



**OECD Guidelines for Multinational Enterprises:  
2005 Annual Meeting of the National Contact Points**

**REPORT BY THE CHAIR**

**Meeting held on  
15-16 June 2005**

*This document reproduces the Report by the Chair of the Annual Meeting of the National Contact Points which was held on 15-16 June 2005. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2005 Edition".*

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## **2005 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS: REPORT BY THE CHAIR**

### **I. Introduction and background**

The 2005 meeting of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) gave NCPs an opportunity to take stock of their experiences during the fifth year of implementation since the June 2000 Review. Consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-government organisations will provide further inputs on Guidelines implementation. The 2005 Roundtable on Corporate Responsibility focused on the OECD Guidelines and developing countries.

The present report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2004-June 2005 period. It is based on individual NCP reports<sup>1</sup> and on other information received during the reporting period. The report is divided into eight sections. These include: institutional arrangements (section II); information and promotion (section III); specific instances (section IV). Section V describes the Investment Committee’s response to a request for clarification by the Swiss NCP on a specific instance that contained no “international element”. Section VI describes work on investments in weak governance zones and steps taken to date to respond to issues raised by the UN Expert Panel on Illegal Exploitation of Nature Resources in the Democratic Republic of Congo. Section VII describes how Guidelines institutions have followed up on some of the issues raised during earlier Annual NCP meetings and Corporate Responsibility Roundtables. Section VIII summarises progress to date and proposes some considerations for future action.

Overall, this year’s report suggests that adhering governments have strengthened promotional efforts in an effort to raise further the instrument’s visibility and influence. Existing promotional programmes were expanded and new programmes and activities were established. These included: 1) promotion targeting the financial and mining sectors; 2) establishing alliances with universities and business schools; 3) seminars for expatriate managers; 4) CSR events in China, Colombia and Ethiopia; and 5) television coverage of a specific instance and of the functioning of NCPs.

The NCPs’ reports suggest that many adhering governments have deepened their use of the Guidelines in the context of a “whole of government” approach to corporate responsibility. They have expanded promotion with and through embassy networks, export credit and investment guarantee

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<sup>1</sup> Individual reports from the following NCPs were received in time to be included in this report: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Israel, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The European Commission also filed a report, though it does not have a National Contact Point.

programmes and other specialised agencies and Ministries. Taken together, the NCP reports on promotion attest to the ongoing vigour of adhering countries' commitment to the Guidelines<sup>2</sup>.

NCPs continue their consideration of specific instances. One hundred six requests to consider specific instances have been brought to NCPs since the June 2000 Review, of which 71 were taken up by NCPs. Twenty-eight of these are still under consideration while 43 specific instances have been concluded.

NCPs and the OECD Investment Committee, which has oversight responsibility for the Guidelines, have continued to explore and refine the procedures for using this unique facility. The Committee examined two procedural issues: 1) specific instances that have no "international element"; and 2) parallel legal proceedings. During this examination the Committee has sought to safeguard the effectiveness and credibility of the Guidelines by enhancing their value added relative to other national, regional, sectoral and international initiatives.

This year's individual NCP reports show that NCPs are cooperating extensively among themselves in organising and reflecting on the handling of specific instances. Active dialogue among NCPs has taken place on procedures, information sharing and on further discussions of follow up to the UN Expert Panel reports. Finally, some of the reports note the difficulties encountered when trying to consider specific instances in non-adhering countries.

## **II. Institutional arrangements**

The NCP reports show that institutional arrangements were largely stable over the June 2004-2005 reporting period. Romania became the 39<sup>th</sup> adherent to the OECD Declaration in April 2005. All thirty nine NCPs have reported on their institutional arrangements. Overall, the structure of NCPs can be summarised as follows:

- 21 NCPs are single government departments;
- 7 NCPs are multiple government departments;
- 9 NCPs are tripartite (many of these also involve multiple government departments); and
- 2 NCPs are quadripartite.

