prohibited, MNEs would be expected not to use it.

14. Discussion also addressed the benefits of the Guidelines for developing countries. It was pointed out that the Guidelines could be a useful additional instrument to improve the investment climate and to help maximise these benefits especially in the area of environment, labour, transfer of technology.

### ***-- Geographical scope***

15. Another important issue and result of the Review was the confirmation of the geographical scope of the Guidelines to be global. This is particularly important because of the increasing multinational enterprise activity in non-adhering countries, and avoids a double standard: adhering countries recommending certain practices in one part of the world but then turning a blind eye to the other part of the world.

## **-- *Implementation procedures***

16. A delegate, chairman of the National Contact Point of an adhering country introduced the implementation procedures of the Guidelines. Adhering countries are required to set up NCPs to further the effectiveness of the Guidelines. They must operate in accordance with the criteria of visibility (seminars, publications etc.), accessibility, transparency and accountability (parliament, annual NCP meetings, CIME meetings). Adhering countries have flexibility in organising NCPs: the NCP could be a government official, a government officer or a co-operative body of agencies and organisations, including business, labour unions and other interested parties. Its task is to undertake promotional activities, handling inquiries and contributing to the resolution of issues that arise relating to implementation of the Guidelines in specific instances.

17. During the discussion, a question was raised about the funding of NCPs to make sure that they respect their commitments. It was pointed out that rules on the functioning NCPs plus new annual reporting requirements, would assist in this. In addition, the peer pressure process that is operative in the OECD, would reinforce this. A business representative supported this position and affirmed that peer pressure will help an effective implementation so that no great differences occur between countries. Business supports a “level playing field” in order to avoid competitive disadvantages.

18. Furthermore, it was pointed out that promoting awareness of the Guidelines is an important element of their success and effectiveness and that it should be a shared responsibility of all the partners in this exercise (governments, business, labour unions and NGOs).

## **-- *Business position***

19. A business representative expressed the business sector’s favourable position towards widening participation of non-member countries and their adherence to the Declaration. He insisted on the importance for the business community of the voluntary nature of the Guidelines and of the fact that they are integral part of the Declaration. This is important in the case of adherence of new countries because their acceptance of the Declaration as a whole would mean acceptance of all the principles that it includes.

20. BIAC stressed that they would promote the Guidelines in a very dynamic and constructive way, not only large MNEs, some of whom have already incorporated the Guidelines in their own codes of conduct, but also to SMEs, which initially may be more reluctant to do so because they lack adequate organisational capacity.

21. This new challenging phase of economic development should be a unique opportunity for both developed and developing countries. The Review of the Guidelines was absolutely necessary to encompass new developments brought up by globalisation, such as the great increase in the number of global enterprises as well as new issues, i.e. on-line services, e-commerce. The Guidelines could be part of a wider package of analyses and proposals made by the OECD in the area of the new economy considering issues such as trade liberalisation and sustainable development.

22. Finally, this representative stressed the need for transparency not only in corporate activities but also in the market environment by having clear and transparent common rules of the game, i.e. non-discrimination, fair and level playing field, in order to avoid any risks in this critical phase of change. He finished with an optimistic statement that the new net economy and the global scenario could be beneficial to both developed and developing countries in terms of the possibilities it offers in reducing poverty and unemployment imbalances. The implementation of the Guidelines should be in line with these targets.

-- *Employee organisations*

23. The TUAC representative made remarks on the more general context in which the discussion of the Guidelines is taking place: the review itself and the implementation of the Guidelines.

■ General context

24. TUAC welcomed the new focus of the discussion in the OECD on global governance issues and the recognition that global markets need global rules which need to be set by governments. In this vein, TUAC views the development of codes of conduct by many corporations a sign of the gap between government responsibilities and the expectations of the public. It is time that governments set a floor of regulations and expectations as to how corporations based in their country perform.

■ Review of the Guidelines

25. Although TUAC was sceptical at the outset of the Review as to whether the Guidelines could play a useful role, it found the results significant and positive. While the text could have been better and stronger in some areas, nevertheless Guidelines are worth having. TUAC is in close discussion with their global union partners in the ICFTU, sector organisations (the International Trade Secretariats), and in particular developing countries unions, about active follow-up.

■ Effective implementation

26. TUAC sees seven priorities for an effective implementation:

- Create operating NCPs;
- Raise awareness of the Guidelines in other intergovernmental fora;
- NCPs should use the Guidelines effectively to stop negative investment competition and should publish their recommendations;
- Companies should meet with the International Trade Secretariats and sign agreements on how the Guidelines should be implemented;
- The Guidelines should be used as points of reference for state aid and export credit guarantees;
- The OECD should hold regional meetings with non-Members to raise awareness of the Guidelines; TUAC could help with funding;
- The CIME Committee should produce a new user guide including the clarifications of elements of the Guidelines that have not been changed.

