

**THE OECD GUIDELINES
FOR MULTINATIONAL ENTERPRISES RESPONSIBLE BUSINESS
CONDUCT IN A GLOBAL CONTEXT**

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The OECD Guidelines for Multinational Enterprises, Responsible Business Conduct in a Global Context¹ (the *Guidelines*) is the OECD's flagship instrument for responsible business conduct. The *Guidelines* contain non-binding recommendations to multinational enterprises (MNEs) drawn up and backed by governments. Updated in 2011,² they consist of principles and standards in areas including sustainable development, governance, disclosure, human rights, employment and industrial relations, the environment, anti-corruption, consumer interests and taxation.³ MNEs head-quartered in adhering countries are expected to comply with the *Guidelines* and to undertake due diligence to identify, prevent and mitigate adverse impacts on matters covered by the *Guidelines*⁴ throughout their business relationships. The *Guidelines* are binding on the forty-two⁵ adhering governments,⁶ which are required to set up a National Contact Point (NCP) – a non-judicial grievance mechanism – to contribute to “the resolution of

** The Trade Union Advisory Committee to the OECD (TUAC) is the voice of labour at the OECD. TUAC works to ensure that the perspective of workers is taken into account in OECD policy-making. TUAC leads trade union activities on the OECD Guidelines for Multinational Enterprises.

¹ The OECD Guidelines for Multinational Enterprises, Recommendations for Responsible Business Conduct in a Global Context, 25 May 2011; <<http://www.oecd.org/dataoecd/43/29/48004323.pdf>>; url last accessed 26 September 2011.

² The *Guidelines* were updated during 2010-2011 a decade after the previous review of 2000.

³ The *Guidelines* consist of eleven chapters: I. Concepts and Principles; II. General Policies; III. Disclosure; IV. Human Rights; V. Employment and Industrial Relations; VI. Environment; VII. Combating Bribery; VIII. Consumer Interests; IX. Science and Technology; X. Competition; and XI. Taxation; and the Implementation Procedures.

⁴ The general due diligence principle does not apply to 3 out of 11 chapters: IX. Science and Technology; X. Competition; and XI. Taxation.

⁵ The 42 adhering governments consist of 34 OECD member countries, as well as 8 non-member countries. The full list is available at: <http://www.oecd.org/dataoecd/17/44/1900962.pdf>; url last accessed, 26 September 2011.

⁶ The *Guidelines* refer to ‘governments’ rather than ‘States’.

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issues that arise relating to the implementation of the *Guidelines* in specific instances".⁷ Trade unions and NGOs are able to submit specific instances (cases)⁸ concerning alleged breaches of the *Guidelines* to these government-backed NCPs.⁹

Trade unions have worked to support the *Guidelines* since 1976, in view of their potential value for addressing global governance gaps. Trade union experience of submitting cases to the NCPs, however, is mixed ranging from significant success to frustration and failure.¹⁰ At their best NCPs have: assessed cases within an appropriate timescale; acted in an impartial manner; offered their good offices for mediation; published final statements; provided for monitoring and follow-up of agreements; and, in cases where mediation has failed, made an assessment of the company's observance of the *Guidelines*. At their worst NCPs have: failed to respond to cases in a timely manner or at all; rejected cases on the grounds of the absence of an investment relationship,¹¹ or the presence of a parallel legal proceeding;¹² been unable to convince companies to come to the mediation table; and, in cases where mediation has failed, been unwilling to make an assessment of the company's observance of the *Guidelines*. Despite their significant potential the often poor performance of NCPs¹³ together with the refusal of some companies to participate in the NCP process have weakened the normative power of the *Guidelines*.

The 2010-2011 Update (the *Update*)¹⁴ delivered a number of significant, indeed landmark, improvements¹⁵ in the content of the *Guidelines* including the

⁷ OECD Guidelines for Multinational Enterprises Recommendations for Responsible Business Conduct in a Global Context, Procedural Guidance, C. Implementation in Specific Instances, 25 May 2011.

⁸ "Specific instance" is the term used for "case" or "complaint" in the *Guidelines*.

⁹ The OECD publishes the list of NCPs at: <<<http://www.oecd.org/dataoecd/17/44/1900962.pdf>>> url last accessed, 26 September 2011.

¹⁰ TUAC publishes the full list of trade union cases submitted under the *Guidelines* together with an analysis at: <<http://www.tuacoecdmguidelines.org/cases2.asp>>. OECD Watch publishes the full list of NGO cases together with an analysis at <<<http://oecdwatch.org/cases>>>; urls last accessed 26 September 2011.

¹¹ In the past NCPs have rejected cases on the basis that there was no ownership relationship ("investment nexus") between the company involved in the alleged violations and the MNE headquartered in the adhering country on the basis that the *Guidelines* apply in the context of international investment only. Hence cases involving subsidiaries were accepted, while those involving suppliers were rejected. Under the new *Guidelines*, 25 May 2011, no such limited interpretation of the application of the *Guidelines* is possible.

¹² The existence of parallel court (or administrative) proceedings in the host country has been the main reason for trade union cases being suspended or rejected.

¹³ TUAC recognises that a small number of NCPs are functioning well, including most notably the UK and the Dutch NCPs. In particular, in recent years trade unions have experienced success at the UK NCP.

¹⁴ TUAC's summary of key revisions of the Update can be found at: *Update of the OECD Guidelines for Multinational Enterprises – Key Elements*, 25 May 2011: <http://www.tuac.org/en/public/e-docs/00/00/09/75/document_doc.phtml>. url last accessed 26 September 2011.

¹⁵ TUAC's Statement to the OECD 50th Anniversary Ministerial Council Meeting welcomed the new positive elements of the *Update*, underlined that the success of the *Update* depends on implementation, and called on adhering governments to upgrade the structures and procedures of their NCPs. The statement also reiterated the trade union movement's commitment to supporting the implementation of the *Guidelines*. *TUAC Statement on the Update of the OECD Guidelines for*