

OECD Watch

Putting the OECD Guidelines for MNEs into practice

The Guidelines as an instrument for implementing CSR

International Multi-Stakeholder Round Table on the OECD Guidelines. Five years after their revision

1 April, 2005

Venue: International Trade Union House. Brussels, Belgium
Bd du Roi Albert II, 5, Bte 2

Report by Julie Smith

As CSR-related issues are actively considered in several international forums, OECD Watch held a roundtable (chaired by Paul Hohnen) at International Trade Union House, Brussels. It provided a unique opportunity to bring together more than 80 people from government, business, trade unions and civil society organisations to evaluate the practical application and the effectiveness of the OECD Guidelines five years on from their revision in 2000.

Representatives from each of the stakeholder groups presented their thoughts and experience during the first part of the morning, reflecting on what was working well, where problems remain and how they see the use of the Guidelines developing.

Manfred Schekulin (Chair of the OECD Investment Committee) set the scene and reminded participants that although observance of the recommendations is voluntary for companies, adhering countries sign a binding commitment to promote them, making this inter-governmental feature the chief value added by the Guidelines in the field of corporate responsibility initiatives. He added that the Guidelines are being used extensively as a benchmark and routinely appear in surveys on corporate responsibility practices and are being referred to in high-profile international fora.

However, he acknowledged that Guidelines' implementation has ample room for improvement. He noted concerns about the transparency of NCPs' handling of specific instances (cases), the need to speed up their handling of some cases, and the problem of how to address partners' ongoing concerns on "functional equivalence"¹ In addition, he recognised that the scope of the Guidelines, especially the concept of the "investment nexus", still poses problems for trade unions and NGOs.

What of the future? During the June 2004-June 2005 cycle of implementation, the Investment Committee has on its agenda, parallel legal proceedings, the relationship between the Guidelines and non-adhering countries, and is considering the role of business in the protection of human rights.

¹ 'Functional equivalence' means that, although NCPs may have adopted different institutional structures and implementation practices, they should still perform to the same standard in terms of their visibility, accessibility, transparency and accountability.

Giusy Chiovato-Rambaldo (European Commission, Employment and Social Affairs DG) followed and said that the Commission sees the Guidelines as a key reference instrument in their approach to CSR.

She saw the combination of the voluntary and regulatory approaches as a way of balancing government and corporate responsibilities and viewed the Guidelines as a reference point for facilitating benchmarking and the convergence of codes, noting that their implementation in developing countries can attract FDI and contribute to overall sustainable development.

Despite the Guidelines strong legitimacy, the global scope of their application, and their unique implementation mechanism, she acknowledged the challenges of effective implementation and of making the Guidelines better known and more widely used (especially in developing countries). Also commenting on the need to increase the transparency of the work of the NCPs.

Looking to the future, she saw the necessity for governments to use the Guidelines as a reference point or condition for state aids and export credit guarantees and of the need to involve SMEs throughout the supply chain in their implementation. She also noted the need to develop a methodology to evaluate their impact.

The next presentation, given by **Eddy Laurijssen** (Director, International Labour Organisation (ILO) Brussels) looked at how the ILO's MNE Declaration and the OECD Guidelines complement each other. Both rely on ILO conventions, although the ILO Declaration goes further on certain labour and employment issues.

He felt that the experience of running the ILO survey every 3 years on the effects of the MNE Declaration and the skills and experience of the ILO technical assistance and training programmes could be very useful to the NCPs and felt better links between the OECD and the National Contact Points, and the ILO technical cooperation teams could help address the provisions of both instruments.

The civil society evaluation was given by **Tricia Feeney** (Rights and Accountability in Development (RAID)) on behalf of OECD Watch. She felt this was a "*time of celebration as well as of reflection*". Civil Society Organisations (CSOs) have seen some NCPs develop good practice over the past 5 years (examples given included Australia, the Netherlands and Sweden from amongst OECD member countries and Chile from the non-adhering countries.) But fundamental problems still exist, including the concentration of NCPs in single government departments, the absence of advisory boards and the lack of NGO involvement.

