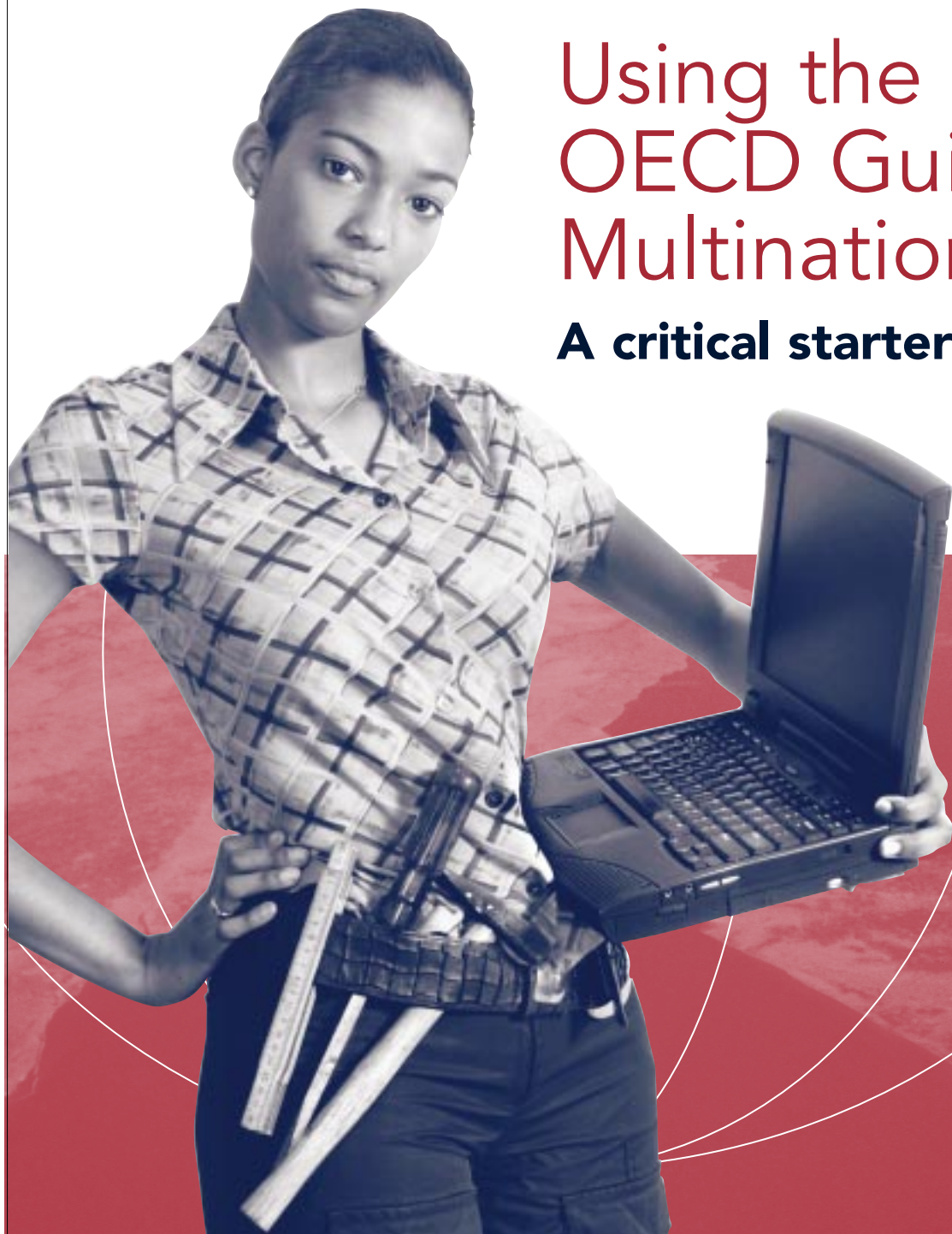




www.milieudefensie.nl/accountability

Using the OECD Guidelines for Multinational Enterprises

A critical starterkit for NGOs



Friends of the Earth Netherlands

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Glossary

ANPED	Northern Alliance for Sustainability, NGO network
BIAC	Business and Industry Advisory Committee to the OECD
CIME	Committee on International Investment and Multinational Enterprises, set up by the OECD in 1975
FoE	Friends of the Earth, international network of environmental organisations
FoE-NL	Friends of the Earth Netherlands, Milieudefensie
Home country	Company's country of origin or country where its headquarters are seated
Host country	Country where a company engages in activities, while the company originates elsewhere
ILO	International Labour Organisation of the United Nations
MNE	Multinational Enterprise, also known as transnational corporation or multinational
NCP	National Contact Point
NGO	Non Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
Stakeholder	Person or organisation that is confronted with the consequences of a company's plans or activities, and/or who could influence the company's plans or activities
TUAC	Trade Union Advisory Committee to the OECD
Whistleblower	Employee who files a bona fide report to the management or to public authorities on practices within the company that violate the law, company policies – or the OECD Guidelines

Introduction

The purpose of this Friends of the Earth Netherlands (Milieudefensie) publication is to explain what the OECD Guidelines are. It also hopes to explore to what extent and when these Guidelines can be used to call multinational enterprises to order that are polluting the environment, maltreating their employees, engaging in bribery or tax-evasion, disrespecting human rights or otherwise inhibiting what is called sustainable development.

Milieudefensie recognises the positive contribution that thriving local economies can make with the contribution of small and medium sized enterprises. They are part of and accountable to local communities, meeting local needs.

At the same time, the scale and power of multinational corporations is such that we need strong instruments and coalitions to counter the adverse social and environmental effects that they do at times cause. Nowadays, many recognise the need to make globalisation support sustainable development. Friends of the Earth Netherlands and many others with them are convinced that a legally binding framework for corporate accountability is necessary to ensure this. However, the need and arguments for such binding rules are not the subject of this publication, for more information please consult the website references on page 23.

As of yet internationally binding regulations for corporate accountability do not exist. However, the OECD Guidelines for multinational enterprises might offer an interesting instrument, especially since their latest Review of June 2000. The OECD Guidelines are recommendations from governments to their multinational enterprises. Although they are not binding, they are a widely recognised standard

promoted by OECD member states and specific complaints against multinationals can be filed if companies do not abide by the Guidelines.

