



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 Working Party of the Investment Committee*  
18 March 2013

## 1. Introduction

1. TUAC welcomes this opportunity to make a submission to the Working Party of the Investment Committee. The submission is structured as follows:

- *Section 2: Working Party on Responsible Business Conduct*
- *Section 3: Meeting of National Contact Points*
- *Section 4: Reporting by National Contact Points*
- *Section 5: Performance of National Contact Points*
- *Section 6: OECD Outreach*
- *Section 7: OECD Communications*
- *Section 8: TUAC Activities*

## 2. Working Party on Responsible Business Conduct

2. The mandate of the WPRBC, as set out in the document '*...Establishment of a Working Party on Responsible Business Conduct*' (CE(2013)5), identifies six tasks (see *TABLE 1*): NCP performance, outreach, the proactive agenda, consultations with stakeholders and international partners, and other tasks relating to the Guidelines or responsible business conduct requested by the Investment Committee.

3. However, the document '*Considerations for the Chair of the Working Party on Responsible Business Conduct*' (DAF/INV/WP(2012)0/4/REV1), which addresses the potential role of the Chair, focuses on outreach and the proactive agenda only (the background section refers to peer learning (para. 5) but this is not listed in the work programme).

**TABLE 1: MANDATE OF THE WORKING PARTY ON RESPONSIBLE BUSINESS CONDUCT V OPPORTUNITIES FOR THE CHAIR**

MANDATE OF THE WPRBC (CE(2013)5)	CONSIDERATIONS FOR THE CHAIR	
	Background Section (para. 5)	Opportunities for the Chair...
i) enhance effectiveness of the Guidelines and foster functional equivalence of NCPs	✓Peer learning	X
ii) Assist in implementation of the proactive agenda	✓	✓
iii) Engage with non-adhering countries	✓ outreach	✓
iv) Support the Global Forum on Responsible Business Conduct	✓outreach	
v) Consult with stakeholders and international partners	X	X
vi) Undertake tasks on the Guidelines and responsible business conduct as requested by the IC	X not fully covered	X not fully covered

4. TUAC considers that the opportunities for the Chair to assist the WPRBC cover the full mandate of the WPRBC and does not understand the rationale for prioritising outreach and the proactive agenda above the other tasks. On outreach, the text (para. 11) states that “**the implementation of the Guidelines in non-adherents is a major priority**” and that “**the business community and other stakeholders also support the need for effective engagement with non-adherents to the Guidelines**” to encourage “**eventual adherence**”. On the proactive agenda, the text (para. 17) refers to the “**complexity of the proactive agenda**” and the “**substantial effort that will be needed to ensure effective oversight, coherence and credibility of the multi-stakeholder process**”.

5. TUAC is unable to speak for other stakeholders but would like to make it clear that the trade union priority for the Guidelines is the “**effective implementation of the Guidelines by adherents**” and considers the major challenge to be the “**complexity of dispute resolution**” and the “**substantial effort that will be needed to ensure effective oversight, coherence and credibility of the NCP process**”.

6. Professor Ruggie observed that “*what’s unique about the Guidelines is that they come with a complaints mechanism...*”. TUAC agrees. It is NCP performance above all else that will provide the yardstick by which the majority of stakeholders will measure the success of the Guidelines. Moreover, it is the effectiveness of the NCP process that will determine whether trade unions support greater adherence to the Guidelines. The role and future work programme of the Chair of the WPRBC should reflect this priority.

- **Recommendation:** TUAC calls on the Investment Committee to revise the text accordingly and under ‘Next Steps’ to include an item to develop a work programme that reflects the full mandate of the WPRBC, including a focus on peer learning and capacity-building to improve the performance of NCPs.

***BOX 1: OPPORTUNITIES FOR THE CHAIR: EFFECTIVENESS AND NCP FUNCTIONAL EQUIVALANCE – EXAMPLES OF PEER LEARNING AND CAPACITY-BUILDING***

- Chair an Advisory Group on capacity-building initiatives, building on the success of the mediation workshop, including regional initiatives and providing a mentoring/buddying programme for new NCPs to be implemented within the first 3 months of adhering to the Guidelines;
- Chair an Advisory Group on peer review so as to develop a robust model peer review for National Contact Points, based on OECD best practice, and an appropriate peer review schedule (3 reviews per year);
- Chair a ‘Two Years On’ peer learning exercise to be launched in June 2013 as a stock-taking exercise consisting of an analysis of completed cases with a view to examining how the new procedures have been applied and to identifying factors of success (and failure) for handling cases.

