

OECD Guidelines – one tool for corporate social accountability

On labour conditions, we need a race to the top among multinationals, not a race to the bottom. The OECD Guidelines for Multinational Corporations can help to ensure corporate social accountability. Governments should boost them – and unions should use them.

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The current wave of globalization, and in particular the role of foreign investment as one of its main motors, has reopened the policy debate about the international rights and obligations of multinational enterprises.

There is a strange paradox in the evidence and in the international debate about the impact of foreign investment on labour rights and “decent work”. Surveys on foreign investors’ intentions suggest that in most sectors market access, good governance, skills and education levels are more important in attracting investment than low wages or submissive workers. Yet, rather than improving living and working conditions, the race to attract foreign investment often appears to pressure governments into reducing workers’ rights in order to minimize labour costs.

The most brutal examples are often in export processing zones (EPZs) where semi-manufactures or raw materials are processed into goods for export by foreign companies, outside the normal laws and regulations of the host country. They may operate very differently in different parts of the world, but EPZs tend to have one overriding characteristic in common: trade unions are tolerated in few, if any, of them. This is disturbing. An update in 2000 to an OECD report on trade and labour standards noted that the number of export processing zones worldwide had risen from some 500 in 1996 to about 850,

not counting China’s special economic zones. EPZs have become commonplace in many parts of Asia and Central America and are now spreading to Africa as a development model.

Multinational companies may also simply decide to switch countries, or at least threaten to do so, when faced with labour dissatisfaction (or the prospect of a cheaper labour market elsewhere), and this in good as well as in hard times. A study by Cornell University in 2000 found that, despite the longest boom in the history of the United States, workers were feeling more insecure than ever before. More than half the firms surveyed, when faced with union action, had threatened to close the plant and move to another country. In some sectors, this figure rose to 68 per cent. The fact that only 5 per cent of firms actually moved away does not lessen the perceived threat, increasing the imbalance of power between unions and employers in the labour market.

The trade union response to foreign investment must be to ensure that, in terms of labour conditions, we start a “race to the top” and stop the “race to the bottom” between multinational companies. To achieve this, we have to take a strategic view of the use of a range of different tools of corporate social responsibility and accountability whose relevance will vary in different circumstances. We also have to achieve synergy between the different instruments.

The OECD Guidelines – one element of a response

At the level of TUAC, in close cooperation with our global union partners – the International Confederation of Free Trade Unions (ICFTU) and the Global Union Federations (GUFs) as well as the World Confederation of Labour (WCL) and the European Trade Union Confederation (ETUC) – we are giving priority to maintaining and encouraging enforcement of the OECD Guidelines for Multinational Enterprises, revised and substantially developed by governments in consultation with labour unions, businesses and non-governmental organizations (NGOs) in 2000. The Guidelines are governmental recommendations for good corporate behaviour, primarily addressed to corporations based in countries that adhere to them but applying to their operations worldwide, which account for 85 per cent of total foreign direct investment.

The OECD Guidelines for Multinational Enterprises were first agreed upon in 1976, following public concern that multinational enterprises were becoming too powerful and unaccountable. This was in the light of the role of some US-based companies in the Pinochet coup that overthrew the Allende government in Chile. They were rapidly followed by the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and negotiations opened at the UN in New York to establish a UN Code on Transnational Corporations. The UN Code did not survive the political shift to deregulation in the 1980s, and the OECD Guidelines themselves fell into partial disuse as most OECD governments showed little political will to enforce them.

The collapse of negotiations on the Multilateral Agreement on Investment at the OECD in 1999, and the appearance of company codes and other initiatives of corporate social responsibility in the late 1990s, led to a swing back in the political climate on company responsibility. This opened the way for a substantial revision of the Guidelines, and notably

their implementation procedures, in 2000. The revision was concluded in June 2000 and resulted in major changes such as the strengthening of the implementation procedures, clarification of their global applicability, the coverage of all core labour standards, and their extension to suppliers and sub-contractors.

The Guidelines are recommendations for good corporate practice, primarily addressed to enterprises based in the countries that adhere to them: the 30 OECD countries – Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States – plus Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia. But the Guidelines also apply to any OECD-based company's operations worldwide. More countries are now in the process of adhering to them.

The Guidelines are comprehensive, with chapters covering general policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation.

Implementation

The Guidelines may not be binding in a legal sense at the international level, but they are not optional for corporations. If companies could simply pick and choose among the provisions of the Guidelines or subject them to their own interpretations, then they would have no value. Nor does their application depend on endorsement by companies. The OECD's Guidelines are the only multilaterally endorsed and comprehensive rules that governments have negotiated, in which they commit themselves to help solve problems arising with corporations. Most importantly, the ultimate responsibility for enforcement

lies with governments. The key therefore is implementation.