NCPs noted that they also use other means for organising consultations and for expanding the inclusiveness of their activities. A number of countries reported using advisory committees or permanent consultative bodies whose members include non-government partners. Others stated that they convene regular meetings with business, trade unions and civil society. Still others state that they consult with NGOs or other partners on an informal basis or in reference to specific issues where partners' expertise is required.

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<sup>2</sup> The Guidelines have now been translated into at least 28 languages: Arabic, Chinese, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Lithuanian, Norwegian, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish, Thai, Turkish and the official languages of Belgium and Switzerland.

### **III. Information and promotion**

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities and to handle enquiries. NCPs have continued to be active in this area. This section summarises the promotional activities described in the individual NCP reports.

#### ***III.a. Selected promotional activities***

Developments and innovations in promotion include:

- *Promotion of the Guidelines with the financial sector.* The Australian NCP presented the Guidelines to the Australian Stock Exchange Corporate Governance Council, which comprises representatives from 21 business groups from various background and has recently developed and implemented a voluntary framework for corporate governance.
- *Training of trade and investment promotion staff.* Canada's Trade Commissioner Service includes corporate responsibility as an important aspect of its promotional activities. Training material has been developed to illustrate to trade and investment promotion staff how the promotion of corporate responsibility (including the Guidelines) can be integrated into the delivery of the core services provided to Canadian companies operating abroad.
- *Canadian embassy engagement on CSR issues in the Americas.* Canadian embassies in the Americas are particularly focused on incorporating relevant corporate responsibility material (including references to the Guidelines) in the briefings they give to their Canadian clients. They also communicate the Government of Canada's commitments in this area through workshops in host countries. For example, in February 2004, the Canadian Embassy in Colombia organised a corporate responsibility forum in Bogotá in conjunction with the Canada-Colombia Chamber of Commerce which was attended by over 100 people.
- *Promotional events in Chile.* In December 2004, the Chilean NCP organised a promotional event with union leaders in Chile's agro-export sector. In May 2005, a seminar was jointly organised with the National Environment Commission, the OECD and the Economic Commission for Latin America and the Caribbean on Chile's environmental policies. The Guidelines were promoted at these seminars.
- *Televised discussion in Denmark.* The Danish NCP has made an effort to raise public awareness of the Guidelines through the media. One of the Danish specific instances and the functioning of the Danish NCP were discussed on in the television programme "Deadline" in April 2005.
- *Promotion in Latin America by the European Commission.* In April 2005, the European Commission Delegates organised two regional workshops on "Sustainable Development and Regional Trade Agreements in Argentina (an adhering country) and Costa Rica. This was an opportunity to explain how investment liberalisation can be supported by responsibility business practices, to present the Guidelines and to explain that they have been signed by a number of non-member countries and are referred to in the EU-Chile agreement.

