



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



Raising the standard

2010 Update
of the OECD Guidelines for
Multinational Enterprises

UPDATE OF THE OECD MNE GUIDELINES

TUAC STATEMENT ON PROGRESS
DECEMBER 2010

Introduction

1 TUAC welcomed the decision to undertake an Update of the OECD MNE Guidelines and strongly supports the purpose stated in the Terms of Reference of ensuring that the Guidelines continue to be a “*leading international instrument for the promotion of responsible business conduct*”.

2 TUAC considers that the priorities for the Update are to upgrade the Procedural Guidance so as to deliver improvements in the level and predictability of the performance of NCPs and ensure that the Guidelines apply to the full range of business relationships, including suppliers and indirect employment.

Progress to date

3 TUAC welcomes the inclusion of new chapters on human rights and supply chains, together with commitments in the Procedural Guidance on guaranteeing resources, enhancing the role of the OECD secretariat and supporting a pro-active agenda. However, TUAC is gravely concerned that the proposed changes to date fall far short of what is required to deliver the required improvements in the performance of the NCPs.

4 In particular, it is essential that changes are made to the main text of the Procedural Guidance, not just to the Commentary, so as to assign these issues the priority they deserve and to ensure coherence. Furthermore, the revisions must focus on strengthening functional equivalence, in line with the Terms of Reference, including upgrading the guidance on the core criteria, in particular transparency, addressing conflicts of interest and providing for internal and external oversight and the involvement of stakeholders.

5 The OECD MNE Guidelines are widely recognised as a unique instrument with considerable potential for promoting responsible business conduct. It is governments’ responsibility to ensure that they fulfil this potential. TUAC urges governments to grasp the opportunity of this Update and show the necessary ambition to improve the effectiveness of the NCPs, and thereby the Guidelines, and so raise the prospects for a fairer, more sustainable, globalisation.

TRADE UNION PRIORITIES FOR THE UPDATE

TRADE UNION
PRIORITIES
TUAC BRIEFING
DECEMBER 2010



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1 Core principles: expand the list of core criteria to incorporate all the principles for operating a non-judicial grievance mechanism proposed by Professor John Ruggie; *legitimacy, accessibility, predictability, transparency, rights-compatibility and equitability*;

2 Structures: involve the social partners and other external stakeholders, ensure impartiality and address conflicts of interests, establish an oversight body and provide for a right of appeal;

3 Timeframes: introduce indicative timeframes and provide for deviations from these indicative timeframes to be disclosed to the oversight body;

4 Transparency: ensure that transparency – a core criteria of NCPs – underpins the Procedural Guidance and provide that any exception to the principle of transparency should be conditional on the agreement of all parties;

5 NCP cooperation: for specific instances involving alleged violations of the Guidelines in an adhering country provide for the home and host NCPs to have equal responsibility for handling a case;

6 Mediation and determination: clearly define the two roles of the NCP such that the NCP should first offer its good offices for mediation and then, if this is refused or fails, make an impartial assessment of the company's conduct against the recommendations of the Guidelines, providing a final statement in both cases, which contains recommendations and follow-up steps as appropriate;

7 Parallel proceedings: introduce the general principle that specific instances should not be rejected or suspended on the grounds of parallel proceedings, unless a party shows that there would be prejudice to the parallel proceedings and require that any such decision be disclosed to its oversight body;

8 Protection of complainants: provide that enterprises should not take reprisals against complainants, reprisals should be remedied and that any such reprisals shall be taken into account in the Final Statement;

9 Follow-up and consequences: strengthen the authority of the NCP by providing for follow-up and introducing consequences for companies, including the withdrawal of public advantage, that either flout the Guidelines process, or are involved in egregious violations;

10 Capacity-building: the OECD should provide capacity-building support for NCPs in the start-up phase, as well as on-going training in core skills, including mediation and fact-finding;

11 Peer review: introduce a mandatory, thematic review system, which involves external stakeholders, and publish country reports that include recommendations;

12 Supply chains: ensure that the Guidelines apply to a wide range of business relationships, including supply chains and indirect employment and require the disclosure of supply chains;

13 Human rights: ensure that the new Human Rights chapter includes a reference to the eight ILO core Conventions and provides guidance to enterprises on undertaking human rights due diligence, while retaining and cross-referencing Chapter IV on Employment and Industrial Relations;

14 Employment: update Chapter IV of the Guidelines in line with the Terms of Reference “to take account of developments in the ILO including the adoption of the ILO Decent Work Agenda and the ILO Declaration on Social Justice for a Fair Globalisation...” and incorporate provisions on precarious work and wages that meet basic needs.