Every adhering government has to set up a National Contact Point (NCP) for promoting and implementing the Guidelines. These NCPs may be organized in different ways. Some involve a single government agency, while others are multi-agency (involving several ministries). Some are tripartite (government, labour and business), e.g. in France, Belgium and Sweden, but governments are ultimately responsible. Whatever the form, representatives of labour, business and NGOs must be informed of the availability of the NCP, which itself is expected to develop and maintain relations with these groups.

When a company is believed to be in violation of the Guidelines, a trade union, an NGO or another interested party can raise the case with the NCP. The NCP should then try to resolve the issue. A range of options is available, including offering a forum for discussion for the affected parties, conciliation or mediation. In deciding what course of action to take, the NCP is required to make an initial assessment as to whether the case “merits further examination”. It must then respond to the party that raised the case. If the NCP decides that the issue does not merit further consideration, it must give reasons for its decision.

The OECD commentaries to the Guidelines provide some guidance on how to interpret the wording “merits further examination”. Accordingly, the NCP should determine whether the issue is “bona fide” and relevant to the implementation of the Guidelines. In this context, it will, among other things, take into account the identity of the party concerned and its interest in the matter, whether the issue is material and substantiated and how similar issues have been, or are being, treated in other domestic or international forums. There is nothing to prevent a party from raising a case that is being handled elsewhere. The French trade union centres raised the closure of Marks & Spencer’s French stores as a case with their NCP in 2001, while the issue was also being dealt with in French courts.

When going ahead with a case, the NCP should help the parties resolve the problem. In doing so, it can:

- seek advice from relevant authorities, trade unions, business, NGOs and experts;
- consult the NCP in the other country or countries concerned;
- seek the guidance of CIME (the OECD committee responsible for the Guidelines) in cases where the interpretation of the Guidelines is in doubt; and
- offer conciliation or mediation to assist in dealing with the issues.

Having followed one or all of these avenues, and if the parties are still unable to agree on how to solve a problem, the NCP is normally required to issue a public statement on the case. It could also make recommendations to the parties on how the Guidelines apply to the case. NCPs may, therefore, inform a company that its activities breach the Guidelines. Whilst the Guidelines are not legally binding, the mere fact that the conclusions of NCPs are to reach the public domain can have an impact and affect company behaviour.

Some 25 cases have been raised by trade unions since the review, and a further half-dozen have been raised by NGOs. So far only a handful of cases have been settled. A majority of the cases refer to corporate conduct in non-adhering countries and/or violation of trade union rights. Another common issue is the closure or transfer of companies or parts of companies.

2000-2003 – an assessment

TUAC conducted a survey of its affiliates and Global Union Federations to evaluate the impact of the Guidelines in the two years since their revision. On the basis of this, some tentative assessment was made of how they are functioning in practice and what could be done to improve their implementation.

The results of the survey are mixed. There have been some positive developments and improvements in the functioning of NCPs, including the establishment of NCPs in Chile, Estonia, Lithuania and Slovenia, and the successful handling of cases by the Czech NCP. But there are also problems in several countries. The central problem is that probably still less than half of the signatories of the OECD Guidelines have NCPs which are really functioning. Although this is an improvement on the situation before 2000, we have still not arrived at a critical mass of governments who take their responsibilities seriously.

How NCPs respond to these cases is crucial to the Guidelines. Depending on the nature of the problem, a case can take more or less time to resolve. It is normal that NCPs need to take some time to establish procedures to deal with the cases. But it is clear that it generally takes too long for the NCPs to respond to cases. The “worst” case in this respect is the United States, where five cases have been raised by trade unions in the US NCP, of which not a single one has led to conclusions by the NCP. The time aspect is an issue that must be addressed in the future. It could be difficult to agree on a time frame, but CIME should give guidance on this. TUAC is concerned that some NCPs are not making a serious effort to deal with the cases raised.

Four of the cases have so far led to conclusions by NCPs. They concern Siemens, Bosch, Marks & Spencer and French companies’ operations in Myanmar. The Siemens case was raised by the Czech trade union confederation CMKOS in the Czech NCP, as the company had prevented the workers from establishing a trade union. The case was settled after the company agreed to negotiate and to take part in a social dialogue. One reason for the good outcome, according to the CMKOS, was the fact that it was raised in the NCP. The case also got some attention in the press, and this helped to achieve a solution. Some other cases have been withdrawn following satisfactory outcomes.