This starterkit tries to explore the possibilities for non-governmental organisations, trade unions, community organisations and others to use the Guidelines. We cannot yet draw from extensive experience to define if and how the OECD Guidelines for Multinational Enterprises can further our aim of making corporations support sustainable development. Therefore, this 'toolkit' is an invitation to groups and people around the world to test the value of the Guidelines and to test the strength of the resolve OECD governments have when it comes to holding their corporations in check.

Readers are encouraged to send their comments or suggestions for improvement to Friends of the Earth Netherlands (Milieudefensie).

1 Basics

PHOTO: KADIR VAN LOHUIZEN/HH



1.1 What is corporate responsibility?

The answer to this question tends to differ depending on who answers it. According to FoE-NL, socially responsible corporations consider the full scope of their impact on communities, workers, and the environment when making decisions. Besides the regulations and laws of a specific country, the enterprise should respect internationally accepted agreements and treaties relating to taxation, prevention of corruption, and respect for human rights, labour rights and the environment. Also, the activities of an enterprise should not contribute to (an increase in) human rights violations. This especially applies to situations involving armed conflict. Corporations should endeavour to ensure that subcontractors, joint ventures, commercial partnerships, suppliers, and others with whom they agree to conduct activities observe these principles as well. Corporations that are truly responsible and accountable acknowledge the right of people to know what the ethical, social and environmental effects are of their activities, products and services. Transparency and disclosure of information are therefore indispensable elements of corporate social responsibility. Corporate social responsibility also means that a company is also responsible for rectifying the consequences of its misbehaviour, for example by cleaning up the pollution it caused or paying damages to those who suffered from their irresponsible business conduct.

Companies do not become responsible merely by paying lip service to the values lined out here. Some of the biggest proponents of corporate social responsibility (CSR) combine their verbal enthusiasm with completely irresponsible

South Africa

business conduct. Premier Oil and TotalFinaElf are good examples. They both advocate corporate responsibility yet are still active in Burma. According to Friends of the Earth and many others, this means they are not showing corporate social responsibility at all. In our view, corporate social responsibility cannot just be another way for corporations to ensure a competitive advantage over other corporations. Presenting a 'green' or social image whilst not acting accordingly, is called greenwash, not corporate social responsibility.

Voluntary initiatives and charity can only add to, but not replace the indispensable elements of corporate social responsibility. Socially responsible business practices reflect a company's commitment to do business in a way that preserves or enhances, rather than harms, the surrounding community, employees, the environment and fair economic behaviour. However, commitment alone is not enough. It should be accompanied with clear implementation mechanisms, including independent monitoring and verification.

1.2 What is the OECD?

Following World War II, the Organisation for European Economic Co-operation was set up to organise American and Canadian aid under the Marshall Plan for reconstruction of Europe. In 1961, this organisation was succeeded by the Organisation for Economic Co-operation and Development, the OECD. Its members are the countries that signed the Convention establishing the OECD. The OECD is seated in Paris, France. Each member state has one vote and there are currently 30 OECD members:

Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, Japan, Finland, Australia, New Zealand, Mexico, the Czech Republic, Hungary, Poland, South Korea and the Slovak Republic.

The OECD's mission is to build strong economies in its member countries, improve efficiency and market systems,



PHOTO: HENK BRAAM/HH

Fruit trade, China

expand free trade and 'contribute to development' in industrialised as well as developing countries. In 1998, OECD Ministers identified sustainable development as a key priority, and agreed to interpret the term 'sustainable' to include social, environmental and economic aspects.

Trade unions and business have advisory committees to the OECD: the Trade Union Advisory Committee (TUAC) is a platform for 55 national organisations of trade unions representing workers in the OECD member countries. The purpose of the Business and Industry Advisory Committee (BIAC) to the OECD is to provide the OECD and its member governments with comments based on the practical experience of the business community. BIAC's members are industrial and employers' organisations in OECD countries. BIAC and TUAC have been regularly consulted on matters relating to the OECD Guidelines. Non-governmental organisations such as Oxfam and ANPED are also consulted regularly, but they do not have an official Advisory Committee like BIAC or TUAC.

1.3 What are the OECD Guidelines?

In 1975 the OECD established the Committee on International Investment and Multinational Enterprises (CIME) to investigate the possibilities of a code of conduct for MNEs and ways to protect MNEs from discrimination. A year later, the OECD Guidelines were first adopted, as part of the OECD Declaration on International Investment and Multinational Enterprises. The primary aim of the Guidelines is to ensure that 'MNE activities are in harmony with national policies of the OECD countries and to strengthen the basis of mutual confidence between MNEs and government authorities.'

Consequently, the Guidelines were reviewed in 1979, 1982, 1984, 1991 and in 2000. The major changes resulting from these reviews were the addition of a new chapter on Environmental Protection in 1991 and a change in the implementation procedure following the latest review in 2000. Compared to other codes, the Guidelines cover a relatively broad range of issues (disclosure, employment, environment, consumer interests, science and technology, taxation, bribery). All 30 OECD members adhere to the Guidelines, and the number of non-member countries that adhere to the Guidelines is growing (this currently includes Argentina, Brazil, Chile, Estonia, Lithuania and Slovenia)

The latest review of the Guidelines resulted in their applicability to MNEs 'and all their entities', regardless of where they do business, including in countries that do not adhere to the Guidelines. Also, supply-chain responsibility was included – which means that MNEs should encourage business partners, including sub-contractors, to do business in a manner compatible with the Guidelines. Governments that adhere to the Guidelines are to set up a National Contact Point for promotion of the Guidelines (see section 5 below).

The Guidelines are voluntary, non-binding recommendations made by governments to companies. They can be considered to have a morally binding character, but they cannot be enforced by a court of law. The Guidelines do not empower citizens as they do not endow them with any

rights. It should be noted that the obligations placed upon MNEs by the Guidelines can only supplement, never contradict, national laws.

Following the most recent review process of the Guidelines, the NGOs consulted expressed their disappointment with the combination of low level standards with a weak implementation mechanism. To what extent the Guidelines will actually be implemented depends largely on the willingness and capacities of the NCPs to do so. It has been pointed out in various contexts that the Guidelines could acquire the legal character of customary law in the course of time. It is important to note that in international law, the status of customary law is not inferior to other sources of law. Whether or not the Guidelines will develop in this direction will depend on the effectiveness of the implementation mechanisms, and the use and acceptance of the Guidelines by stakeholders.