### 3. Meetings of National Contact Points

7. TUAC's previous submissions (October and June 2012) drew attention to the change made in the text of the 2011 Guidelines to increase the frequency of NCP meetings:

*"3. National Contact Points shall meet ~~annually~~ regularly to share experiences and report to the Investment Committee."*

Amendment of the Decision of the Council on the  
OECD Guidelines for Multinational *Enterprises*

- **Recommendation:** TUAC calls on the Investment Committee to hold meetings of the National Contact Points at a minimum twice a year, in June and December, back-to-back with meetings of the WPRBC and to change the name of the meetings accordingly (Biannual/by number of the meeting).

### 4. Reporting by National Contact Points

8. TUAC welcomed the new Common Framework for Annual Reporting as a means of improving transparency and accountability. However, the quality of reporting by NCPs continues to be uneven: some NCPs provide excellent reports, others provide incomplete or inaccurate reports, while others fail to report at all. A particular problem is incomplete or inaccurate reporting as, without further enquiry, it is impossible for the OECD secretariat to spot omissions/inaccuracies.

9. TUAC considers that transparency and accountability would be further strengthened by:
- *Quality control:* the OECD secretariat should run checks on the information and follow-up where information is out-of-date, unclear, inconsistent or incomplete including cross-checking information with TUAC and OECD Watch web sites and national stakeholders;
  - *Frequency of reporting:* increase the periodicity by enabling information to be updated on-line so that information can be amended on a timely basis;
  - *National level reporting:* NCPs should publish their reports to the OECD on their (and other relevant) web sites in national languages so that the reports provide a vehicle for enhancing accountability at national level.

### 5. Performance of National Contact Points

10. All NCPs should have brought their structures and procedures in line with the requirements of the 2011 Guidelines by 25 November 2011. TUAC has developed and published a profile of NCP performance in order to monitor NCPs' implementation of the Guidelines and their adoption of best practice. These profiles are accessible on TUAC's web site on the OECD Guidelines (<http://www.tuacoecdmneguidelines.org/contact-points.asp>)<sup>12</sup>.

<sup>1</sup> TUAC launched its dedicated web site on the OECD Guidelines in January 2012 which publishes summaries of trade union cases, NCP profiles, documents of the OECD, NCP and TUAC and news items on the Guidelines.  
: <http://www.tuacoecdmneguidelines.org/>.

<sup>2</sup> TUAC invites all NCPs to check the information provide comments, corrections and additions.

11. The profiles reveal that while many NCPs have updated and upgraded their web sites and published information, others have not. Some of the ‘invisible’ NCPs reported by TUAC in its submission in October 2012 continue to be invisible. *TABLE 2* provides an indicative summary of the state of play with regard to the most basic of information<sup>3</sup>.

- Is there an accessible web site/web page?
- Does the information provided correspond to the updated 2011 Guidelines?
- Does information exist in national language(s)?
- Does information exist in English or French?
- Does the site/page provide a link to the updated 2011 Guidelines?
- Has the NCP published procedures that reflect the updated 2011 Guidelines?

12. TUAC is deeply concerned that some NCPs persist in failing to comply with the most basic requirements. In June 2013, TUAC will publish an assessment of NCP performance.

## 7. OECD Outreach

13. TUAC welcomes the work of the OECD on outreach and the opportunity to comment on the draft concept note of the new *Global Forum on Responsible Business Conduct* and the OECD High-Level Conference on ‘*Responsible Business Conduct for Development*’ to be held in Autumn 2013. TUAC will provide comments verbally at the consultation following the meeting with affiliates and trade union partners held in the morning of the 18 March 2013.

## 8. OECD Brochure

14. TUAC congratulates the secretariat on its brochure, which it considers to be a substantive and high quality piece of work. We have the following three criticisms:

- Business case: we do not support the inclusion of text presenting what appears to be a ‘business case’ for the Guidelines. We think the focus should be on the responsibility of business;
- Responsibility of stakeholders: in part the text appears to conflate the important role that trade unions and NGOs have to play in implementing the Guidelines with the responsibilities of governments and business under the Guidelines;
- Proactive agenda: we consider that the text on the Proactive Agenda should more clearly state the aims and priorities and put the NCPs central-place.
- **Recommendations**:
  - o revise the text on the business case;
  - o revisit the text on the responsibility of trade unions/civil society;
  - o clearly state that the aim of the proactive agenda is to promote effective observance of the principles and standards contained in the Guidelines by enterprises; move the second paragraph which accurately describes the scope of the proactive agenda above the criteria (demand driven and avoiding duplication) which are not part of the text of the Guidelines; revise the criteria

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<sup>3</sup> The questions summarised here are indicative rather than providing an exhaustive assessment of whether an NCP is conforming with the core criteria of visibility and accessibility.

so as to make it clear that the priority is to **address risks of adverse impacts on matters covered by the Guidelines**; that the proactive agenda should add value in **terms of contributing to the effective observance by enterprises of the principles and standards contained in the Guidelines and that it should avoid duplication with other efforts relevant to the effective implementation of the Guidelines**;

- revise the language to give the NCPs a more central role.

