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**CONFERENCE ON THE OECD GUIDELINES FOR MULTINATIONAL
ENTERPRISES**

Budapest, Hungary -- 16-18 November 1998

Summary of proceedings

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CONFERENCE ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

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Summary of proceedings

(prepared by the Secretariat)

I. Introduction

1. A conference on the OECD Guidelines for Multinational Enterprises was held in Budapest from 16-18 November 1998. The Government of Hungary was host to this event, which was attended by 118 participants, including 69 from the governments of 25 countries (including 3 non-OECD Members), 21 from the business sector, 12 from trade unions, 10 from IGOs (including 6 from the OECD) and 6 from NGOs (see the annex for the list of participants). Opening addresses were delivered by Dr Gábor Gulácsi, State Secretary at the Ministry of Economic Affairs of Hungary, and Dr Rainer Geiger, Deputy Director for Financial, Fiscal and Enterprise Affairs at the OECD. The conference was held against the background of a decision by the CIME (in June 1998) to undertake a review of the Guidelines. This report, by the OECD Secretariat, summarises the proceedings of the conference.

2. This conference marked the start of a review process. While no decisions were taken, the importance of this event for the future of the Guidelines was recognised -- indeed, the word 'landmark' was used. It enabled participants to take stock of the Guidelines' strengths and weaknesses and to mark their points of departure for the review.

3. The Chairman summarised the results of the conference as follows.

- The meeting has accomplished its objective of a brainstorming session which has served to collect ideas for the review process. It was not its intention to reach decisions or establish consensus among participants. Nevertheless, on the following key aspects a communality of views emerged.
- The review should be serious and meaningful. It needs to address the reasons why the Guidelines have not been as effective as they could have been. It should also deal with areas where the Guidelines may no longer represent the state of the art as reflected by developments in legislation and other international instruments.
- Areas for future attention include: raising awareness of the Guidelines and promote their use and understanding, improvements in follow-up procedures and updating their text where this proves necessary on the basis of further analysis. Among the chapters which may need revision, labour and industrial relations, as well as the environment, were most frequently mentioned, but other chapters also need examination. New issues like human rights and sustainable development also need to be addressed.

- The review process is still at an early stage and further analysis is required. The work of the CIME on the review will proceed in close co-operation with other key players, including other OECD Committees, business, labour, NGOs and other international organisations.
- The ultimate objective of the review is to establish a common vision of the Guidelines as part of a framework for the proper functioning of markets and managing globalisation.
- The momentum created in Budapest should be maintained and the consultation process with the organisations represented at this conference will continue.

II. First session: An assessment of the experience with the Guidelines

4. It was noted that there is now an increased interest in good corporate conduct and strong support for a meaningful review of the Guidelines. There is also a widespread feeling that the Guidelines no longer represent the state of the art for codes of corporate conduct and need a thorough review to ensure their continued relevance. There are differences, however, between the present context and that of the 1970s, when the Guidelines were adopted. At that time, the main concern was the MNEs might undermine the sovereignty of their host countries. Currently, however, MNEs are often called upon not to benefit from, or even to correct, failures by host country governments, *e.g.* in the lax implementation of labour and environmental standards.

5. Some speakers stressed that a review process has to start by developing a vision of what the Guidelines should be and of how any proposed revision should work out in practice. Already, there was considerable discussion about some of the essential characteristics of this instrument and about the question as to whether these are strengths or weaknesses. Two such characteristics were: the stability of the Guidelines and their legal status (*i.e.* non-binding, but with a legally binding implementation mechanism).

6. While no speaker precluded revisions, several of them, in particular on the side of BIAC, felt that there are advantages to limiting the number and frequency of amendments: the Guidelines are part of wider framework of rights and obligations and the balance between the two should be preserved. Their consistency with other instruments, such as those of the ILO, should also be considered. Any review should help realise the potential benefits of foreign investment, not hamper them.

7. Opinions differed as to the usefulness of non-legally binding rules. On the one hand, it was argued that such rules may relieve the pressure for high-quality regulation. The opposite view was that companies trust the Guidelines because they are not law and, hence, do not compel them to set up a legal defence mechanism to deal with their implementation. Furthermore, making the Guidelines binding could undermine the OECD countries' sovereignty. Another argument was that developing binding rules may lead to 'lowest common denominator' standards. Several speakers observed that the 'voluntary,' or 'non-legally binding' character did not imply a freedom to ignore the Guidelines and that legally binding rules exist in different degrees.