1.4 Where are the Guidelines applicable?

The first chapter of the Guidelines notes that since the operations of multinational enterprises expand throughout the world, co-operation on the observance of the Guidelines should extend to all countries. Governments adhering to the Guidelines should encourage the enterprises operating in their territories to observe the Guidelines wherever they operate. The applicability of the Guidelines is thus not limited to OECD countries or countries adhering to the Guidelines. For example, a number of complaints were raised about MNE behaviour in Burma (Myanmar). Even though Burma is not an OECD member or adhering country, these cases – mostly dealing with forced labour – were valid for complaints, because the companies involved also had branches in OECD countries. As most multinational companies are also active in one or more OECD countries, one should not hesitate to check out the possibilities for using the OECD Guidelines. Branches of multinationals in OECD countries often include, but are not necessarily limited to, a company's headquarters.

1.5 What are National Contact Points?

Countries adhering to the Guidelines are to set up a National Contact Point (NCP). The role of these NCPs is to further the

effectiveness of the Guidelines. This can be done by promoting the Guidelines, by informing investors about the Guidelines, and by dealing with 'specific instances', which is jargon for complaints.

National Contact Points are supposed to operate according to the four 'core' criteria of visibility, accessibility, transparency and accountability. This implies that they should be open to enquiries and complaints, also when they originate from NGOs or the public.

Governments have are free to decide how they will organise their NCP, as long as they meet the four core criteria. The NCP may be a government official, a government office, a co-operative body including representatives of several government agencies, or even a body that includes

PHOTO: MICHEL WUJBERGH



FoE Netherlands 'sludge' action against multinational IHC Caland's activities in Burma, at IHC Caland office in the Netherlands

representatives of employee organisations, the business community and other interested parties. Most NCPs are linked to a country's Ministry for Economic Affairs or the Treasury, also in cases where they have an interdepartmental set-up involving several Ministries. Finland and Chile have 'quadripartite' NCPs, which means that four different Departments are involved. Some Contact Points also involve regional governments (Korea and Belgium). Finland, Germany, The Netherlands and Austria are examples of Contact Points that organise a lot of consultations with stakeholders, including NGOs. In Latin America, the Chilean National Contact Point is very active, but in other Latin American countries NCPs have only just been set up and their activities have yet to start.

1.6 What have NCPs done so far?

To date (August 2002), National Contact Points have been translating the Guidelines in the language of their country and engaged in activities to promote the Guidelines. Several National Contact Points have also developed their own procedures to handle specific instances (i.e. how they will deal with the complaints filed). Of course some NCPs have had to deal with concrete complaints ('issues' or 'specific instances', as they are called in the Guidelines). These complaints were mostly filed by trade unions (TUAC or members) and by NGOs such as Greenpeace, Oxfam, the Clean Clothes Campaign and the India-Committee of the Netherlands. Some of these complaint procedures have already come to a conclusion. For example, the French NCP concluded that Marks & Spencer had not consulted its employees properly on the closure of Marks & Spencer stores. French trade unions were content with this outcome. The Belgian NCP however, which was dealing with the same case filed by a Belgian trade union, concluded that the enterprise had not breached the Guidelines.

The Czech NCP handled a case about threats to fire people when a trade union was formed. The case was consequently settled when the companies agreed to negotiate and take part in a dialogue. According to the Czech trade union confederation, it was possible to resolve the problems because they were raised at the NCP.

A Summary of the OECD Guidelines

Preface

The Preface states that the Guidelines 'provide voluntary principles and standards for responsible business conduct', aimed at enhancing the contribution to sustainable development made by companies. The Preface is the only part of the Guidelines with some reference to other documents such as the Universal Declaration of Human Rights, the ILO Declaration, the Rio Declaration and the Copenhagen Declaration.

I. Concepts and principles

The Concepts and Principles state that companies should observe the Guidelines wherever they operate and that the Guidelines are addressed to all the entities (branches) of multinational enterprises.

II. General Policies

Enterprises should contribute to sustainable development, respect human rights, encourage local capacity building, create employment opportunities, refrain from seeking or accepting exemptions from environmental, health, safety, labour, taxation or other legislation and abstain from any improper involvement in local political activities.

This part also includes whistleblower protection (par II.9) and has a reference to supply-chain responsibility (par II.10). Companies should also support and adhere to good governance principles

and practices and develop and apply effective management systems accordingly.

III. Disclosure

Enterprises should ensure that timely, regular and accurate information is disclosed concerning their activities, structure, financial situation and performance. They are also encouraged to disclose information on their social, ethical and environmental policies.

IV. Employment and industrial relations

MNEs are to respect freedom of association, and contribute to the effective abolition of forced labour,

child labour, and discrimination. They should also observe standards of employment and industrial relations that are not less favourable than those observed by comparable employers in the host country.

Changes which will have considerable impact on employees (such as the closure of an entity, or collective dismissals) are to be announced with reasonable notice.

V. Environment

Enterprises should take due account of the need to protect the environment and to contribute to sustainable



PHOTO: ROEL BURGIER

development. They should establish measurable targets for improvement of environmental performance, and regularly verify their progress (or lack thereof). They should provide adequate and timely information on the potential environmental impacts of their activities, over the full life cycle of the goods and services they produce. Enterprises are to communicate and consult with the communities affected by their activities.

This chapter also includes the precautionary principle (par V.4) which means that companies should take measures to prevent environmental damage where there is a risk it will occur, even if there is no fullproof scientific evidence of such damage.

VI. Combating bribery

Enterprises should not, directly or indirectly, offer, promise, give or demand a bribe to obtain or retain business or other improper advantage. Their battle against bribery should include making public commitments against bribery, and refraining from the practices such as secret accounts or 'off the books'. Enterprises shall not make illegal contributions to candidates for public office, political parties or other political organisations.

VII. Consumer interests

Enterprises should not only meet all agreed and legally required standards for consumer health and safety, they should also provide accurate and clear information regarding the safe use, maintenance, storage and disposal of

their products, so that consumers can make an informed decision. They should have transparent and effective procedures to address consumer complaints and respect consumer privacy.

VII. Science and technology

The activities of enterprises should allow for the transfer and rapid diffusion of technologies and know-how, in a manner that contributes to the long-term development prospects of the host country.