- *Corporate Social Responsibility Finland Programme.* Under this programme, meetings were organised to discuss the following topics: 1) general ethical investment and management by Finnish pension funds; 2) ISO initiative on 'Guidance on Social Responsibility'; 3) WWF Finland Green Office Programme; and 4) stocktaking of CSR Principles in the Finnish public procurement.
- *Co-promotion of the Guidelines and binding anti-corruption instruments.* The Hungarian NCP is using training events for officials of Hungary's Investment Promotion and Trade Development Agency and diplomats working for Hungarian Embassies to promote the Guidelines. The events focus on the OECD Anti-Bribery Convention and the EU's Criminal Law Convention on Corruption, but are also used as to promote awareness of Hungary's commitments under the "Combating Bribery" chapter of the Guidelines.
- *Promotional events in Italy.* The Italian NCP has launched a major promotional campaign. During the reporting period, this included mailing 3,000 copies of brochures to all multinational enterprises operating in Italy (both Italian and foreign). It also set up information stands at three separate events designed to promote the public services activities. It also sponsored, in partnership with the Eni Enrico Mattei Foundation, a cycle of three seminars designed to deepen understanding of the contents of the Guidelines (particularly those aspects linked to human rights, environmental sustainability, bribery and innovation). This initiative aims to create an Italian network of experts to improve the diffusion and implementation of the Guidelines and, more generally, of corporate responsibility principles.
- *Seminars for expatriate business people.* The Japanese NCP organised seminars to explain the OECD Guidelines and the OECD Convention against Bribery in International Business Transactions to Japanese managers based in Thailand, Malaysia, Philippines, China and Vietnam.
- *Promotion by the Mexican NCP in the context of the 10<sup>th</sup> anniversary of OECD membership.* In order to mark this event, the Mexican NCP organised a Roundtable on the Guidelines in Mexico City in November 2004. The NCP also attended a conference organised in Montevideo, Uruguay on Perspectives on the Guidelines for Multinational Enterprise (organised by TUAC and the FES-Proyecto Regional Sindical).
- *CSR Knowledge and Information Centre.* The Netherlands Ministry of Economic Affairs launched this centre – called MVO Nederland -- in November 2004. Apart from providing information on general CSR policies and guidelines, MVO Nederland will collect and distribute CSR specific country information with a focus on emerging markets.
- *Intra-governmental promotion in New Zealand.* The New Zealand NCP has distributed information about the Guidelines to all government agencies. It has also met with other government organisations and encouraged them to use the Guidelines in future government activities.
- *Major international conference sponsored by Sweden.* In cooperation with the World Bank, SIDA, International Business Leaders Forum, the International Institute for Environment and Development, the Swedish Minister for Development Cooperation hosted a conference in which the Guidelines were presented along with other major corporate responsibility initiatives.

- *Promotion in China.* In November 2004, the Embassy of Sweden in Beijing -- in cooperation with the Ministry for Foreign Affairs, local Chinese Authorities and Swedish and Chinese companies -- organised a workshop on “the Business Case for CSR.” Information on the Guidelines was provided to the 100 participants.
- *Turkish request for help from domestic Guidelines partners.* The Turkish NCP requested the help of Turkish business organisations that are members of BIAC, trade union members of TUAC and a Turkish NGO in promoting ethical values in Turkish business life and in raising awareness of the Guidelines. The Turkish report states: “All parties accepted to give their full support and since then the NCP has got direct contact with all.”
- *Promoting the Guidelines with human rights lawyers.* The UK NCP presented the Guidelines to a human rights training course run by the Matrix Chamber (barristers specialising in human rights law).
- *Whole of government promotion of the Guidelines.* The US NCP report notes widespread use and promotion of the Guidelines. Promotional activities include: 1) training of Foreign Service diplomatic, economic and commercial officers; 2) training of Foreign Commercial Service Officers by the Department of Commerce; provision of information to applicants to the Export-Import financing programmes in support of business activities abroad; cooperation with the US Government Accountability Office; American ambassador to the OECD’s statement in the President’s Export Council Fall 2004 Report on Corporate Stewardship.
- *Promotion by the Investment Committee Chair.* The Investment Committee Chair actively promoted the Guidelines over the reporting period. He presented the Guidelines at the major international conference in Stockholm organized by the Swedish government (see above) and in Brussels. His Brussels presentation on may be found at the following address: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines). In March 2005, the Chair sent a letter to the Extractive Industry Transparency Initiative expressing the “OECD’s support for the general principles of transparency and accountability underpinning the Extractive Industries Transparency Initiative.” The text of this letter may be found in Annex 4, document 1.