-- *Non-Governmental Organisations*

27. The representative of an NGO said that NGOs are interested in a quick change from current unsustainable development to sustainable development, a reversal of the deteriorating trends in the environment, the elimination of poverty, the elimination of abuses of human rights, and other key elements of sustainable development. They consider the Guidelines as one of the many tools available to affect change in corporate behaviour, including legal challenges, public campaigns, direct NGO-Company codes and contracts. The Guidelines are an initiative of great importance, as the only government operated one.

28. The NGOs were critical of the Review of the Guidelines. NGOs wanted a binding instrument. They also considered that although many good things were taken up in the Guidelines, some were left out,

especially on the transparency and disclosure side. However, although some NGOs will continue to flatly reject voluntary codes as a mechanism for “controlling” corporations, the NGOs that were involved in the Review recognise the importance of the Guidelines and are currently working to spread the information related to them to their colleagues around the world. As a first step they will have to be convinced that their scepticism about the political will to implement these Guidelines was misplaced. In this respect, they will focus on the NCP procedures, their uniform application, their transparency in procedures and outcomes and the actual observable impact on company behaviour.

### **Session III – Relevance for Non-Adhering Economies**

29. The third session was divided into two parts: The first addressed the issue of the adherence of non-members to the Declaration and its contribution to an enhanced investment climate for non-members. The views of several representatives from non-Members were heard. The second part of the session focused on practical aspects of implementing the Guidelines in non-adhering economies.

#### ***-- Adherence to the Declaration***

30. The chair placed the Guidelines in the context of the Declaration from the point of view of their relevance for non-adhering countries. He pointed out that the objective of non-adhering economies in absorbing the potential benefits of globalisation depends on their ability to attract investment which will be applied in a way that promotes social and environmental progress as well as economic. Creating this environment depends on the creation of a sound policy environment that includes issues of non-discrimination, transparency and the rule of law generally. Many OECD countries have sought to promote this environment through bilateral and regional investment rules that provide specific protection to investors. On this point he added that efforts to develop multilateral rules in the OECD failed for two reasons: there was a lack of policy consensus within the OECD, but in addition, there was a lack of flexibility in a process to attempting to negotiate legal rules in the context of an increasingly challenging globalised world.

31. The true relevance of the OECD Declaration for non-adhering countries is the same relevance as it is for OECD countries: the flexibility that it provides for policy dialogue. Unlike investment treaties, informal rules – the OECD Declaration—are founded on dialogue and discussion; it is the process of equals bringing their own experience and informing one another of how they have deal with the complex challenges that they faced. In addition, it is the only existing instrument that addresses both the rights and responsibilities of MNEs.

32. A member of the Secretariat explained that adherence to OECD instruments by developing countries means an undertaking of the same political commitments as the OECD countries and others that have already adhered, and facilitates participation in the follow-up procedures with other adhering countries. The procedures call for periodic examinations of each country's investment policies, participation in OECD discussions of all the issues relating to the Declaration, and setting up effective National Contact Points to help implement the Guidelines for MNEs. With respect to procedures for adherence, he explained that the CIME is currently trying to set out precise procedures. Finally, he added that there are also in the OECD other forms of co-operation with non-members on investment issues, in case some countries are not ready to adhere to the Declaration in the immediate future. A new body, the Global Forum for International Investment would establish an on-going dialogue between OECD member and non-member countries.

33. One developing country representative expressed some scepticism about the Guidelines Review and the Declaration in general. She wondered how developing countries could adhere to an instrument

when they have been exposed very little to the entire framework and have not participated in the Review. She also questioned the benefits of a multilateral approach versus a bilateral approach and whether there was a link between these instruments and the Multilateral Agreement for Investment. She expressed the view that there was a lack of balance in addressing issues of interest to developing countries to entice them to adhere to the entire package: issues such as investment and trade and investment and technology should be included or extended in the Guidelines. Finally, she considered the implementation mechanism weak. She concluded however, that she would do the necessary to make the Guidelines known in her country and examine the benefits for possible adherence to the Declaration.

34. In response, two OECD delegates said that, although there were information sessions for non-member countries during the Review, the Review itself was negotiated between adhering countries – that already included developing countries. It is an instrument designed among adhering countries which are also beneficiaries of FDI and try to attract FDI. There is no real dichotomy between developing and developed country interest; may be a different appreciation on how to achieve goals. This instrument is also a fine example of rights and obligations with a mechanism that could be seen as weak, but all the cards are on the table to make it an effective instrument via peer pressure. As to bilateral versus multilateral approaches, it was stressed that the amount of analysis done in the OECD, the richness of the policy dialogue, the exchange of experience among thirty plus countries, in co-operation with non-members, all at different stages of development provides a much more complete environment for dialogue than at a bilateral level. Finally, it was pointed out that the Declaration is based on critical political commitment of governments that provide an opportunity for an ongoing dialogue; it is not a static agreement with a set of binding legal rules.