IX. Competition

Enterprises should refrain from fixing prices, making collusive tenders, sharing or dividing markets by allocating customers, suppliers or territories. All of their activities should be conducted consistent with applicable competition laws.

X. Taxation

Enterprises should make timely payment of their tax liabilities, and act in accordance with both the letter and spirit of the laws and regulations concerning taxation.

Council Decision

The Council Decision attached to the Guidelines states that adhering countries shall set up National Contact Points (NCP) and that the NCPs will meet annually and report to the Committee on International Investment and Multinational Enterprises (CIME), and that the CIME is responsible for clarification of the Guidelines.

Procedural Guidance

The Procedural Guidance is an attachment to the Guidelines. This document outlines the follow-up procedures and obligations for adhering countries. It basically outlines what governments should do to promote and increase the use of the Guidelines by their multinational enterprises, and describes how NCPs can be organised, what can be expected from NCPs and how they relate to the CIME.

Commentaries

It is important to note that each of the chapters of the Guidelines and the Procedural Guidance are accompanied by what are referred to as the Commentaries. The Commentaries were developed by the so-called Working Party that prepared the review of the Guidelines. Although the Commentaries are not officially part of the Guidelines, they provide useful information on the context and interpretation of the Guidelines. Their length does not allow for them to be included in this starterkit. However, their content can be quite helpful to substantiate your arguments when you are raising a case about a breach of the Guidelines. The Commentaries can be obtained through the OECD (also at <http://www.oecd.org/EN/documents/0,,EN-documents-93-3-no-6-no-0,00.html>).

2 Pros and Cons of the Guidelines

2.1 What are the advantages of the Guidelines?

The good thing about the Guidelines is that they cover a wide range of issues, and not just labour or environmental standards. Also, the fact that they are recommendations made by the thirty OECD governments to their enterprises makes the Guidelines a potentially interesting tool to use when pressing for corporate accountability. Companies are vulnerable to adverse publicity that connects their brand name

to allegations about sweatshop labour or environmental pollution and an alleged breach of the Guidelines could result in such publicity if the company does not improve its behaviour. The Guidelines can help us to put pressure on companies that are not acting in a socially and environmentally responsible manner. In one case, even the intention to file a Guidelines complaint led an enterprise to cancel its plans that would otherwise have triggered the complaint.



PHOTO: LIESBETH SLUITER

Environmental protest against the building of a dam, Thailand

Furthermore, the complaint procedure offers a forum with governmental backup. This also increases government involvement in ensuring corporate responsibility, which is not necessarily the case when companies establish their own private codes of conduct, or when there are bilateral communications between a company and those attacking the company's social or environmental record.

The applicability of the Guidelines is extra-territorial in that they are also applicable outside the OECD countries. The Guidelines can thus be an option for countries where the legal framework is not functioning smoothly, or where NGOs do not have easy access to the legal system. Enterprises operating in these countries are still expected to comply with the OECD Guidelines and can be held accountable. The Guidelines reflect internationally shared views on what good corporate behaviour should entail.

An additional advantage of the Guidelines is that under the General Principles 'good corporate governance principles and practices' and 'effective management systems' are also expected from companies. A complaint could therefore be made about a company with a code of conduct, but without matching 'governance practices' and 'management systems'. However, this has not been tested yet.

Furthermore, the Guidelines and the possibility to file a complaint at an NCP have proven they can serve as a means to get companies to actually discuss their conduct, whereas otherwise companies would have turned a deaf ear to allegations of misbehaviour. Also, the burden of proof is not as judicially heavy as is the case when you take a company to court. This stems from the consultative and problem-solving nature of the complaint procedure.

Normally, an NCP should publicise the results of a complaint procedure. This is set out in the Procedural Guidance attached to the Guidelines and may create a possibility to 'name and shame' a company that is not abiding by the Guidelines. However, when these results are made public the name of the company is not necessarily revealed. Ideally, use of the Guidelines should be part of a broader

strategy of the complaining organisation to change the company's behaviour. A complaint about breaching the Guidelines could be helpful in putting pressure on that company.

2.2 What are the disadvantages of the Guidelines?

Weak implementation mechanisms

The current procedures only provide a minimal sanction through the risk to a company's reputation that decisions of NCPs may cause. Also, the OECD itself does not ensure independent verification of whether companies follow the Guidelines. During the latest review of the Guidelines, suggestions were made to increase the weight of potential incentives and sanctions. For example, it was suggested that a register could be set up, so that enterprises would actively implement the Guidelines by publicly stating their adherence to the Guidelines. The idea of holding public hearings on the behaviour of individual enterprises was introduced as another way to encourage MNEs to abide the Guidelines. Unfortunately, neither of the two proposals made it through the review process at the OECD.

Weak wording

Weak wording in the form of qualifications such as 'where practicable', or 'when appropriate' water down the meaning of many paragraphs. For example, the paragraph on supply-chain responsibility says that enterprises should 'where practicable' encourage their subcontractors to respect the Guidelines (par II.10). The paragraph on disclosure not only says that companies should disclose timely and accurate information about their dealings, but also says that their disclosure policies can be tailored to fit competitive concerns such as cost, business confidentiality etc. (III)

Confidentiality versus disclosure

The Procedural Guidance (see annex II) says that while procedures about a certain case are underway, a confidentiality rule is applied: 'information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.' This means that you cannot reveal confidential or sensitive information that you receive from

the company or the NCP during meetings or consultations, which are part of the complaint procedure. It also means that you can ask the NCP not to reveal certain information about you or provided by you, to the company you are filing a complaint against. Both the complainant and the company can thus be protected by the confidentiality rule.

However, if the parties have not agreed on a resolution of the problem at the end of the procedure, the results of the procedure are to be made public by the NCP involved. Unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines. This stipulation in the Procedural Guidance obviously leaves some room for National Contact Points to keep certain cases and issues confidential.

We have not collected enough practical experience to draw conclusions about the effects of the confidentiality provisions. Both in the Netherlands and in Germany, NGOs did presswork when they filed a case at their NCP. The Dutch NCP was not too happy about this because they fear it will undermine the carefully arranged opportunity for finding solutions that the complaint procedure now offers. On the other hand, specific cases of corporate misbehaviour are often also discussed outside the NCP procedure. This information does not suddenly become confidential once a NCP procedure is started, while new information from third parties about the issue can also be brought into the public domain.