Other promotional activities during the reporting period included:

- Outreach to companies via contacts or presentations to individual companies or to business associations (Argentina, Australia, Belgium, Brazil, Canada, Chile, Estonia, France, Hungary, Italy, Japan, Korea, Lithuania, Mexico, Netherlands, Portugal, United Kingdom, United States).
- Consultations and organisation of meetings with national partners (Argentina, Australia, Brazil, Canada, Chile, Denmark, Estonia, France, Germany, Ireland, Italy, Japan, Korea, Lithuania, Mexico, Netherlands, Portugal, United Kingdom, United States). In November 2004, the Argentine NCP organised a promotional meeting for “society at large” that featured speeches from business, trade union and NGO.
- Newsletters, articles in the press or other promotion through the media (Belgium, Denmark, Korea, Portugal, Slovak Republic, Sweden)

- Participation in conferences organised by non-governmental actors (Argentina, France, Italy, Portugal, Slovak Republic, Spain, United States). The Guidelines featured prominently in a speech delivered by a US Department of State Representative at the Intertek Conference on Corporate Social Responsibility in New York City. The Spanish NCP participated in a corporate responsibility day for SMEs that was organised by the Valencia Chamber of Commerce.
- Cooperation and promotion with think tanks, universities and other institutions of higher education (Australia, Finland, Germany, Italy, Mexico, Slovak Republic, Spain, Turkey United States). Italy and United States made presentations on the Guidelines to graduate schools of business. The Italian NCP collaborated with the University of Bari in the Puglia region in planning a seminar on *The Sensitive Enterprises: A Strategy for Globalisation*. The Spanish NCP promoted the Guidelines at a University of Alcalá event on the “Social function of companies”.
- Development of promotional material and mailings (Brazil, Germany, Israel, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Portugal, Turkey). The Lithuanian NCP has published “European Works Councils: 33 questions and answers. OECD Guidelines for Multinational Enterprises”.
- Website development (Australia, Finland, Hungary, Italy, Lithuania, Mexico, New Zealand, Switzerland)

### ***III.b. Promotional activities within governments***

- Promotion with and training of embassy and consular staff (Australia, Canada, Germany, Hungary, Korea, Poland, Spain, Sweden, United States, United Kingdom). The Australian NCP briefs senior officials in person prior to them taking up postings and incorporates information on the Guidelines into information packs provided to all Australian Government officials taking overseas postings.
- Trade and Investment Promotion missions or activities (Canada, European Commission, Korea, Netherlands, Poland). In April, 2005, a Swedish Ambassador promoted the Guidelines during a trip to Ghana with a Swedish business delegation.
- Other inter-governmental promotion (Australia, Canada, European Commission, Finland, France, Germany, Italy, Mexico, Netherlands, Poland, Spain, United Kingdom, United States). The Italian NCP organised with the support of the Lombardia Region, the Chamber of Commerce of Milan and several business association, a training course addressed to employees of public utility agencies that was designed to raise awareness of the Guidelines. The United States NCP cooperated with the US Government Accountability Office on a report entitled “Federal Government Involvement in Corporate Social Responsibility.”
- Promotion through overseas development agencies (Canada, Sweden, Switzerland).
- Answering questions from or promotion with Parliaments, Ombudsmen or other government bodies (Canada, European Commission, Finland, Mexico). The Canadian NCP was asked to appear before the Parliamentary Sub-Committee on Human Rights and International

Development in May 2005. The Sub-Committee was seeking information about the Guidelines and the role of NCPs in the context of their hearings on the operations of a Canadian mining company in the Philippines.

### ***III.c. Investment promotion, export credit and investment guarantee agencies***

Adhering governments have continued to explore how to ensure that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Twenty-one NCPs report that such links exist. The main changes in Table 1 relative to last year's report are the addition of an entry for Switzerland and a restructuring of the Japanese entry.

Three national developments are noteworthy in relation to export credit and investment programmes.

