

Chapter 7

Promoting Corporate Responsibility: The OECD Guidelines for Multinational Enterprises*

The OECD Guidelines for Multinational Enterprises, a government-backed code of conduct for international business, has become an influential instrument for promoting appropriate standards of behaviour in today's global economy. The Guidelines contain voluntary recommendations in such areas as human rights, labour relations, environment, consumer protection, the fight against corruption and supply chain management. The Guidelines' distinctive follow up mechanism has been used to look at how these recommendations apply in concrete business situations ranging from resettlement of local populations in the Zambian copper belt to the risk of using child labour in outsourcing in India. The Guidelines reinforce an ongoing trend in international business toward acquiring expertise in responsible corporate management. OECD research covering thousands of individual businesses and business associations shows that companies have invested heavily in their abilities to do this. In making these investments, they are often influenced by powerful incentives – e.g. the need to protect brand and reputation capital, legal and regulatory arrangements, pressures from labour and capital markets and the desire to forestall or shape more formal regulatory initiatives.

* The following text reproduces an article by the OECD Secretary-General Donald Johnston for a book on Corporate Social Responsibility to be published by the International Bar Association and Kluwer Law International.

1. Corporate responsibility and the international economy

International investment by multinational enterprises is at the heart of the current debate on globalisation. The Monterrey Conference and the Johannesburg Summit in 2002 called attention to the importance of responsible international business for spreading the benefits of globalisation more widely. The 2003 G8 Summit Declaration underscored the importance of “fostering growth and promoting a responsible market economy”. The Declaration explicitly cites the OECD Guidelines for Multinational Enterprises and commits the G8 to work with interested countries to create an environment in which “business can act responsibly”.

Thirty-eight governments – from the 30 OECD members and from 8 non-members¹ – have adhered to the OECD Guidelines for Multinational Enterprises, a government-backed code of conduct for international business. Today they are exploring how the Guidelines can best contribute to improving the functioning of the global economy and to promoting corporate responsibility. The Guidelines are recommendations by the 38 governments on business conduct covering such areas as human rights, labour relations, environment, combating corruption and consumer protection. Observance of these recommendations is voluntary for business, but the adhering governments make a binding commitment to promote them among multinational enterprises operating in or from their territories. In making this commitment, governments aim to “to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises”.²

The OECD’s view is that the primary contribution of business – its core responsibility – is the conduct of business itself. The role of business in society is to develop investments so as to yield adequate returns to the suppliers of capital. In so doing, companies create jobs and produce goods and services that consumers want to buy.

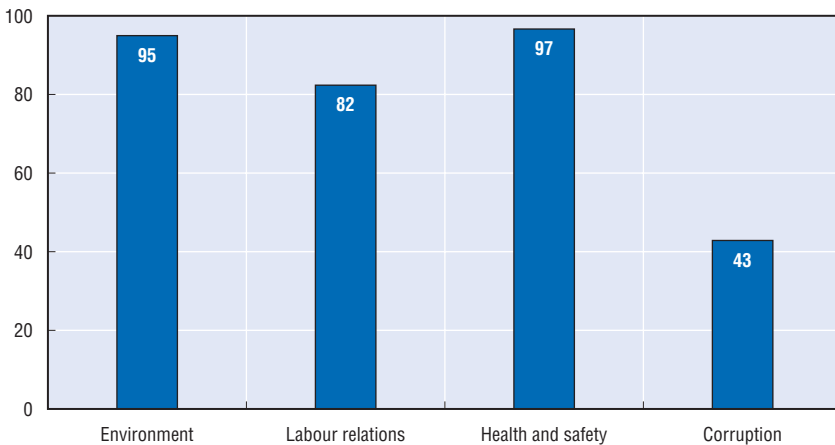
However, corporate responsibility goes beyond this core function. Companies are expected to obey the various laws that are applicable to them and, as a practical matter, must often respond to societal expectations that are not written down in law books. Many multinational enterprises have tens of thousands of employees and hundreds of products. They straddle dozens of legal, regulatory and cultural environments. Because of this, compliance with

law and with societal expectations expressed through other, less formal channels is often a formidable challenge.