Another problem is that the Guidelines are relatively unknown, compared with some other instruments, such as the UN Global Compact. To tackle this issue within TUAC, we have organized a project to raise awareness among trade unions, including the publication of a user’s guide for trade unionists, which is now available in 14 languages.¹ With our partners, we are running workshops and seminars on the Guidelines, particularly in non-OECD countries. In 2003, with the support of the European Union and the Friedrich Ebert Foundation, we are organizing workshops in Central America, North and southern Africa, and Asia. The Asian and Pacific Region of the ICFTU is also organizing a series of workshops in Asia. Overall, however, we continue to feel governments must do much more.

One of the themes for the 2003 G8 Evian summit was “responsibility” and TUAC has called on the OECD and OECD governments to put in place a programme to improve the effectiveness of the Guidelines so as to:

- ensure that all NCPs are operating and meet the standards of the best performers;
- set targets for efforts to promote the Guidelines;
- raise awareness of the Guidelines, both in the OECD so that the Guidelines are included in relevant meetings and activities, and also in other relevant inter-governmental forums;
- establish an outreach programme with non-members, including regional meetings/seminars to raise awareness of the Guidelines;
- review experience with particular chapters of the Guidelines; and
- provide guidance on the time frame for dealing with cases.

Linking government support to Guidelines' compliance

Governments also need to do more to link their own support to compliance with the Guidelines. No government has yet made observance of the Guidelines a condition for the receipt of public subsidies. However, some are moving in this direction, which would be a powerful stimulus to Guidelines' observance. In order to receive export credit guarantees, Dutch companies have to state that they comply with the Guidelines. French enterprises have to sign a letter saying that they are aware of the Guidelines. Furthermore, trade unions in the Czech Republic, Finland and Sweden have noted that discussions with their governments on linkages between the Guidelines and export credits are still ongoing.

There are also other areas where a linkage to the Guidelines should be developed. References to them should be made in bilateral investment treaties between adhering and non-adhering countries. This would make non-adhering countries aware of the expectations that multinational enterprises are facing. In addition, the European Union has a number of instruments that operate under the direction of the European Commission and to which the Guidelines could be associated or linked, so as to create conditionality or leverage on European-based multinationals. Trade unions have requested the Commission to audit these mechanisms as a first step towards this goal.

The link to global framework agreements

There are other instruments in an evolving "toolbox" that the global union movement can use to counteract the social downside of globalization. These include work by the Global Union Federations to develop collective bargaining relationships with companies at an international level. Some 20 global framework agreements have been concluded – most in the

last two years – between the federations and companies in sectors such as mining, chemicals, food, forestry, services and automobiles (see page 15). The Guidelines could become a benchmark alongside ILO standards in these agreements.

Some trade unions are using the Guidelines in a broader context of corporate social accountability. They have been used in connection with shareholder resolutions in some countries, including the United States. The Lithuanian Trade Union Confederation is using the Guidelines in its discussions with multinational enterprises and in collective bargaining. The Finnish trade union confederation SAK is planning to raise the Guidelines in European Works Councils in Finnish-based companies. The Guidelines have been used by the Brazilian Social Observatory as criteria for studies on multinational enterprises operating in Brazil. The Danish trade union confederation LO has let the Guidelines form the basis for some discussions on corporate social accountability. TUAC is also part of a joint Global Unions Committee which is reviewing the social performance of enterprises in which workers' pension and saving funds are invested and is beginning to train union trustees.

Conclusion

The Guidelines are not an alternative to effective legal regulation of companies, worker capital strategies or the negotiation of collective agreements, but they can be an important complement. Ultimately, their effectiveness depends on governments and whether they make sure that they have properly functioning NCPs. The Guidelines can be an effective instrument if governments take their responsibilities seriously. But trade unions and NGOs must also look to their own responsibilities and make use of them. For labour, perhaps the greatest danger is not globalization itself. Rather, it is to accept policy paralysis as a result of globalization. Some of the tools to prevent this paralysis

already exist. The union movement must make sure it uses them effectively, but governments cannot absolve themselves from their own ultimate responsibility for managing markets globally.

Note

¹ The *Users' Guide on OECD Guidelines for Multinational Enterprises* is available from TUAC – OECD, 26, avenue de la Grande-Armée, 75017 Paris, France (e-mail tuac@tuac.org). The guide has been translated from English into 13 languages, including French, Spanish, Italian, Portuguese, Hungarian, Russian, Korean, Czech, Latvian, Estonian, Thai and Bahasa Indonesia. It describes step by step how to raise a case on a company; it also contains the addresses of all the NCPs, TUAC, the ICFTU and the Global Union Federations. Editions in some languages are available online at <http://www.tuac.org>