Nevertheless, the confidentiality constraints of the Guidelines are a major concern amongst many NGOs. The question of which

information can be made public without consequences for the procedure has not yet been answered and practical experience should shed more light on this issue.

Reference to other international instruments

The fact that the Guidelines do not refer to specific paragraphs in other international instruments like the ILO Convention and environmental declarations, diminishes their value. The existence of these documents as well as the Universal Declaration of Human Rights and the Copenhagen Declaration for Social Development is mentioned in the Preface to the Guidelines, but it is not stated that companies should respect the principles expressed therein. Also, the Guidelines have their own vaguer descriptions of labour rights and the precautionary principle. These



Protest against World Economic Forum, Melbourne

PHOTO: DANIELE ANZENBERGER / TRANSWORLD

are already established in the ILO Conventions and the Rio Declaration respectively, but unfortunately the Guidelines do not follow these existing instruments.

2.3 Are the Guidelines always the best way to tackle misbehaviour by MNEs?

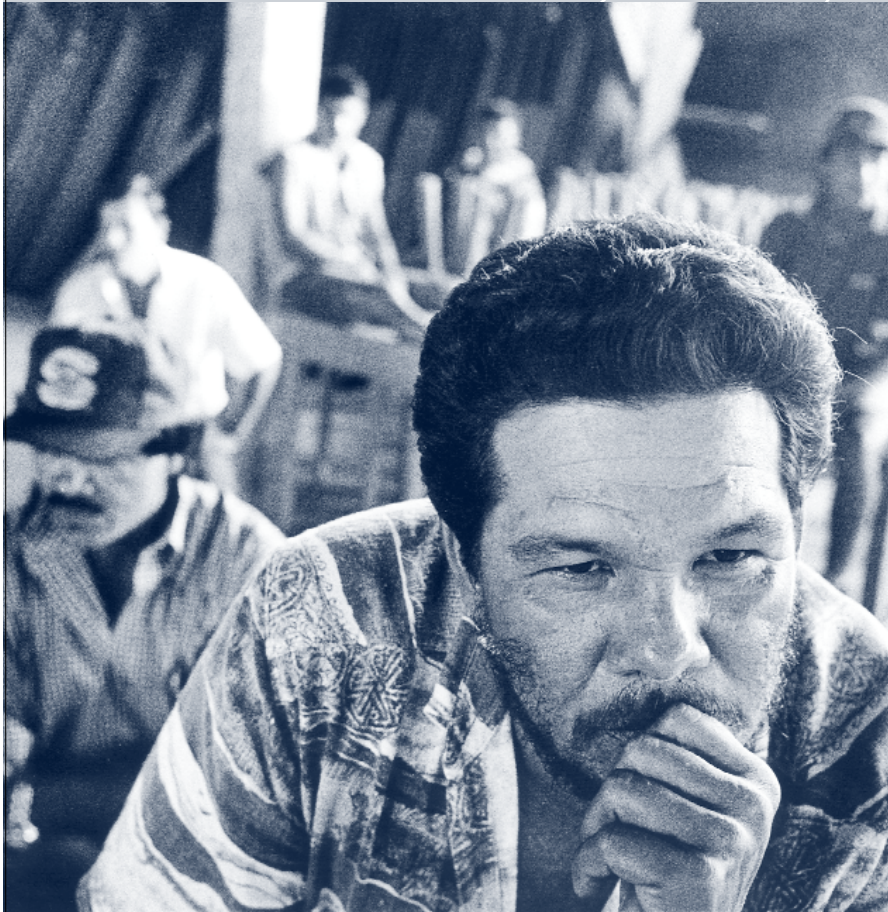
There have not been many declarations by NCPs and therefore it is difficult to evaluate to what extent the Guidelines can be useful to ensure corporate accountability. More experience needs to be gained to find out what the guidelines can offer. As described in the checklist at the end of this booklet, one should always think of the various possible ways to combat corporate misbehaviour. Filing a complaint related to the OECD Guidelines is only one of them.

Usually, a breach of the Guidelines implies that other rules are being broken too. These could be national laws, or international laws and regulations. The format of this starterkit does not allow for an exhaustive list of all such documents and regulations on corporate responsibility. However, in the websites section at the end of this booklet you will find some useful online starting points for finding out more about them.

There are of course many other ways to influence corporate behaviour and put pressure on those that deny their responsibility besides the various possibilities to file complaints related to Guidelines and codes of conduct and to start judicial procedures in court. Public opinion campaigns, media work, consumer boycotts and direct action are only several of the campaigner's options. They all have their advantages and disadvantages. Be creative and give much strategic thought to which the options to your disposal could best serve your purposes. In many cases it is also worthwhile to pursue several lines of action simultaneously.

3 Practical Questions

PHOTO: PIET DEN BLANKEN/HH



Banana plantation trade union meeting, Costa Rica

3.1 Who can file a complaint with an NCP?

Basically any 'interested party' can file a complaint. The interested party does not necessarily have to be an organisation, although individuals planning to raise a case are advised to seek back-up from one or more organisations. The party that is filing the complaint, for example a community fighting against pollution by a company, has to make clear what its interest in the case is. This 'interest' can be the legitimate concern of any citizen or organisation.

The interested party can also be an organisation in the company's home country that represents those affected by the company's activities in the host country. If the NCP is not convinced that the complainant has an interest, it will declare the case 'frivolous' and not look further into the matter.

There is no standard answer to the questions of who should file a complaint and at which NCP the complaint should be filed (see next section). Take time to assess the structure of the company, the political context of the country, the character of the NCP and the potential for allies both in your own country and in the company's home country in order to take an informed decision on these issues.

3.2 How to choose an NCP to file a complaint with?

For example, if the corporate activity you are concerned about takes place in Chile then the Chilean NCP is the appropriate NCP to contact. If the activity takes place in another adhering country then the case should be for that country's NCP to consider. If the activity takes place in a non-adhering country, but the company's headquarters or relevant part of the company are located in, to take the

same example, Chile, then the Chilean NCP may be the appropriate contact. A concrete example was when the India Committee of the Netherlands filed a complaint about a sportswear company. The activities they considered a breach of the Guidelines took place in India, and the company's headquarters are located in Germany. But because the company also had an office in the Netherlands, they could file their complaint at the Dutch NCP.