Many companies have invested heavily in trying to meet this challenge. Indeed, the development of business tools such as codes of conduct and related management and reporting systems has been one of the major trends in international business over the last 25 years. OECD research³ shows that thousands of enterprises on at least four continents have participated in this trend. It also suggests that there are significant variations – by country and by sector of operation – in the issues companies choose to deal with and in their approaches to these issues. Examples of such divergences can be seen in Figures 7.1 and 7.2. Figure 7.1 shows that nearly all of the top 100 multinational enterprises publish policy statements on environment and health and safety while fewer than half deal publicly with the issue of corruption. Figure 7.2 reveals large sectoral variations in the propensity of companies to publish policy statements on corruption. While such variations reflect the diversity of companies' individual business environments, they also reflect other differences such as the state of development of agreed norms for conduct in different issue areas and sectors. Understanding these differences and encouraging convergence toward good practice are among the main objectives of the OECD Guidelines.

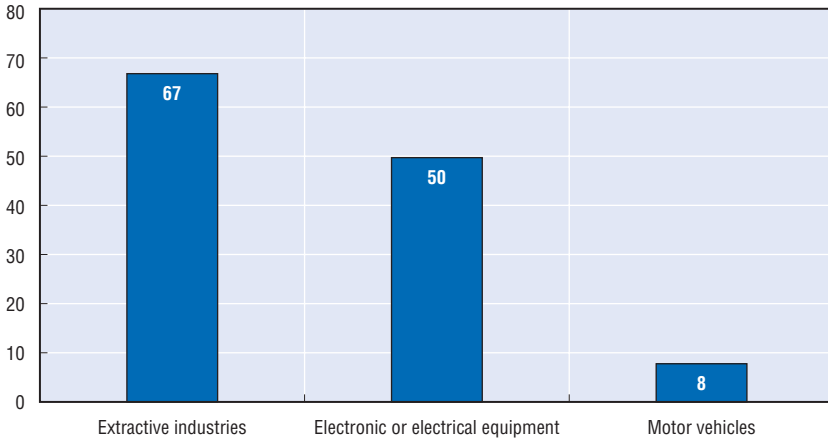
Of course, there is an ongoing debate about the effectiveness of voluntary initiatives. Some parties believe that they represent the business sector's contribution to the goal of building effective standards of international business conduct. This voluntary approach offers the flexibility needed to

Figure 7.1. **Policy statements by issue area**
Number of companies in top-100 list making statements



Source: Annual Report on the OECD Guidelines for Multinational Enterprises: 2003 Edition.

Figure 7.2. **Anti-corruption statements by sector of activity**
Per cent of companies in sector sample



Source: Annual Report on the OECD Guidelines for Multinational Enterprises: 2003 Edition.

adapt to and learn from regional, sectoral and individual business circumstances. Others view these efforts as little more than public relations ploys and would favour replacing them with binding rules involving sanctions and other enforcement mechanisms. Only these, they feel, will give the standards enough “teeth” to influence corporate behaviour in a meaningful way. I will return to this point.

The OECD member governments believe that these initiatives are helping to improve the functioning of the global economy, as examples of their application have shown. Private initiatives allow businesses and societies to “feel their way forward” in the many areas where standards on acceptable management practices for business are not yet firmly established. For example, OECD research suggests that the published policies of OECD-based companies with outsourcing operations have tended to converge with respect to the core labour standards they ask their suppliers to observe. Nearly all companies with publicly-available outsourcing policies now mention all core labour standards, whereas few covered all core standards in the late 1990s.⁴ However, the research also suggests that most companies – 118 out of a sample of 147 companies operating in sectors where core labour standards are a strategic concern – do not publish their outsourcing policies. Thus, while there is evidence of significant progress in this area, there is also evidence suggesting that many companies operating in sensitive sectors could do more to contribute to broader efforts to enhance compliance with core labour standards. The Guidelines provide several channels through which companies, trade unions and NGOs work with governments to promote further progress. As described below, these channels include:

1) discussions between adhering governments and other stakeholders of individual company conduct in specific business situations (including specific companies' approaches to respecting workers' rights to freedom of association or to managing the risk of employing child or forced labour); and 2) analysis and discussion of generic corporate responsibility issues.

