



TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
COMMISSION SYNDICALE CONSULTATIVE
AUPRÈS DE L'ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

The OECD Guidelines for Multinational Enterprises
Recommendations for Responsible Business Conduct in a Global Context

**TUAC Submission to the Annual Meeting of National Contact Points
28 June 2011**

1. Overview

1. The updated Guidelines contain a number of positive new elements including a chapter on Human Rights, the clear application of the Guidelines to suppliers and other business relationships, the introduction of a general due diligence principle, the broadened scope of the Employment and Industrial Relations Chapter, stronger rules aimed at improving functional equivalence and an enhanced role for the OECD in implementing the Guidelines in particular in relation to peer learning and capacity-building.
2. TUAC considers that these elements significantly increase the relevance of the Guidelines and their potential to raise the standard of responsible business conduct in a global context. The success of the Update now depends on prompt and full implementation of the new provisions by adhering governments at national level and at the OECD.
3. Adhering governments must harness the momentum generated by the Update at national and international level to translate the ambition of the Update into reality. They must ensure that the updated Guidelines fulfil their potential and promote greater responsible business conduct in a global context, thereby continuing to be a leading international instrument in this regard.

2. Adhering governments

4. Adhering governments must first and foremost upgrade the structures and procedures of their NCPs. The future functioning of NCPs will be the yardstick for measuring success of the Update. It is essential the implementation of the Updated Guidelines consigns to the past the poor and patchy performance of NCPs.
5. According to the Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for Multinational Enterprises, there is an informal understanding at the OECD which establishes that: *“when a legal instrument is adapted or revised, a reasonable length of time – approximately six months – is needed in order to implement its provisions”*. TUAC calls on all NCPs to review and revise their procedures and structures over the next six months, working with the social partners and other non-governmental organisations, so as to have in place upgraded structures and procedures that, at a minimum, meet the standards of the updated Guidelines, by January 2012. *TABLE 1* sets out ten next steps for adhering governments.

TABLE 1: NEXT STEPS FOR ADHERING GOVERNMENTS¹

| STEPS | DESCRIPTION | REFERENCES |
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| 1. PROVIDE ADEQUATE RESOURCES | Adhering governments must ensure that the resources of the NCP are adequate for undertaking the enhanced functions under the updated Guidelines, including mediation, capacity-building and participating in peer learning. | <u>Council Decision</u> <u>I. National Contact Points</u> “Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities...”. |
| 2. TRANSLATE THE UPDATED GUIDELINES | NCPs should translate the updated Guidelines and their Commentaries into all national and, as appropriate, local languages in the coming weeks, in line with the Procedural Guidance and the core criteria of accessibility. | <u>Procedural Guidance</u> <u>I. National Contact Points</u> <u>B. Information and Promotion</u> “The National Contact Point will 1. Make the Guidelines known and available by appropriate means, including through on-line information and in national languages...”. |
| 3. SET UP AN ADVISORY, OVERSIGHT OR REVIEW BODY | NCPs should establish an advisory, oversight or review body in line with the recommendation made in the Commentary to the Procedural Guidance and in accordance with NCP best practice, thereby helping to ensure <u>impartiality</u> , <u>predictability</u> and <u>equitability</u> in the handling of specific instances. | <u>Commentaries to the Procedural Guidance.</u> <u>Paragraph 11</u> “Regardless of the structure governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks”. <u>Paragraph 22</u> “Impartial; NCPs should ensure impartiality in the resolution of the specific instances. Predictable: NCPs should ensure predictability... Equitable: NCPs should ensure that parties can engage in the process on fair and equitable terms...”. |
| 4. CONDUCT A REVIEW OF NCP STRUCTURES | In addition to creating an advisory or oversight body, NCPs should review and revise their structure so as to provide an effective basis for implementing the Guidelines, assure impartiality and to be consistent with the other core criteria and the guiding principles for the handling of specific | <u>Procedural Guidance</u> <u>I. National Contact Points</u> <u>A. Institutional Arrangements</u> 1. NCPs will “be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the |