- First, the UK reports that the Export Credit Guarantees Department (ECGD) is to “examine compliance against the environment, employment, combating bribery and transparency chapters.”
- Second, Canada reports that Export Development Canada co-organised a short course on “Managing Social and Environmental Risk in the Mineral Exploration Sector”. This was delivered as a side event prior to the annual convention of the Prospectors and Developers Association of Canada, held in March 2005. The course attracted over 50 participants representing mining companies of various sizes, NGOs and consultants, all of whom received a copy of the Guidelines brochure.
- Third, for several years now, the Netherlands has asked companies requesting government support for their international commercial activities “to fulfil certain CSR-related conditions.” (See Netherlands entry in Table 1). The Netherlands report states: “Recently, there has been an evaluation of the manner in which the agencies responsible for the implementation of the support instruments are applying this framework in practice. This evaluation included a stocktaking of the experiences of companies and civil society organisations. In general, the framework works quite satisfactorily, but some practices aspects (related to the clarity and transparency of the framework) have to be improved. In two years time, the effects of this framework on CSR performance (related to supported projects outside the OECD area) will be examined more thoroughly”.

### ***III.d. High level promotion***

The Netherlands' Coordinating Minister for CSR hosted a European Conference on Corporate Social Responsibility, Competing for a Sustainable Future. During this conference, held under the Dutch EU presidency, ministers from several departments expressed their commitment to CSR initiatives and the Guidelines.

The Swedish Minister for Trade and Industry participated in a corporate responsibility panel at the OECD Forum in May 2005 and published a letter in the Financial Times.

In Switzerland, speeches by Ministers or other high level officials of the Swiss government have been used as on an occasion for promoting the Guidelines (for example, at the “World Economic Forum 2005” and, in February 2005, at the award ceremonies for the best corporate sustainable development reports).

**Table 1. Table 1. The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes**

Australia	Export credit and investment promotion	<p>Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines.</p> <p>The Foreign Investment Review Board, a non-statutory body that advises the Australian Government on the administration of Australia's foreign investment policy, and the Invest Australia, Australia's investment promotion agency, websites provide information on the Guidelines and links to the Australian NCP website.</p>
Canada	Export Credits	<p>The Export Development Corporation (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.</p>
Chile	FDI	<p>The Foreign Investment Committee (CIE in Spanish) is the Agency that the state of Chile uses in its dealings with those who elect to use (the Foreign Investment Decree 600) as the legal mechanism to bring Direct Investment into the country. The Foreign Investment Committee helps to position Chile as an attractive destination for foreign investment and international business.</p>
Czech Republic	Investment promotion	<p>There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the CR. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.</p>
Estonia	Investment promotion	<p>The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.</p>
Greece	Investment promotion	<p>The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.</p>
Finland	Export promotion	<p>This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.</p>
France	Export credits and investment guarantees	<p>Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines (<i>"avoir pris connaissance des Principes directeurs"</i>).</p>
Germany	Investment guarantees	<p>A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.</p>
Israel	Investment Promotion Centre	<p>The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.</p>
Japan	Trade-investment Promotion	<p>The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, METI Japan. Japan established a website with the intention to further strengthen a network (<a href="http://www.TICAExchange.org">www.TICAExchange.org</a>) between Asia and Africa to facilitate the exchange of trade and investment. The Japanese NCP plans to link the TICAD Exchange website to the texts of</p>

		the Guidelines.
Latvia	Investment promotion	Information on Latvian NCP and Guidelines are available electronically on the website of Latvian Investment and Development Agency.
Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ)
Slovenia	Investment promotion, export credits and investment guaranties	Both organisations have added links to the NCP web site. Export credits and investment guaranties (SID) call the Guidelines to the attention of outward investors.
Spain	Investment guarantees	The CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) and ICO (the Official Credit Institute) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on bribery, the OECD GL for MNE's and the Swedish Partnership for Global Responsibility
Switzerland	Export credits and investment guarantees	Switzerland's Export Credit Agency (ERG) and Investment Risk Guarantee Agency (IRG) both promote corporate responsibility principles. On their websites, they provide information regarding the Guidelines and their implementation mechanism.
Turkey	Investment promotion	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for inward investment promotion. The investment promotion website provides information on the Guidelines.
United Kingdom	Export Credit	Links connect Guidelines website and Export Credit Guarantee Department's website and vice versa. The following text is in ECGD's Case Impact Analysis Process document. "The UK Government encourages all multinational companies to adopt the recommendations on responsible business conduct contained in the "OECD Guidelines for Multinational Enterprises". ECGD's internal procedures will check on the consistency of the operations of its customers (both in the UK and overseas) with these recommendations, and in particular those relating to the environment, employment, combating bribery and transparency."
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

In December 2004, the UK Secretary of State for Trade and Industry wrote to the Chief Executive Officers of FTSE 100 companies to promote the Guidelines. A copy of the Guidelines brochure was included with each letter.