### ***BOX 2: TEXT FROM THE 2011 GUIDELINES***

6. In its pursuit of a proactive agenda, the Committee will co-operate with NCPs and seek opportunities to collaborate with the advisory bodies, OECD Watch, and other international partners. Further guidance for NCPs in this respect is provided in paragraph 18.

#### ***Proactive Agenda***

18. In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:

- a) consider new developments and emerging practices concerning responsible business conduct;
- b) support the positive contributions enterprises can make to economic, social and environmental progress;
- c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.-

15. For the section '*Working with Stakeholders and Partners*', TUAC would be willing to provide an amended text that more clearly explains the work of TUAC, its affiliates and trade union partners on implementing the Guidelines.

## **9. Official Translations of the Guidelines**

16. TUAC welcomes the additional official translation of the Guidelines into German and calls on the OECD to publish official OECD translations of other language versions including Spanish, Arabic and Chinese.

## **10. Resources**

17. In May 2012, the TUAC General Secretary wrote to the OECD calling for an increase in the level of resources made available to the secretariat of the Investment Committee to ensure that it is able to implement the new commitments made under the Update of the Guidelines, in particular on promotion, outreach, capacity-building, peer learning, including peer reviews, and the proactive agenda. TUAC requests an update of the situation as regards resources.

## 11. TUAC Activities

18. TUAC has recently undertaken or planned the following activities in support of implementation of the Guidelines:

- Training:
  - *West Africa*: regional training event, Benin, October 2012;
  - *IndustriALL/IUF Global Union Federations*, Geneva, January 2013
  - *Asia*: regional training event, Manila, July 2013
  - *Eastern Europe*: regional training event, September 2013 (place tbd)
  
- Trade Union Guide to the OECD Guidelines:
  - *Current Languages*: English (5000 copies printed), German (translated not printed), Japanese (translated not printed) Swedish (translation under way funded by the Swedish NCP);
  - *Forthcoming*: French, Italian, Korean and Spanish

**TABLE 2: ACCESSIBILITY AND VISIBILITY – NCP PERFORMANCE<sup>4</sup>**

NCP	ACCESSIBLE WEB SITE/PAGE	WEB SITE CONTENT REFLECT UPDATE	NATIONAL LANGUAGE	ENGLISH OR FRENCH	LINK TO UPDATED GUIDELINES	PUBLISHED UPDATED PROCEDURES	TUAC COMMENT
Argentina	X	X	X	X	X	X	The NCP web site was not available during 2012 and is still not available as of 14 March 2013. The OECD web site giving the addresses of all the NCPs provides a general web address.
Australia	√	√	√	√	√	√	
Austria	√	√	√	√	√	X	
Belgium	√	√	√	√	√	X	The Belgian NCP has updated its web site which now provides a summary of the 2011 Guidelines on its web site and provides links to the 2011 Guidelines in French, Dutch, English and German.
Brazil	√	√	√	X	√	√	
Canada	√	√	√	√	√	√	
Chile	√	√	√	X	√	√	
Colombia	√	√	√	√ X	√	√	The Colombian NCP web site is in Spanish only, but the site provides access to the Guidelines in English.
Czech Republic	√	√	√	X	√	X	The web site is in Czech only. The NCP has published procedures, but only in Czech and in 2010 before the completion of the 2011 update. TUAC understands that the web site is going to be re-structured.
Denmark	√	√	√	√	√	√	A new Danish NCP was

<sup>4</sup> TUAC welcomes all corrections and comments.