3.3 How to file a complaint?

Usually the more information an NCP receives, the easier it will be for it to take action on the complaints received. The quality of the information an NCP receives is even more important, so make sure the information you deliver is as accurate as possible.

The basic information an NCP will require is:

- your identity and your interest in the matter
- name of the company involved
- the location of the company's activities
- which parts of the Guidelines are considered relevant; with reference to specific paragraphs
- description of the activity with any supporting evidence;
- what can be revealed towards the company, for example the identity of those filing the complaint; documentary evidence etc.

(See above on the confidentiality principle: a complainant can decide which information he delivers to the NCP may be revealed to the company)

A telephone call to find out more about the NCP before sending in a written complaint can be very useful. Find out who the contact person is, how they can help you, and what level of activity you can expect from them (if this appears to be quite low you may consider filing the complaint at a



PHOTO: LIESBETH SLUITER

Nicaragua

different NCP). Have a look at the checklist below (page 20) which you may find helpful.

Once you have decided which NCP is the appropriate one to contact and you have collected all the relevant information and supporting evidence, you can file the written complaint with the NCP of your choice. Alternatively, you can ask another organisation to file the complaint for you (see section 10 above).

Consider sending an official copy of your complaint to other organisations such as trade unions and NGOs so that the NCP and the company know that others know about it. Greenpeace Germany did this by sending a copy of their complaint to Germanwatch. Sending out a press release about the complaint you submitted is also an option. Both these measures might spur an NCP into action.

4 Raising a Case at an NCP

PHOTO: PIET DEN BLANKEN/HH



Banana plantation trade unionist, Honduras

4.1 What happens when you raise a case at a National Contact Point?

The NCPs deal with issues in a two-stage procedure. When a party raises a case, the NCP is required to make an initial assessment of whether the issue(s) raised merit further examination and respond to the party or parties raising the issue(s). As the institutional arrangements for NCPs leave room for them to operate in different ways in different countries, there is no standard way that cases are dealt with.

NCPs can exclude cases where alternative channels of recourse (for example arbitration in the host country) exist.

When deciding whether to pursue an issue, the NCP may consult the company in question and also any other interested parties, but it is not obliged to do so. The NCP will take into account:

- the identity of the party concerned and its interest in the matter (the NCP will not determine the validity of an issue based solely on the identity of the party raising the case)
- whether the information provided supports the claim of a breach of the Guidelines
- the relevance of applicable law and procedures
- how similar issues have been or are being, treated in other domestic or international proceedings;
- whether or not the consideration of the issue would contribute to the purposes and effectiveness of the Guidelines.

After this initial assessment, the NCP decides whether the case 'merits further examination', which means that it accepts the complaint. If the NCP decides that the issue does not merit further consideration, it will contact the

complainant to explain why this is the case. There is no appeal against such a ruling, although in theory the OECD committee responsible for the Guidelines (CIME, see below) should review the performance of the NCPs annually. What you can do at this point is go to the media with a story about failings of the Guidelines, underlining the need for better and binding regulations for company behaviour.

Note that companies cannot sue for libel or slander individuals or organisations solely for raising a case at an NCP as long as sensitive information, confidentially obtained through the complaint procedure is not made public.

4.2 What happens when a complaint is accepted?

If the NCP decides the case merits further consideration, it will go into a second phase of investigation. The decision to enter into the second phase can be publicised by the NCP. The procedure that follows focuses on problem solving in order to resolve the issue between the complainant and the company. This may be achieved through external consultation of experts, stakeholders, other NCPs or CIME and mediation between the parties involved. The NCP can organise several meetings with the complainant and the company accused of breaching the Guidelines. The NCP may send a list of questions to the complainant about the issue concerned. Consultation meetings will most likely take place in the country where the NCP is located, although there is no fixed policy as to where these meetings should take place. Embassies in the host country could also be involved. In a case against a Zambian/Canadian mining corporation, meetings between the company and local NGO and community leaders were arranged to take place in the Zambian community suffering from the carelessly conducted mining activities after the Canadian NCP intervened.

If the parties can still not reach an agreement about a solution after mediation, the NCP is expected to make a public statement about the case. This statement can include recommendations for remedial actions to be taken by the company. However, these recommendations may remain confidential if this is believed to be 'in the best interests of the implementation of the Guidelines'. The NCP statement



PHOTO: KADIR VAN LOHUIZEN/HH

Niger Delta, Nigeria

can be a useful tool for campaigning activities, as your efforts to change a company's behaviour do not have to stop at the end of an OECD Guidelines case.

BIAC, the Business and Industry Advisory Committee to the OECD, would argue that severe public condemnations of companies would scare the business community so much that they might give up their support for the Guidelines, while business support is seen by the CIME as an important element of effective implementation of the Guidelines.

There are no fixed timetables for how quickly a case should be dealt with. The implementation procedure merely demands that they are dealt with in a timely manner. Clearly, it may take at least several months or over a year to complete a case.

4.3 What kinds of outcomes can be expected?

Until now, the outcomes of cases that have been dealt with cannot be considered spectacular in terms of denunciations of bad corporate social and environmental records. However, only a few cases were completed and several are still in the process of being handled. In a case against a

Scandinavian-based company, concrete improvements were realised after a case was raised about labour conditions. As mentioned above sometimes even the probability of a case starting has pushed an enterprise to change.

Another outcome of a procedure could be the publication (also on the website of the NCP) of all the information exchanged between the complainant and the company. This information could serve as a basis for further dialogue with the particular company or for checking the information (which might include intentions or promises by the company to change its behaviour) against future practice. Again, collecting more experience is the only way to find out how and to which extent the Guidelines and their complaint procedure can be useful in combating corporate misbehaviour.

In the case of the Zambian mining corporation mentioned above, the company agreed to make an inventory of the

problems as well as a plan for improvement, together with the stakeholders (such as the local community). Most of the problems concerned toxic and other pollution of the area, caused by the mining activities. Also, the company was threatening to evict squatters on its mine-land, and until then had refused to meet with them to discuss the situation (Oxfam considered this to be a breach of par. II.7 of the Guidelines).

As a result the two parties agreed on a social plan to minimise the adverse effects of the corporation's decision on relocation.