At the same time, it would be naïve to think that a meaningful system of global norms could exist without binding regulation and formal deterrence. For the time being, much regulation and law enforcement is very much anchored in national economic systems. Future international regulation in some areas could emerge from gradual convergence and coordination of national practices. The OECD has taken steps to encourage this. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – which obliges signatories to enact laws and criminal sanctions against bribery of foreign public officials – is an important example. Another example can be found in OECD work on international tax enforcement. I would caution, however, against exaggerating the degree to which formal law enforcement can or should solve all the world's problems. I return to this idea in my conclusions. Moreover, many of these initiatives are not quite as “voluntary” as they might seem. Webster's dictionary defines “voluntary” as “acting or done with no external compulsion or persuasion”. If one accepts this definition, then many private initiatives are not really voluntary – they are private responses (built into management systems and other business practices) that are driven by powerful financial, legal or regulatory pressures created by the broader society in which businesses operate. For example, environmental regulation in the European Union provides incentives for adopting certain environmental management practices. The US Federal Sentencing Guidelines provide another example of this deliberate coordination of public and private efforts. The Sentencing Guidelines provide powerful legal incentives (in the form of the possibility of more lenient sentences) for companies to adopt management systems that would allow them to show that they have made credible efforts to prevent violations of law by their employees.

Thus, the idea that there is a stark difference between binding and “soft” initiatives is not a valid one. In fact, these initiatives are integral parts of broader systems for influencing business conduct. The challenge is to promote a workable mix of public and private initiatives and to get all actors in the broader system – both public and private – to take up their responsibilities. Private initiatives by companies are part of this broader effort, but companies cannot, by themselves, create workable norms for conduct for the global economy. Indeed, the Guidelines recognise that business should not be asked to take on other actors' – especially governments' – responsibilities. If they are to build effective systems for promoting appropriate business conduct, governments and private sector actors must act in partnerships underpinned by an appropriate allocation of roles and responsibilities for each.

The OECD Guidelines for Multinational Enterprises, which I will describe below, are one of the most concrete examples in the OECD of how successful private-public partnerships can be used to help make the global economy work better.

2. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises seek to encourage and reinforce the private initiatives for corporate responsibility that are described above. They express the shared views of 38 adhering governments on ethical business conduct.

Key features of the Guidelines are:⁵

- They contain voluntary recommendations to multinational enterprises in all major areas of business ethics.
- Adhering governments sign a binding commitment to promote them among multinational enterprises operating in or from their territories. Thus, the Guidelines represent a unique combination of voluntary and binding elements.
- The most visible sign of adhering governments' commitment to the Guidelines is their participation in the instrument's distinctive follow-up mechanisms. These include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.
- One of the NCPs' responsibilities is to consider "specific instances". Under this procedure, NCPs act as referees in multi-stakeholder discussions of specific company behaviour in specific business situations. In effect, this creates a case based approach to the problem of building behavioural norms for appropriate international business conduct.
- The Guidelines are part of a broader and balanced instrument of rights and commitments – the OECD Declaration on International Investment and Multinational Enterprises. In addition to the Guidelines, the Declaration provides guidance for governments in the areas of national treatment, avoiding imposing conflicting requirements on international investors and investment incentives and disincentives.⁶

The 38 governments that adhere to the Guidelines represent countries that are the source of most of the world's foreign direct investment and are home to most major multinational enterprises (97 out of UNCTAD's top 100 multinational enterprises are covered by the Guidelines). Although the Guidelines have been in existence since 1976, they were significantly revised in June 2000. After four years of implementation under the revised procedures, it is fair to ask what kind of impact the Guidelines have had to date.