NCP	ACCESSIBLE WEB SITE/PAGE	WEB SITE CONTENT REFLECT UPDATE	NATIONAL LANGUAGE	ENGLISH OR FRENCH	LINK TO UPDATED GUIDELINES	PUBLISHED UPDATED PROCEDURES	TUAC COMMENT
							established 1 November 2012. It has an up-to-date and accessible web site in English with links to the Guidelines and the Commentary available in Danish and English.
Egypt	X	X	X	X	X	X	TUAC is unable to find any information on the Egyptian NCP. Egypt did not submit an Annual Report for 2012.
Estonia	√	√	√	√	√	X	The web site is available in English but the link from the Estonian page to the English page does not go to the English page which makes it hard to find.
Finland	√	?	√	√	X	X	The pages on the Guidelines are part of a general web site on CSR under the title 'key guidelines' alongside EU and Global Compact. No information is provided on how to submit cases.
France	√	√	√	√	√	√	The French NCP published new procedures in July 2012.
Germany	√	√	√	√	√	√	
Greece	√	√	√	√	√	X	The Guidelines are available in Greek and English.
Hungary	√	√	√	√ X	X	√	The Hungarian NCP web site provides a link to the 2000 Guidelines and to the Hungarian translation of the 2000 Guidelines. It also provides a link to the OECD



NCP	ACCESSIBLE WEB SITE/PAGE	WEB SITE CONTENT REFLECT UPDATE	NATIONAL LANGUAGE	ENGLISH OR FRENCH	LINK TO UPDATED GUIDELINES	PUBLISHED UPDATED PROCEDURES	TUAC COMMENT
							page where the 2011 Guidelines can be downloaded. The web site is in Hungarian only, although there is link to its report to the OECD which is in English.
Iceland	X	X	?	X	X	X	TUAC cannot find any information on the Icelandic NCP. Iceland did not provide an Annual Report to the OECD in 2012.
Ireland	√	X	√	√	√	X	The information provided on the Irish NCP web site is extremely brief and out of date (out of date list of adhering non-member countries) even though the link provided is to the 2011 Guidelines and the page was last updated 22 <i>January 2013</i> .
Israel	√	√	√	√	√	X	In English and Hebrew.
Italy	√	√	√	√	√	√	Comprehensive web site.
Japan	√	√	√	√	√	√	
Latvia	√	√	√	X	√	X	There is a brief but up-to-date page on the general web site of the Ministry of Foreign Affairs but it is difficult to find. There is no translation into English or French. There is a brochure that references BIAC but none of the other stakeholders.
Lithuania	X	X	X	X	X	X	Lithuania did not provide an Annual Report to the OECD in 2012.

NCP	ACCESSIBLE WEB SITE/PAGE	WEB SITE CONTENT REFLECT UPDATE	NATIONAL LANGUAGE	ENGLISH OR FRENCH	LINK TO UPDATED GUIDELINES	PUBLISHED UPDATED PROCEDURES	TUAC COMMENT
Luxembourg	X	X	X	X	X	X	Luxembourg did not provide an Annual Report to the OECD in 2012.
Mexico	√	√	√	X	√	X	The Mexican NCP previously published part of its web site in English as well as procedures in English and Spanish. It does not provide any record of recent cases that have been handled by the Mexican NCP. It has however published a brochure setting out the steps of the NCP process.
Morocco	√	√	√	√	√	X	The Guidelines are not available in Arabic.
Netherlands	√	√	√	√	√	√	
New Zealand	√	√	√	√	√	√	
Norway	√	√	√	√	√	√	
Peru	√	√	√	√	√	X	
Poland	√	√	√	X	X	√	
Portugal	√	X	√	X	√	√	
Romania	√	√	√	√	√	√	
Slovak Republic	X	X	X	X	√	X	TUAC is able to find a copy of the 2011 Guidelines in English on the Ministry of Economy web site but it is not able to find any other information on the Slovak NCP.
Slovenia	√	√	√	√	√	X	
South Korea	√	√	√	X	√	√	
Spain	√	√	√	X	√	X	

<b>NCP</b>	<b>ACCESSIBLE WEB SITE/PAGE</b>	<b>WEB SITE CONTENT REFLECT UPDATE</b>	<b>NATIONAL LANGUAGE</b>	<b>ENGLISH OR FRENCH</b>	<b>LINK TO UPDATED GUIDELINES</b>	<b>PUBLISHED UPDATED PROCEDURES</b>	<b>TUAC COMMENT</b>
Sweden	√	√	√	X	√	X	Information on the Swedish NCP is difficult to find because the pages are only in Swedish.
Switzerland	√	√	√	√	√	√	
Turkey	X	X	X	X	X	X	TUAC has not been able to find information on the Turkish NCP. Turkey did not provide an Annual Report to the OECD in 2012.
UK	√	√	√	√	√	√	
US	√	√	√	√	√	√	