4.4 Who can help you raise a case at an NCP?

If you need help with filing a complaint at a National Contact Point, try to get in touch with organisations that may have specific expertise or experience with the issue you are dealing with. Trade unions, also represented at the OECD through TUAC or NGO's working on labour issues are the most logical choice for labour issues. Coalition-

building strengthens your case and it may be possible to get help from non-governmental organisations, politicians, scientists, lawyers and others. It is especially worthwhile to contact organisations in the home country of the enterprise you are dealing with. They could inform you about the character of the National Contact Point in their country, and provide you with additional information on the company that might be hard to find in the host country.

Also, support by organisations in the company's home country usually increases the chances of media coverage in the home country. For cases with environmental aspects, you can contact Friends of the Earth member organisations. If you need more suggestions please contact Friends of the Earth Netherlands at <accountability@milieudefensie.nl>.

Even when you think you do not need help, coalition building will strengthen your case!

PHOTO: JAN BANNING/LAIF/HH



Protest to free members of 'illegal' trade union, Indonesia



Blockade of Finnish paper industry ship, Netherlands

4.5 What if the NCP is not doing its job properly?

National Contact Points may deal differently with similar cases. This should be taken into account when you choose which NCP to raise your case at. If an NCP is not doing its job properly, for example by not answering your correspondence at all, you will have to continue putting pressure on the NCP to get it to react. Contacting another NCP for information, or enquiring at the Embassy of the country whose NCP you are trying to contact, might help. Remember that all NCPs are supposed to act according to the four criteria of criteria of accessibility, transparency, visibility, and accountability. When an NCP has handled a case but you are convinced that it reached an erroneous conclusion, the Committee on International Investment and Multinational Enterprises (CIME) is the next step in the complaint procedure. However, officially the CIME can only be asked for 'clarifications' concerning the Guidelines by adhering countries, NCPs and BIAC or TUAC.

When an NCP is not responding or comes to conclusions you think are not right, you should also inform trade unions and NGOs about the case. Together you can contemplate a strategy to go forward. It may be possible to activate the CIME through TUAC, especially when the case under consideration deals with labour relations and conditions.

4.6 What is the role of CIME?

The Committee on International Investment and Multinational Enterprises (CIME) consists of government representatives and is responsible for the Guidelines. The Committee meets regularly in Paris and consults with TUAC, BIAC, and NGOs on Guidelines questions and other international investment issues. The CIME will consider requests for assistance from NCPs about how to carry out their activities, including the handling of specific cases.

4.7 What is a 'clarification'?

The CIME can also clarify the meaning of the Guidelines, but only in cases where TUAC, BIAC or an adhering country believes that an NCP has misinterpreted them. NGOs cannot directly ask CIME for a clarification.

The clarification then issued by CIME does not name companies, although in practice the company identity is known. When CIME clarifications differ from the findings of an NCP, they can be of use in pressing a government to take action, for example by re-opening a case. Also, a clarification can help to put pressure on a company to observe the Guidelines.



Banners against dam construction, Thailand

Checklist

Preliminary Preparations

- Check whether the abuse you want to put an end to, could constitute a breach of the OECD Guidelines
- Additional arguments can be generated by combining a breach of particular Guidelines on e.g. labour or environment with one or more of the General Policies
- Check whether the abuse is a violation of the laws of the host country
- If the latter is the case, check where you could go to for recourse within the host country's or other judiciary system
- If sub-contractors are involved, you should try to assess what kind of control or influence the company has over the actual supplier or subcontractor. This may include pricing, delivery conditions, joint management systems or the lack of such a system, proportion bought of supplier's total production etc.
- Define clearly for yourself what your direct and indirect goals are. Consider what a possible complaint procedure would mean for those involved (both in costs and profits)
- Do you need additional expertise? If yes, what kind of expertise?
- Consider your limited resources (time, money, people) and make a list of the ways that you could try to change the corporation's behaviour: you may find that other activities (legal work, lobby work, boycott campaign, direct action, etc) have a higher chance of a timely success. Realise that you do not necessarily have to choose one of your options: several ways can be worked on at the same time
- Try to assess how much time a complaint procedure will take, and whether that might inhibit your campaign or not.

Getting Started

- Contact NGOs, trade unions or other groups in the host country of the company. They might be able to help you and provide you with useful information about the company, about the NCP, etc
- Contact the company (for example by telephone or in writing) to get a first impression of how it views the issue.

- When it looks like filing a complaint at an NCP could be worth the trouble, check which NCPs could be approached:
- is there an NCP in the host country?
- NCP in the home country?
- NCP in another country?
- Are there other parties such as government, or non-governmental groups with an aim opposite to yours involved and what are their interests The political context might have to influence your strategy.
- Coalition-building: try to find allies, both at the national and international level
- Burden of proof: will it be possible to come up with enough supporting evidence of the company's activities?
- Imagine what the impact of a possible NCP declaration could be for the complainant (you) and for the company: none, some, a lot?
- Check whether the company's behaviour constitutes a violation of other international declarations, which is probably the case. You can use this information when filing a complaint with an NCP and/or when seeking recourse through the mechanisms established for these other declarations
- Representation: if for any reason you think you might put yourself or your organisation in danger by filing a complaint (for example because you expect reprisals from a company or from others), contact other groups (for example in the home country) that might be able to file the complaint for you
- **Please help us collect and build on our experience with the Guidelines and let us now if you raise a case by sending a copy of your complaint, or a summary of it, to Friends of the Earth Netherlands (for contact details see backside of cover).**

Concluding remarks

As you will have noticed, this starterkit gives a lot of information and it also raises many questions that cannot yet be answered. There are two main reasons for this lack of answers:

First of all, not many Guidelines cases have been completed yet. Secondly, each case is unique because it concerns a different company, country and organisations. This means it is impossible to come up with a single blueprint recipe for when and how to file a complaint about a breach of the OECD Guidelines. Sharing experiences and expertise is the only way to learn more about whether or not the Guidelines could serve a useful purpose and what that purpose could be. This is also why we hope you will inform us about your dealings with the Guidelines and National Contact Points.

In the appendices to the starterkit you will find the ingredients to get started. There are websites for more information on corporates, the official text of the Guidelines, the Council Decision and Procedural Guidance, the addresses of all existing National Contact Points and a list of Friends of the Earth member organisations.

Add your own creativity and intellect to it. Find out how you can use the ingredients provided to campaign for corporate accountability.



PHOTO: DANNY KENNEDY

Papua

References and further reading

**The 2000 Review of the OECD Guidelines for
Multinational Enterprises: A New Code of Conduct?**

SOMO, Joris Oldenziel, Amsterdam 2000.