¹ TABLES 1 and 2 use the paragraph numbering for the Commentaries given in the version of the Commentaries that was submitted for approval to the Council in May 2011. The Commentaries of the public version of the updated Guidelines, whilst usefully following the relevant Chapter, do not contain paragraph numbers. TUAC has started working with the new text and find this highly problematic.

| STEPS | DESCRIPTION | REFERENCES |
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| | <p>instances. They should pay particular attention to identifying, disclosing and removing conflicts of interest in line with the requirement to be impartial.</p> <p><u>This review of NCP structure should be undertaken collaboratively with the social partners and other non-governmental organisations.</u></p> | <p><i>Guidelines and enable the NCP to operate in an <u>impartial</u> manner, while maintaining an adequate level of accountability to the adhering government”.</i></p> <p><u>Procedural Guidance</u> <u>I. National Contact Points</u> <u>C. Implementation in Specific Instances</u></p> <p><i>“The National Contact Point will contribute to the resolution of issues that arise relating to ... specific instances, in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.”</i></p> <p><u>Commentary to the Procedural Guidance</u> <u>Paragraph 22</u> (guiding principles – see above)</p> |
| <p>5. CONDUCT A REVIEW OF NCP PROCEDURES</p> | <p>NCPS should conduct a review to ensure that their procedures are, at a minimum, consistent with the standards set in the updated Guidelines, including the following: introduce <u>indicative timeframes</u>; strengthen <u>cooperation</u> between home and host country NCPs; develop best practice guidance on <u>parallel proceedings</u> in line with the updated text, using the UK procedures as a model; <u>protect</u> the identity of the <u>complainant</u>.</p> <p><u>This review of NCP procedures should be undertaken collaboratively with the social partners and other non-governmental organisations.</u></p> | <p>Indicative timeframes <u>Commentary to the Procedural Guidance</u> <u>Paragraph 21</u> Defines ‘good faith’ in the context of the Guideline as <i>inter alia</i> ‘<i>responding in a timely fashion...</i>’.</p> <p><u>Paragraph 40</u> Initial assessment: 3 months; issue of report or statement 3 months; overall timeframe, 12 months.</p> <p>NCP cooperation <u>Commentary to the Procedural Guidance</u> <u>Paragraph 23</u> <i>“the NCP of the host country should consult with the NCP of the home country...”</i>.</p> <p>Parallel proceedings <u>Commentary to the Procedural Guidance</u> <u>Paragraph 26</u> <i>“NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are underway, or are available to the parties concerned...”</i>.</p> |

| STEPS | DESCRIPTION | REFERENCES |
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| | | <p>Protecting complainants <u>Commentary to the Procedural Guidance</u> <u>Paragraph 30</u> The updated Guidelines recognise that there may be a need to “withhold the identity of a party or parties from the enterprise involved”.</p> <p><u>Paragraph 38</u> ‘Equally other information such as the identity of individuals involved in the procedures, should be kept confidential...’</p> |
| <p>6. PUBLISH NCP PROCEDURES</p> | <p>Publish procedures on the NCP web site in local, <u>national and international languages</u> in line with the core criteria of <u>accessibility</u>. It is not sufficient to publish procedures in national languages, as this would limit the <u>accessibility</u> of the NCP to those able to work in national languages.</p> | <p><u>Commentary to the Procedural Guidance</u> <u>Paragraph 15</u> “NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance...”</p> |
| <p>7. STRENGTHEN POLICY COHERENCE</p> | <p>Identify and meet with relevant government departments, including export credit agencies, public procurement departments and pension funds, in order to identify procedures for strengthening policy coherence. NCPs should focus in particular on the steps to be taken where an NCP issues a statement in the event of: i) no agreement being reached; ii) a party refusing to come to the table; iii) providing recommendations on the future implementation of the Guidelines; iv) a finding that a company has breached the Guidelines.</p> <p>The Export Credit Group (ECG) at the OECD is currently undertaking a revision of its Recommendation on ‘Common Approaches’ that aims to improve the environmental, social and governance standards of export credit agencies (ECAs). This revision is due to be completed in November 2011. It would therefore be timely if NCPs could meet with their respective ECAs to discuss how procedural and substantive elements of the updated Guidelines text should be reflected in</p> | <p><u>Procedural Guidance</u> <u>C. Implementation in Specific Instances</u> “3.c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures...The NCP will make recommendations on the implementation of the Guidelines, as appropriate, which should be included in the statement....”</p> <p><u>Commentary to the Procedural Guidance:</u> <u>Paragraph 37</u> “<i>In order to foster policy coherence NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency’s policies and programmes.</i>”</p> |