8. The point was made that there is a need for internationally accepted standards for corporate conduct. The Guidelines are still the only widely supported and comprehensive instrument (although their application in non-OECD countries deserves further attention). They have also inspired the development of other instruments. In this light, the question was raised whether their main function should be that of a 'code of codes': a standard to be used as a basis for other instruments.

9. Greater visibility and credibility would help strengthen the confidence in the Guidelines. Greater credibility should be achieved in particular in the implementation mechanism. Three processes were distinguished: monitoring, verification and certification. As to monitoring, most speakers felt that the functioning of the National Contact Points had to be improved. NCPs need to be proactive, not reactive. On the verification process, it was remarked that the clarifications by the CIME could be more accessible by the use of more transparent, user-friendly language. On verification and certification, a suggestion was made that enterprises publicly sign up to the Guidelines and that some degree of monitoring may be necessary. So far, very few enterprises refer to the Guidelines in defining their corporate policies.

10. Finally, there was discussion about the role of NGOs in the implementation and review process. A speaker stressed the importance of distinguishing between holders of interest, *i.e.* governments, business and labour on the one hand, and ‘opinion makers’ such as NGOs on the other: the latter should not have a direct role in the process on a par with BIAC and TUAC. However, other speakers appreciated the interest expressed by NGOs in the present review. No speaker took issue with the opinion that a multinational enterprise has responsibilities towards its shareholders, its customers, its employees, its business partners and towards society as a whole.

III. Second session: The role of the Guidelines in a globalising economy

11. Session 2 dealt with the role of the Guidelines in a globalising economy (or “globally integrating economy,” as one speaker put it). Broadly, the way in which globalisation was seen to be changing the context for the Guidelines can be summarised as follows.

12. Foreign direct investment is now much more likely to be seen as beneficial for economic development than it was in 1976. It is also likely to be of more interest to a wider range of citizens. And it is likely to be subjected to fewer government controls. One implication of these changes is that MNEs now have more flexibility with regard to FDI than in the past. This increased flexibility introduces at least a “moral obligation” (as one speaker termed it) for business to demonstrate that it is successfully contributing to those public goods which cannot be delivered via conventional markets. On the other hand, there is also some ‘moral obligation’ on the part of governments to recognise the key role provided by business in the FDI process.

13. FDI now has to function in an environment where more people have access to information and much sooner than they used to be. One implication of this for the Guidelines is that key processes need to be open to public scrutiny (if for no other reason than that the results of these process will eventually get into the public domain anyway). This implies that open hearings by National Contact Points, routine access of all interested parties to the process and periodic reporting on activities and results may be appropriate.

14. Global business activity is itself becoming ever more integrated and complex. The need for business to demonstrate to its own markets that it is acting responsibly, is already being felt within the business community, resulting in a proliferation of codes of conduct at the firm and industrial levels. Similarly, there is an ever-widening range of codes emerging at the international level. The main implication of these globalisation-related changes is that the OECD Guidelines will have to demonstrate their value-added on a continuing basis -- in effect, to provide value-added to other available codes, and to show how they can contribute to the broader international framework for FDI. This issue was not extensively debated, but at least three suggestions emerged as possible elements of that contribution. First, there is the idea of offering a *statement of leadership* from the world’s richest nations. Secondly, there is the idea of demonstrating an *effective partnership between business and government* across the

full range of topics covered by the Guidelines (running all the way from bribery to the environment). And thirdly, there is the idea of the Guidelines being used as an *integrating force with respect to all other investment related codes*, especially as a way of increasing the information-efficiency of markets.

15. The Guidelines, which have not been reviewed since 1991, have not kept pace with globalisation-related changes in the economy or society. Examples of this were provided across all subjects considered by the meeting (competition and corporate governance, environment, bribery and corruption, and labour standards). It was suggested that the Guidelines be brought up to the state of the art in each of these fields. The access of civil society to the Guidelines process will be important. But there are various ways of achieving this access. Increased transparency, coupled with implementation procedures that really ‘bite,’ may be all that is eventually required to unlock this particular problem.