Towards Binding Corporate Accountability.

Friends of the Earth International,

www.foei.org/publications/corporates/accountability.html

accessed July 2002

The OECD Guidelines on multinationals – A User's Guide

TUAC, Paris

TUAC Survey of the Functioning of National Contact Points

OECD, Paris, 2001

**UK National Contact Point for the OECD Guidelines for
Multinational Enterprises**

www.dti.gov.uk/worldtrade/ukncp.html – accessed July 2002

Websites

Friends of the Earth Netherlands website on corporate responsibility (English, Spanish, French)

<http://www.milieudefensie.nl/accountability>

Friends of the Earth International

<http://www.foei.org/corporates/index.html>

Friends of the Earth England, Wales and Northern Ireland

<http://www.foe.co.uk/campaigns/corporates/>

Corpwatch – For help on researching corporate activities

<http://www.corpwatch.org>

SOMO Centre for Research on Multinational Corporations

<http://www.somo.nl/monitoring/related.htm>

Germanwatch: support for Guideline cases concerning German enterprises

<http://www.germanwatch.org/tw/ncpwatch.htm>

Corporate Europe Observatory

<http://www.xs4all.nl/~ceo>

ASEED: Action for Solidarity, Equality, Environment and Development

<http://www.aseed.net>

Indymedia – a collective of independent media organisations and journalists offering grassroots, non-corporate coverage

<http://www.indymedia.org>

Citizen portal on brands and corporations, in English, Spanish, French and Italian

<http://www.transnationale.org>

Organisation for Economic Co-operation and Development: OECD official website

<http://www.oecd.org>

Trade Union Advisory Committee to the OECD

<http://www.tuac.org>

Business and Industry Advisory Committee to the OECD

<http://www.biac.org>

International Labour Organisation – Tripartite UN organisation

<http://www.ilo.org>

United Nations Division for Sustainable Development

<http://www.un.org/esa/sustdev/>

United Nations Draft Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises

www1.umn.edu/humanrts/principlesWOutCommentary5final.html

OECD Guidelines for Multinational Enterprises

Preface

The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

International business has experienced far-reaching structural change and the Guidelines themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of

technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

Many enterprises have responded to these public concerns by developing internal programs, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The Guidelines clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the Guidelines both complement and reinforce private efforts to define and implement responsible business conduct.

Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection

in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

The common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organizations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the Guidelines are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and principles

The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.

Governments wish to encourage the widest possible observance of the Guidelines. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the Guidelines nevertheless encourage them to observe the Guidelines recommendations to the fullest extent possible.

Governments adhering to the Guidelines should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise. Governments adhering to the Guidelines set them forth with the understanding that they will fulfill their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

Governments adhering to the Guidelines will promote them and encourage their use. They will establish National Contact Points that promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the Guidelines in a changing world.

II. General policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.

5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.
11. Abstain from any improper involvement in local political activities.

III. Disclosure

Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

Enterprises should also disclose material information on:

- a. The financial and operating results of the company;
- b. Company objectives;
- c. Major share ownership and voting rights;
- d. Members of the board and key executives, and their remuneration;
- e. Material foreseeable risk factors;
- f. Material issues regarding employees and other stakeholders;
- g. Governance structures and policies.

Enterprises are encouraged to communicate additional information that could include:

- a. Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;
- b. Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;
- c. Information on relationships with employees and other stakeholders.

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
- b) Contribute to the effective abolition of child labour;
- c) Contribute to the elimination of all forms of forced or compulsory labour;
- d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies, which specifically promote greater equality of employment opportunity, or relates to the inherent requirements of a job.
2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
- b) Provide information to employee representatives, which are needed for meaningful negotiations on conditions of employment;
- c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees and their representatives, which enable them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
- b) Take adequate steps to ensure occupational health and safety in their operations.
5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the

employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
 - regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant

environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
 - a. Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b. Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c. Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
 - d. Research on ways of improving the environmental performance of the enterprise over the longer term.
7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection

- with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
 4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
 5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of 'off the books' or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
 6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

VII. Consumer interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels;
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions;
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden;
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair;
5. Respect consumer privacy and provide protection for personal data;
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

VIII. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.

2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner.

In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
 - a) To fix prices;
 - b) To make rigged bids (collusive tenders);
 - c) To establish output restrictions or quotas; or
 - d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.
2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Appendix II

Council Decision

Decision of the council, June 2000

The Council,
Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the 'Declaration'), in which the Governments of adhering countries ('adhering countries') jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the 'Guidelines');

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Committee on International Investment and Multinational Enterprises, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Committee on International Investment and Multinational Enterprises:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the

Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached Procedural Guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter covered by the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Committee on International Investment and Multinational Enterprises.

II. The Committee on International Investment and Multinational Enterprises

1. The Committee on International Investment and Multinational Enterprises ('CIME' or 'the Committee') shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the 'advisory bodies'), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.

6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached Procedural Guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. Information and Promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the Guidelines from:
 - (a) Other National Contact Points;
 - (b) The business community, employee organisations, other non-governmental organisations and the public; and
 - (c) Governments of non-adhering countries.

C. Implementation in Specific Instances

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with

the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - (a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;
 - (b) Consult the National Contact Point in the other country or countries concerned;
 - (c) Seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances;
 - (d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
- 4.(a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
- (b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each National Contact Point will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

II. Committee on International Investment and Multinational Enterprises

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
 - (a) Consider the reports of NCPs.
 - (b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
 - (c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
 - (d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

Appendix IV

List of National Contact Points

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Argentine – Argentina

Ministry of External Relations
National Directorate of International
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(54-11) 4819 7597
multilaterales@mrecic.gov.ar

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ancp@treasury.gov.au
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Autriche – Austria

Director, Export and Investment Policy Division
Federal Ministry of Economic Affairs and
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(43-1) 715 9651
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<http://www.oecd-leitsaetze.at>
<http://www.wko.at/eu/handel/oecd.htm>
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Belgique – Belgium

Directeur général honoraire – Président
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Central Bank of Brazil
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Ministry of Economy
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(The European Commission is not formally a 'National Contact Point'. However, it is committed to the success of the Guidelines)

Source: OECD

Appendix V

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CADIC

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