3. Results to date

The 2000 review of the Guidelines and subsequent work by adhering governments have strengthened the instrument and raised its profile. There is growing evidence that the Guidelines are becoming an important international tool for corporate responsibility. The Guidelines have been translated into at least 24 languages. A recent survey asked managers of international companies to list influential international benchmarks for corporate behaviour – 22 per cent of them mentioned the Guidelines without prompting. Some 60 000 Web pages refer to the Guidelines. Fifteen countries use the Guidelines in their export credit and investment guarantee programmes. In addition to the formal adherence by 38 governments, the Guidelines have received official support from business and trade union representatives at the OECD. NGOs have formed a coalition to make use of them.

The implementation procedures are being actively used, tested and refined. As of June 2003, 64 specific instances had been considered.⁷ Some of these deal with company conduct in OECD countries, but most look at business conduct in non-OECD countries and cover issues that go to the heart of the current debate on globalization. For example:

- *Zambian copper mining.* The Canadian NCP has looked into the resettlement plans of a company operating in Zambia's copper belt. As a result of this consideration, the company agreed to postpone its resettlement plans for one year to allow time to rethink the plans – both the company and the NGO coalition (involving a Canadian and Zambian NGO) that were parties to this specific instance agreed that the procedure made a useful contribution to reducing tensions.
- *Korean suppliers in a Guatemalan export processing zone.* The Korean NCP has looked into a Korean company's respect of freedom of association – a core labour standard – in an export processing zone in Guatemala. The Korean NCP encouraged the company to inform the Guatemalan workers of their rights and to respect these rights. The company responded by issuing a manual in comic book form illustrating workers' rights under Guatemalan law.
- *Swedish business service provision in Ghana's gold sector.* The Swedish NCP looked at two Swedish companies' involvement (as business service providers) in Ghana's gold sector. The NCP collected information from on-site visits, from the Swedish embassy and from Ghanaian NGOs. It concluded that, while there are significant environmental and social problems in Ghana's gold sector, the two companies could not be held responsible for these problems because they were too far removed from them.

These are just a few of the many specific instances that have been considered by NCPs so far. Some of the positive developments that have been noted from these and other experiences include:

- *Using the embassy networks as an accountability mechanism.* It is now becoming common practice for NCPs to use embassies (as well as employees from overseas development assistance programmes) as sources of information for consideration of “specific instances” (e.g. see Swedish case above). In 2003, five adhering countries now feature the Guidelines as part of the training material given to embassy personnel before they take up their posts.
- *Giving a voice to trade unions and civil society actors from the non-OECD area.* Many of the specific instances have been brought by trade unions and NGOs from the non-OECD area working in partnership with OECD-based actors. The Guidelines strengthen these non-OECD actors by providing an international forum in which they can voice their concerns and by allowing them to gain experience with international institutions and procedures.
- *A way for governments to engage with companies on issues of business ethics at a lower standard of “proof” than that required by formal legal proceedings.* A number of actors, including the UN Expert Panel on the illegal exploitation of natural resources in the Democratic Republic of Congo, have noted that the Guidelines allow governments to engage with companies with greater flexibility than that permitted by legal proceedings.
- *A tool for companies.* Trade unions and NGOs have been attracted to the specific instances procedure for some time. But companies are now starting to realize that it can be a useful tool for them as well. Business recently asked the Guidelines institutions to assist them in dealing with bribe solicitation and ways of responding to this request are currently being explored. In addition, the specific instances procedures can help provide concrete guidance to companies – it can reassure them (as in the Swedish case described above) while sometimes also helping them to identify shortcomings.