35. Two other representatives of emerging economies presented the political and investment climate situation in their respective countries and highlighted the difficulties they face in their way to development and market economy. They acknowledged the importance of the Declaration and the Guidelines and the benefits that these instruments could bring to their countries and pointed out that despite the difficulties that their country face, they would consider adhering to the instruments.

36. Finally, one representative from a developing country raised the issue of “outsourcing” and the importance that the phenomenon of sub-contracting has taken in a globalised world. OECD delegates drew attention to the fact that the Guidelines already touch upon this issue in their General Policies chapter, where it is noted that enterprises are encouraged to advice their business partners including their suppliers and sub-contractors to apply principles of corporate conduct compatible with the Guidelines. It was recognised however, that this is a difficult question because the level of influence the enterprises have on their suppliers may vary substantially.

#### ***-- Implementing the Guidelines in non-adhering countries: practical matters***

37. An OECD member country representative made a presentation on issues related to implementation of the Guidelines in non-adhering countries. He pointed out that there are references to co-operation, general discussion and implementation in non-adhering countries in the Guidelines decisions, texts and commentaries. Along these lines, international co-operation including consultation on issues relating to the Declaration is extended to all countries and that consultation in the form of outreach events or with individual countries is provided for. In the case of issues arising in non-adhering countries, NCPs should take steps to develop an understanding of the issues involved and follow the same procedures set out for issues arising in adhering countries, where relevant and practicable. However, possible conflicts with domestic laws in non-adhering countries may make it more difficult to implement the Guidelines, given the fact that the Guidelines are not intended to place MNEs under conflicting requirements. The commentary to the Guidelines suggests ways an NCP may gain a full picture such as contacting the

management firm in the home country and government officials in the non-adhering country. Parties involved in any specific issue need to be aware of possible limitations in implementing in non-adhering countries. Guidelines issues in non-adhering countries may be discussed in NCP meetings with a view to building expertise in handling issues arising in these countries.

38. He brought to the participants' attention two concrete cases his country had faced the last three years. In these cases, the NCP without contacting the non-adhering country's governments directly, received information on the case from the company's headquarters in its own country and also contacted its Embassy in the non-adhering country. In both cases the Embassy was a valuable source of information and could have been a facilitator into arranging meetings and consultations with the local governments, if this would have deemed necessary. When in the local press it was revealed that the issue had been raised with the NCP of the home country, the reactions were positive and negative; negative for those considering the issue to be an exclusively local one.

39. How, in the future, should issues relating to non-adhering countries be dealt with? One avenue would be to make the Guidelines known to non-adhering countries by means of further meetings (in the OECD or regionally), dissemination of documents, articles in publications in non-adhering countries to increase familiarity with the Guidelines when issues arise. In his country, one method under consideration for promoting awareness is to use embassies overseas when conducting investment promotion work. In this way, any potential overseas investor requesting market information from its embassy would also receive a short explanation of the Guidelines and how they relate to them (including the message that when an MNE invests overseas the government expects them to behave in accordance with the Guidelines). The same participant also raised the issue of whether it would be useful and appropriate to contact other interest groups in non-adhering countries.

40. There was a general agreement that dealing with cases occurring in non-adhering countries is complex and difficult. It was recognised that during the negotiations of the relevant provisions in the Guidelines, the adhering countries were very cautious in defining the responsibilities of the NCPs. The situation may well differ case by case, in terms of the relationship that the NCP government may have with the government where the MNE is operating and in term of its ability to deal with this issue in a meaningful way. There is no easy answer or clear formula that could be applied; it is necessary to develop some experience on this on case by case basis not to face just the theoretical problems but also practical ones.

41. On this point, the ILO representative drew attention to the fact that there could be other avenues to be pursued and existing procedures which could be helpful. He mentioned that for example, there could be an organic link between the NCP process and process which exist in each state, including non-adhering ones members of the ILO, for improving the implementation of international labour standards. The unions and employer organisations in all those states would have something to contribute in Guidelines related cases arising in non-adhering countries from their ILO experience.

### **Concluding Remarks**

42. The chair commended the participants for their participation, their willingness to absorb all the information about the Declaration and the Guidelines and their engagement in a very fruitful dialogue. He reiterated that co-operation with non-adhering countries is vital and welcomed the interest that was expressed by some of the participants to adhere to these instruments and by others seeking more information. He concluded that dialogue is very important and assured the participants that further opportunities would be created for consultation with non-adhering countries.