Issues for the review

16. *Timing.* This issue has two dimensions. First, there is the issue of the pace of the review process itself. There is general recognition of the wisdom of taking sufficient time to study the real need for revision before taking action. But there is also some concern that slow reactions are more a reflection of a lack of political commitment to the process, than they are of normal prudence. As the 2-year horizon for the review moves closer, this tension seems likely to grow. The second timing issue has to do with the credibility of the Guidelines themselves. It was suggested that the Guidelines process should find a way of contributing to the prevention of damaging behaviour in time to make a difference. This problem is obvious with respect to the environmental issue, but it applies to the social and economic elements of sustainable development too.

17. *Stability.* Speakers with experience in the actual operation of the Guidelines tended to emphasise the need to maintain the good working relationships which had been built up over time in these operations. In broad terms, ‘investor confidence’ was seen to underlie the call by these speakers for stability. On the other hand, there were several interventions expressing concern about stability getting in the way of improved effectiveness of the Guidelines.

18. Most interventions agreed on the need to more clearly define the applicability of the Guidelines in *non-OECD jurisdictions*, and the precise conditions, if any, under which such applications would be made.

19. There were also some suggestions that some form of *reward for conformity* with the Guidelines (or some form of disincentive for non-conformity) might be appropriate. In any event, if such incentives were to be employed, their modalities would have to be clarified.

IV. Third session: Improving the effectiveness of the Guidelines

20. The chair opened this session with a comprehensive outline of the issues that had emerged during preliminary discussions in the current review of the Guidelines with respect to improving their effectiveness. The chair emphasised the importance of basing the review on a thorough analysis of recent experience with the Guidelines, and noted that hypothetical possibilities for review could already be grouped under two categories: substance (or changes to the text) and changes in procedural matters.

21. With respect to changes to the text, it was observed that these could be made in all chapters, but that chapters on general policies (especially with respect to bribery and corruption, and perhaps corporate

governance), competition, the environment, and employment and industrial relations could all warrant some updating. Since the last review, changes in the international institutional environment with respect to the environment, as well as to employment and industrial relations in particular, had not been reflected in the Guidelines text. In addition, the relevance of corporate influence on other issues, such as human rights, was noted, as well as the possibility of clarifying existing text with respect to 'parent company responsibility' in paragraph 8 of the Introduction, for example.

22. Finally, the Chair also noted thornier issues on which a range of views existed, but that would have to be addressed during the current review. These included the possibility of changing the Guidelines' non-binding status (in various ways), the applicability of the Guidelines outside the OECD area, enforceability, and the status of other players (*e.g.* NGOs), whether at the national level, or with respect to other OECD Committees, or other international organisations.

23. The lead speaker of the session, a national delegate, presented concrete suggestions for changes to the Guidelines for the CIME to consider. The speaker argued that there was scope for a re-examination of issues related to both the actual text of the Guidelines, as well as operational procedures associated with them. Two chapters singled out for change -- on the environment and on employment and industrial relations -- were also noted by other speakers at the conference, although in this case, the national delegation in question has suggested proposed language for a revised chapter on the environment.

24. The lead speaker also focused on procedural changes, in particular strengthening National Contact Points and strengthening CIME's evaluation role in the operation of the Guidelines. More specifically, the preparation of an annual report, and changes to CIME's unanimous decision-making procedures were also suggested. Finally, the participation of civil society (especially environmental NGOs), as well as other OECD Committees, was advocated.

25. Following the lead speaker's presentation, a number of discussants presented papers on implementation procedures and follow-up. Participation was broad, and included representatives from national delegations, international organisations, as well as BIAC, TUAC, and NGOs.

26. A second national delegate led off the round-table discussion with a summary of the long-standing formalised role of the National Contact Point in his country, noting its tripartite nature. (Later interventions by other delegations noted that this format was not unique among members.) With respect to procedural issues, it was suggested that, at the international level, regular annual meetings of National Contact Points (NCPs) should take place in an attempt to add some dynamism to what was felt to be the currently somewhat moribund nature of many NCPs. It was noted that this was also a plea for the standardisation of the role of NCPs by all Guidelines signatories.

27. A representative from UNCTAD made a plea for recognition of the needs of developing countries, and reminded participants that their room for manoeuvre is often more limited than OECD members. It was also observed that the Guidelines chapter on Science and Technology was of interest to developing countries since it furthers the goals of technology transfer. The representative concluded with an offer of further co-operation between UNCTAD and the OECD during the Guidelines review period.