She gave a brief analysis of the pros and cons of the Guidelines. The positives of their being comprehensive, multi-sectoral, covering 80% of all FDI, government backed and with complaints and dispute resolution mechanisms but she also noted particular problems with the gaps in the text, the fact that they are not universal, there is no monitoring or investigation, they are not binding, and the lack of an appeal mechanism.

Five years experience has shown other obstacles which need resolving. She gave examples of the total procedural vacuum NGOs have encountered when they bring cases and she also mentioned the inordinate delays. There has also been political interference, protectionist attitudes and a lack of awareness of the development process amongst some NCPs. On the other hand, best practice does exist. For

example, the Chilean recommendations on the Nutreco case were exemplary and the use of the Guidelines as a proactive tool by Canada has been excellent.

Analysis of the CSO experience has resulted in a number of key recommendations which would improve the functioning of the NCPs and the overall implementation of the Guidelines.

OECD Watch recommendations

- Interdepartmental NCPs
- Advisory boards to guide decision making/review controversial decisions
- Regular stakeholder meetings
- Parliamentary scrutiny
- Governments need to promote Guidelines
- IC to improve procedural guidance
- Maintain an accurate register of cases
- Review OECD Guidelines including: -human rights - conflict zones – living wage - environment – tax
- Trade related cases – inclusion or new ‘trade’ instrument.

Vincent van Assem (Group Sustainable Development, ABN AMRO) said he sees more OECD Guideline-type thinking in his company.

The company’s business principles, launched in 2002, were partly prompted by the revision of the OECD Guidelines and ABN AMRO has recently produced a new sustainability report. He acknowledged that banks have entered the “sustainability arena” late, noting that the supply chain responsibility for clients is more complex than the chain for suppliers. He also talked about the “indirect footprint” of financial institutions which may have more impact than their direct footprint because of their influence on capital flows and on society.

He commented on the importance of engaging with NGOs through strategic, policy and transaction-related dialogues and training.

How far has his company progressed? They have new products like micro-finance (in Brazil and India), there are SRI funds, the company raises awareness, and has policies related to their direct footprint (aka procurement). He concluded by saying, “*we believe that we are not even near perfect, but tomorrow should be better than today*”.

The presentations were followed by a panel discussion, chaired by **Chris Marsden**. Panellists were **John Evans**, Trade Union Advisory Committee (TUAC), **Dirk Manske**, Business and Industry Advisory Committee (BIAC), **Colette Vanstraelen**, National Contact Point (NCP) Belgium, **Teresa Fogelberg**, Global Reporting Initiative (GRI), and **Hannah Owusu-Koranteng**, Wassa Association of Communities Affected by Mining (WACAM), Ghana. The lively discussion focused on the voluntary nature of the Guidelines and the difficulties (and frustrations) experienced by all of the stakeholders on trying to implement them.

Dirk Manske (BIAC) acknowledged that the Guidelines are a very good tool for companies to improve their CSR, but stressed their voluntary nature. This led to a challenge from Hannah Owusu-Koranteng (WACAM, Ghana) who represented the interests of communities in Ghana affected by mining investment. She did not have much faith in the Guidelines – Ghana is not an adhering country and has no NCP

and there is a lack of awareness of the instrument despite all the company investment in her country. She compared today's mining companies with those from the past quoting the King of Spain when he said, "*they should look for gold, humanely if possible, but they should look for gold*".

Representatives from NCPs contributed to the discussion and talked about their difficulties with implementation. The UK NCP admitted it could do better, but felt that the Guidelines are not always clear and there is a lack of clarity in the NCP processes. The Dutch NCP agreed there was a need for some improvements, especially over timetabling of cases.

There was discussion about the perceived quasi-judicial role of the NCPs and although their representatives tried to bring clarity, defining the role of the NCP as a facilitator, investigator or mediator, others had different views which included that the Guidelines have been negotiated and should therefore be binding, and that the commitment by government makes them much more than voluntary. In addition, it was noted by John Evans that NCPs almost always invoke legal reasons why they can not make a decision.