| <i>STEPS</i> | <i>DESCRIPTION</i> | <i>REFERENCES</i> |
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| | the national procedures of ECAs, as well as the revised ‘Common Approaches’. | |
| 8. ESTABLISH NATIONAL CONSULTATION AND REPORTING MECHANISMS | <p>The 2000 version of the Guidelines already required NCPs to put in place mechanisms for consultation and reporting at national level, including reporting to national parliaments. The updated Guidelines further strengthen the requirement for the NCP to be accountable.</p> <p>NCPs should conduct regular consultations with external stakeholders and establish mechanisms for national reporting, including to Parliament, and publish all reports, including the report to the OECD on the NCP web site in national languages, as well as international language.</p> | <p><u>Commentary to the Procedural Guidance</u></p> <p><u>Paragraph 9</u> <i>“Accountability...nationally parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experience and encourage “best practices” with respect to NCPs...”</i></p> <p><u>Procedural Guidance</u> <u>I. National Contact Points</u> <u>A. Institutional Arrangements</u></p> <p>1. NCPs will <i>“be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an <u>impartial</u> manner, <u>while maintaining an adequate level of accountability to the adhering government”</u></i>.</p> |
| 9. IDENTIFY ISSUES FOR PEER LEARNING AND SIGN UP FOR VOLUNTARY PEER REVIEW | Identify <u>issues for peer learning</u> and thematic peer review through consultations at national level with external stakeholders and <u>sign up for peer review</u> . | <p><u>Commentaries to the Procedural Guidance</u></p> <p><u>Paragraph 19</u></p> <p><i>“NCPs will engage in joint peer learning activities. In particular they are encouraged to engage in horizontal, thematic peer reviews and voluntary peer evaluations.”</i></p> |
| 10. DRAW UP PROMOTIONAL PLAN TO SUPPORT THE PRO-ACTIVE AGENDA | Draw up a plan for promoting the Guidelines and implementing the proactive agenda in collaboration with the social partners and other non-governmental organisations. The public profile of the OECD Guidelines is low. There is an urgent need to increase significantly the level and effectiveness of promotional activity. One means of doing so it to work collaboratively with the social partners and other non-governmental organisations, so as to harness their global networks for the purposes of promoting and implementing the Guidelines. | <p><u>Commentaries to the Procedural Guidance</u></p> <p><u>Paragraph 18</u></p> <p><i>“...NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:</i></p> <p><i>a) consider new developments and emerging practices concerning responsible business conduct;</i></p> <p><i>b) support the positive contributions enterprises can make to economic,</i></p> |

| <i>STEPS</i> | <i>DESCRIPTION</i> | <i>REFERENCES</i> |
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| | | <i>social and environmental progress;</i> <i>c) participate... in collaborative initiatives to identify and respond to risks of adverse impacts..."</i> |

3. Investment Committee and the OECD Secretariat

6. The new Guidelines significantly strengthen the role of the Investment Committee and the OECD Secretariat with regard to outreach, information collation and analysis information, reporting, peer learning, capacity-building, peer review and promotion. These commitments cannot be discharged within the existing resource limitation. TUAC calls on the OECD to increase the level of financial support commensurate with these responsibilities. It also urges the Investment Committee to assess the adequacy of its existing structures and specifically whether there is a need to establish a new dedicated Working Group to implement the updated Guidelines.