28. A BIAC presentation followed, reminding participants of the considerable importance that BIAC attaches to the stability of the Guidelines -- an attribute that has indeed been noticed by the CIME and other observers. Confidence building and trust amongst all adherents to the Guidelines should not be threatened, and suggestions with respect to making the Guidelines a binding instrument would not be productive in this regard. BIAC noted its opposition to changing the non-binding character of the Guidelines, pointing out that to do so could risk existing accomplishments embodied in the Guidelines. At

the very least, a more binding instrument would necessitate changing it to a complex legal document with 'lowest common denominator' provisions, and including dispute settlement procedures. This may be beyond the current mandate of the review, and, in any case, recent precedents in negotiating instruments with similar features were a caution in this regard. The Guidelines should also be consistent with other legal instruments and the OECD should not interfere with the enforcement of ILO Conventions. Nonetheless, BIAC was not opposed to a reasonable revision of the Guidelines, and noted the potential danger of a credibility gap in terms of their public profile that should be addressed during the current review.

29. A TUAC representative then echoed at least one of the BIAC points with respect to the need to update the Guidelines while cautioning against starting from 'ground zero,' or completely rewording them. Reanimating the CIME, and improving enforcement of the Guidelines, were also advocated. The TUAC representative went on to warn of the dangers associated with this review in the absence of real political will from country delegations -- a point that was echoed by other participants during the conference. And finally, again reflecting a point supported by a number of participants, the TUAC representative suggested an annual report for OECD ministers by the CIME on the Guidelines.

30. Finally, a representative from an environmental NGO made several points from the perspective of civil society. This representative spoke in favour of making the Guidelines truly relevant, and made several suggestions with respect to improving 'accountability' in the Guidelines, including clarifying the standing of citizens to bring issues to the attention of NCPs, the possibility of public hearings on issues raised by NCPs, and of monitoring the Guidelines, and NCPs. The NGO representative argued that good companies have nothing to fear from transparent accountability, and that accountability mechanisms, in addition to being of interest to NGOs, could also help in the efficient functioning of markets.

V. Final session: Conclusions

31. The purpose of the final session was to draw conclusions as to how the results of the conference could be used for the benefit of the review process. There was wide support for a substantial and meaningful review, to ensure more effective Guidelines. Many speakers stressed that any decision on revisions of the text of the Guidelines should be preceded by a thorough analysis of the issues.

32. The point was reiterated, notably from the side of BIAC, that the Guidelines are part of a balanced package of rights and obligations and that this balance, and the stability of the Guidelines, should be preserved. However, the point was also made that stability is not a virtue in its own right and should not be an excuse for inertia: the Guidelines have to be a flexible instrument and, although a revolutionary change was not sought, many delegations saw a need for amendments in several areas.

33. Many speakers felt that compliance with the Guidelines should be more effectively sought. Ways to ensure independent verification deserve further consideration. Several speakers cautioned against 'blacklisting' companies, but others felt that the prospect of bad publicity, if a company were found to be in breach of the Guidelines, would serve as a useful deterrent against misconduct.

34. The application of the Guidelines outside the OECD area raises sensitive issues of sovereignty, but ways should be considered to make the Guidelines relevant for the activities of OECD-based MNEs in non-Member countries. A speaker suggested that non-Members be given the opportunity to be associated with the Guidelines without going through the present procedures of CIME observership. The proposal was also made that the Guidelines be made applicable to the activities of companies' subsidiaries and subcontractors abroad.

35. While no firm positions were taken on the scope of any revisions, all chapters of the Guidelines could be considered for revision. Several new issues were suggested for insertion, in particular references to the Universal Declaration of Human Rights, to forced and child labour, sustainable development and to the state of the art in other OECD instruments, notably on corruption, competition, corporate governance and taxation. The point was made that sustainable development is an overarching rather than a separate issue.

36. There was a general sentiment that the National Contact Points need to be reinvigorated. Concrete suggestions were that they be given a more precisely defined mandate. This might include a reference to a tripartite composition and a more active role in monitoring observance of the Guidelines. The NCPs could meet annually or biannually at the OECD to exchange experience. Annual reports on the NCPs' activities could be prepared for submission by the CIME to the OECD Council. The CIME, and its Working Group on the Guidelines, could be reconfirmed in their pivotal role in the implementation of the Guidelines and their procedures made more effective.

Annex/Annexe

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