One company representative expressed frustration with a case brought by an NGO which they had responded to in great detail and despite the NCP asking the NGO to respond, very little had happened over the past two years. Underlining that companies also need closure.

Although companies appear to be more aware of the need to work on their CSR practices, the Chair expressed frustration with the "constant conservative" responses which dominated the discussion. There is a need to dispel the view that the Guidelines are set in stone and not something to develop.

Participants spent the afternoon in working groups looking at four key areas of Guidelines' application and implementation - supply chain responsibility, CSR investment, governments and conflict resolution and development. Each group gave a snapshot of their discussions in the plenary session.

The following points were noted for consideration, but it was stressed these were not consensual recommendations.

Working Group 1: Supply chains

- Develop and research best practice case studies of those companies incorporating CSR objectives and ethical purchasing practices into their existing business objectives – companies to exchange/compare good and effective practices that exist. Best/worst eggs
- Enable business partners and suppliers to comply with CSR standards by incorporating the environmental and social costs into pricing structures
- Encourage MNEs to build capacity of sub-contractors to incorporate CSR practices into their structures
- Implement ethical purchasing and procurement practices at government level to demonstrate government commitment to operationalise CSR by ensuring that suppliers comply with national laws and the OECD Guidelines
- Respond to trade issues being negotiated outside of the OECD Guidelines – either the scope of the Guidelines needs to be broadened or clarified (eg. duration of relationship with suppliers) or parallel mechanisms to be set up to integrate CSR into trade relations.

Working Group 2: Financial markets

- NGOs, governments, unions and NCPs need to provide more guidance for implementation of Guidelines
- Transparency: provide relevant information (ie. searchable database) to investment shareholders
- Governments need to promote the idea that institutional funds are also responsible for implementing the OECD Guidelines

Working Group 3: Governments and the OECD Guidelines

- Peer review would help to advance the consistency of the application of the Guidelines
- NCPs should put more effort into raising awareness
- The transparency and clarity of the procedures for specific instances should be improved
- Raise political will to put government resources behind the Guidelines

Working Group 4: Conflict Resolution and development

- Support work of OECD & Guidelines as measure
 - to put more focus on conflict zones
 - for proactive communication strategy for Guidelines
- OECD should continue to work on weak governance zones
- Bring OECD & NCPs closer to front lines
- Support recommendations of the Commission for Africa
- Create permanent secretariat at the UN for conflict zones
 - independent expert on corporate responsibility

In the closing statement **Serena Lillywhite**, OECD Watch, said that five years on there is no doubt that the Guidelines are making a contribution to the promotion of fair and decent working conditions and sustainable development but what has become more apparent during discussions today is the challenge, and the complexity, of their implementation. She said that the time is right for the Guidelines to be taken seriously. They need active promotion and use by government and business and to be integrated into government policies. We need a framework that encourages ongoing debate on issues like supply chains.

The role of business in CSR is a hotly debated issue but there is a gap between government rhetoric about the benefits of the Guidelines and practice and NCPs must play a more proactive and investigative role. If the Guidelines can not develop through dialogue, there is a growing risk that NGOs will not continue to support them and pursue other parallel mechanisms to achieve their objectives.

She concluded by looking at the future, emphasising the need for active and demonstrable commitment from governments. The debate must move beyond the investment nexus and recognise that supply chains are part of the trade and investment environment. She said for civil society to have confidence in the procedures and implementation of the Guidelines, NCPs need to meet some agreed minimum requirements and should have expert advisory boards to guide discussion and decisions. In addition, NCPs need greater powers and more support, including agreed budgets, and a peer review process to help build capacity. A "joined up government" approach is required to ensure the Guidelines are integrated into other government agencies. Valuable initiatives and work, such as that in weak governance zones, and the opportunities to work closely with the GRI, the UN Norms

and the ILO must be developed to help build capacity and to learn from their experience.