Guidelines implementation – which includes an annual Corporate Responsibility Roundtable organized in conjunction with the annual meeting of NCPs – also provides an opportunity for business, trade unions and NGOs to share their views on major corporate responsibility issues (e.g. responsible supply chain management, business’ contribution to the fight against corruption). Among other things, this allows them to influence NCPs thinking on high profile issues. The summaries of these discussions, published in the annual reports on the Guidelines, provide a public record of the views of governments, business, trade unions and NGOs on these issues.

4. Ongoing challenges

While their overall visibility has grown, more needs to be done to raise public awareness of the Guidelines and to demonstrate that they can make a vital contribution to the global economy. A number of priority areas for future work have been identified:

- **Transparency and effectiveness of NCPs.** The NCPs are focusing on enhancing the transparency and effectiveness of their operations. They are sharing their experiences through a regular annual meeting in order to ensure that the specific instances are considered in a fair way. One of the main outstanding issues is the disclosure of information at the various stages of the “specific instances” process.
- **Parallel legal procedures.** Surveys of NCPs show that specific instances are often conducted in parallel with consideration of related matters under legal or administrative procedures. NCPs have started to explore under what circumstances the Guidelines procedures can make positive contributions over and above those made by other procedures.
- **Enhancing the contribution of business in weak governance zones.** The OECD is working on providing terms of reference for conducting business with integrity in countries with very weak governance. This work will draw on the OECD’s integrity package, which includes the Guidelines as well as the OECD Anti-Bribery Convention and Recommendations, the Corporate Governance Principles and Guidelines on Avoiding Conflict of Interest in the Public Service.
- **Partnerships with other international organizations.** The Guidelines are one of several global corporate responsibility initiatives. The OECD is building partnerships with other international organisations – in particular with the United Nations, the World Bank and the Global Reporting Initiative (GRI). The GRI has issued a map of how the GRI indicators can be used by companies to report on their performance relative to the Guidelines’ recommendations. The OECD Investment Committee will be working with the UN Global Compact on follow-up to the UN Expert Panel’s Report on Illegal Exploitation of the Democratic Republic of Congo.

5. Conclusions

Having been a practicing lawyer and a parliamentarian, my bias has been towards controlling much behaviour through laws and regulations – a rules-based system, if you like. My view has changed. The OECD Guidelines for Multinational Enterprises (like the OECD Principles of Corporate Governance) set out a number of “principles” for international behaviour which underpin good corporate citizenship, no matter what may be the local legal framework. Effective pressure for good corporate behaviour can be exercised not only by

legal tribunals with lawyers debating whether a rule has been breached, but also by the court of public opinion, often finding its expression at shareholders meetings and in consumer action. The Guidelines are a code of conduct attached to a government-backed mediation procedure that reinforces these market pressures. This procedure has been used many times and in a variety of ways, ranging from “naming and shaming” to highlighting the positive steps taken by companies. It also provides a mechanism through which governments help businesses explore what ethical conduct means in situations where this is far from obvious. Thus, the Guidelines promote appropriate international business conduct by raising the incentives for acting responsibly and by helping companies understand what appropriate conduct is.

Notes

1. The eight countries are Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.
2. Preface of the OECD Guidelines for Multinational Enterprises.
3. *Corporate Responsibility: Private Initiatives and Public Goals*, OECD, Paris, 2001.
4. The core labour standards are set forth in the International Labour Organisation's *Declaration on Fundamental Principles and Rights at Work*. They include freedom of association, elimination of all forms of forced or compulsory labour, effective abolition of child labour, the elimination of discrimination with respect of employment and occupation. For a detailed discussion of these standards, see *International Trade and Core Labour Standards*, OECD, Paris, 2000.
5. For fuller information on the Guidelines, see www.oecd.org/daf/investment/guidelines/.
6. For fuller information on the OECD Declaration, see www.oecd.org/daf/investment/instruments/.
7. *2003 Annual Report on the OECD Guidelines for Multinational Enterprises: Focus on Enhancing the Role of Business in the Fight Against Corruption*, OECD, Paris, 2003.