7. TUAC also urges the Investment Committee to upgrade its consultation processes and provide for the participation of TUAC, BIAC and OECD Watch in peer learning, peer review and the proactive agenda. *TABLE 2* sets out ten next steps for the Investment Committee and the OECD Secretariat.

TABLE 2: NEXT STEPS FOR THE INVESTMENT COMMITTEE AND OECD SECRETARIAT

| <i>STEPS</i> | <i>DESCRIPTION</i> | <i>REFERENCES</i> |
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| 1. REINTRODUCE NUMBERING OF THE PARAGRAPHS IN THE COMMENTARIES | The Commentaries in the public version of the Updated Guidelines, <u>do not include paragraph numbers</u> . TUAC is already working with trade union partners on the updated Guidelines and has found it extremely difficult to work with the Commentaries due to the lack of numbering. The Commentaries to the Procedural Guidance, which are very long and contain the majority of the improvements made under the Update, are particularly problematic. <u>TUAC strongly welcomes the new format such that the Commentaries following their respective Chapter, but considers it highly problematic that the Commentaries no longer have paragraph numbers.</u> | The paragraphs of the Commentaries of the <u>2000</u> version of the Guidelines were numbered as were the paragraphs in the document that was submitted for adoption to the <u>Council in May 2011</u> . |
| 2. PROVIDE ADEQUATE RESOURCES TO THE OECD SECRETARIAT | The updated Guidelines significantly strengthen the role of the OECD Secretariat including: developing and maintaining a database of cases, facilitating peer learning/peer reviews, capacity-building, training and promoting the | <u>Procedural Guidance II Investment Committee</u> “5. .. <i>The Committee will be assisted by the OECD secretariat...</i> <i>b) make available relevant information on recent trends and emerging practices... maintenance</i> ” |

| STEPS | DESCRIPTION | REFERENCES |
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| | Guidelines. The level of resources assigned to the OECD Secretariat must be raised significantly – and quickly – if the secretariat is to have the capacity and the skills to discharge these responsibilities adequately. | <i>of an up-to-date database on specific instances</i> c) <i>facilitate peer learning, including voluntary peer evaluations, as well as capacity-building....”.</i> |
| 3. REVIEW THE STRUCTURES OF THE INVESTMENT COMMITTEE | The updated Guidelines also significantly strengthen the role of the Investment Committee. TUAC considers that the Investment Committee should review its structures in light of these new commitments and assess whether there is a need to establish an <u>Investment Committee Working Group that is dedicated to the Guidelines.</u> | <u>Council Decision</u> <u>I. National Contact Points</u> 3. <i>“The Council Decision now states that National Contact Points shall meet regularly to share experiences and report to the Investment Committee”</i> |
| 4. UPGRADE CONSULTATION PROCESSES WITH BIAC, TUAC AND OECD WATCH | Enhance consultation processes with TUAC, BIAC and OECD Watch and specifically put in place structures to ensure their participation in peer learning, including peer reviews, and the proactive agenda. The participation of the stakeholders in the Advisory Group to the Chair for the Update has been hailed as a precedent and a success. TUAC urges the Investment Committee to build on this experience. | |
| 5. ESTABLISH CONSULTATIVE STRUCTURES FOR COMPILING THE RESOURCE DOCUMENT | The Chair’s Report on the Update of the Guidelines ² identified the need for further work in a number of areas, including the development of a resource document that would compile all relevant ‘references’ (instruments) and initiatives. The Investment Committee should draw up a time-bound plan for completing this work during 2011-2012 that includes the <u>full participation of TUAC, BIAC and OECD Watch</u> and provides for <u>meaningful public consultation.</u> | <u>Chair’s Report:</u> <i>“..as part of the follow-up on the updated Guidelines, a resource document be compiled bringing together descriptions and links to all these references and initiatives....”</i> |
| 6. IDENTIFY ISSUES FOR PEER LEARNING | The Investment Committee should identify issues for peer learning to be addressed over 2011-2012. TUAC suggests the following: | <u>Procedural Guidance</u> <u>II Investment Committee</u> <i>“5. .. The Committee will be assisted by the OECD secretariat... c) facilitate peer learning...”,</i> |

² Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for Multinational Enterprises.

| <i>STEPS</i> | <i>DESCRIPTION</i> | <i>REFERENCES</i> |
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| | <p>- <i>Specific instances:</i> the Investment Committee should follow the practice of the OECD Anti-bribery Working Group and carry out a <u>tour de table</u> of cases with a view to sharing experience of handling specific instances;</p> <p><i>Refusal to participate in the NCP process:</i> TUAC is concerned about recent cases of companies refusing to participate in the NCP process. This is a serious problem, especially in view of the priority given to mediation in the updated Guidelines. NCPs should share their experiences on such cases with a view to identifying strategies for strengthening the authority of the NCP.</p> | |
| <p>7. DRAW UP A PROGRAMME OF PEER REVIEW</p> | <p>Draw up a programme of peer review starting with 3 countries per year, rising in the medium term to 5 per year. Ensure that the approach, drawing on OECD best practice, is transparent and participatory, concludes with the publication of country reports and provides for follow-up. Also identify thematic issues for horizontal reviews.</p> | |
| <p>8. IDENTIFY PRIORITIES FOR THE OECD SECRETARIAT</p> | <p>The updated Guidelines significantly strengthen the role of the OECD Secretariat with regard to outreach, information collation and analysis information, peer learning, capacity-building, peer review and promotion. The Investment Committee should draw up a time-bound plan setting out priorities that includes the contributions of the stakeholders TUAC, BIAC and OECD Watch.</p> | <p><u>Procedural Guidance</u> <u>II Investment Committee</u> “5. .. <i>The Committee will be assisted by the OECD secretariat...</i> <i>b) make available relevant information on recent trends and emerging practices... maintenance of an up-to-date database on specific instances</i> <i>c) facilitate peer learning, including voluntary peer evaluations, as well as capacity-building....”.</i></p> |
| <p>9. STRENGTHEN POLICY COHERENCE AT THE OECD</p> | <p>TUAC considers that there has been insufficient promotion of the Guidelines either within or by other relevant OECD departments over the past decade. It calls on the OECD to provide for internal policy coherence and ensure that other policies and programmes related to the issues covered by the Guidelines, trade, investment or development promote the</p> | <p>In line with OECD and G20 policy commitments on responsible investment.</p> |

| <i>STEPS</i> | <i>DESCRIPTION</i> | <i>REFERENCES</i> |
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| | Guidelines. | |
| 10 IMPLEMENT THE PROACTIVE AGENDA | <p>The Chair's Report for the Update identifies a number of issues for follow-up that TUAC considers should be treated as priorities for the proactive agenda:</p> <ul style="list-style-type: none"> - <i>Decent wages</i>: work should be carried out by the OECD and the ILO involving TUAC, BIAC and OECD Watch to give guidance on the meaning of the new provision 4b) of the Chapter on Employment and Industrial Relations, so as to give guidance to companies and NCPs. - <i>Supply chains and due diligence</i>: developing better understanding of human rights and other due diligence as it applies now and its relevance and application to the 'carved out' chapters of tax, competition and science and technology. - <i>Financial sector</i>: understanding the application of the Guidelines to the financial sector | <p>The Council Decision of the Council provides that "<i>the Committee shall, in co-operation with National Contact Points pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the Guidelines</i>" and that it should collaborate <i>inter alia</i> with TUAC, BIAC and OECD Watch "<i>in order to encourage the positive contributions that multinational enterprises can make in the context of the Guidelines to economic, environmental and social progress with a view to achieving sustainable development</i>".</p> <p><u>Employment and Industrial Relations</u></p> <p><u>Paragraph 4b</u></p> <p><i>"...provide the best possible wages, benefits and conditions of work... at least adequate to satisfy the basic needs of the workers and their families."</i></p> <p><u>Chair's Report on the Update</u></p> <p>Decent wages: "<i>in interpreting this recommendation, the ILO context and developed practices regarding this provision should be taken into account.</i>"</p> |