The March 2005 Report of the Commission on Africa – entitled *Our Common Interest* -- attracted considerable interest in international policy making circles and the media. The Commission for Africa was established in February 2004 by the UK Prime Minister, Tony Blair. The independent commission – made of 17 commissioners, the majority from Africa – was asked to produce a coherent set of recommendations for the G8, EU and other wealthy countries as well as for African countries on the steps required to accelerate progress towards a strong and prosperous Africa. These were outlined in the CFA’s report.<sup>3</sup> The report makes numerous references to the OECD Guidelines for Multinational Enterprises in its sections on conflict, corruption and poverty reduction. References to the Guidelines in the Report are presented in Annex 4, document 2.

### **III.e. Promotion with the United Nations and other international organisations**

*Addis Ababa conference.* More than 90 participants representing African business, civil society and labour organizations, international organizations and governments, gathered in Addis Ababa on 7-8 March for “Alliance for Integrity – Government and Business Roles in Enhancing African Standards of Living”. About 70 of the participants were Africa-based – they included representatives from business, business associations, state-owned enterprises, trade unions, civil society, national governments and regional organisations. Co-organized by the OECD Investment Secretariat, the UN Global Compact, the New Partnership for Africa’s Development (NEPAD) and Transparency International, the conference took place at the facilities of the Economic Commission for Africa (ECA). The final agenda and summary of this event can be found at [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment).

The main objective of the two-day conference was to strengthen alliances between business, civil society, governments and international organisations to fight corruption and foster positive environments for investment and job creation. The event also provided African inputs into the Investment Committee’s follow up on the UN Security Council’s process on “illegal exploitation of natural resources in the Democratic of Congo” (see Section VI below).

*Joint report on the UN Global Compact and the OECD Guidelines.* At its December, 2005 meeting, the Investment Committee heard a presentation from Georg Kell, Executive Director of the UN Global Compact and had discussions with him. The Committee agreed that there is scope for exploring synergies between the Global Compact and the OECD Guidelines and asked the Secretariat to work with the UN Global Compact on the development of a joint public document explaining the similarities and the differences between the two instruments. This document was discussed at the April 2005 Investment Committee and approved for publication. It is reproduced as Annex 5 of this document<sup>4</sup>.

### **III.f. Promotion by the OECD Secretariat**

The OECD Forum in May 2005 – held in conjunction with the OECD Ministerial meeting -- included a corporate responsibility session arranged by the Public Affairs and Communications Directorate at which the Guidelines were discussed. The 2004 Global Forum on International Investment in New Delhi, organised in collaboration with the government of India, was also used as an occasion to promote the Guidelines. (The German NCP delivered a presentation about “Promoting Corporate Responsibility – Defining the Roles of Governments and Business”.) The Secretariat informed the

<sup>3</sup> The text describing the Commission for Africa is quoted from the LEAD and Commission for African Press Release cfapn09/05. *Commission for Africa Comes Under Spotlight*.

<sup>4</sup> The document is also available at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

participants in the 25-26 May NEPAD-OECD Investment Policy Roundtable in Entebbe of the OECD Guidelines process.

The OECD Secretariat accepted invitations to promote the Guidelines at roughly 20 meetings over the period. Selected promotional events attended and activities undertaken include:

- A meeting sponsored by the UN Global Compact in New York in which the promotion of the Compact's 10<sup>th</sup> principle (anti-corruption) was discussed.
- An international conference in Yaoundé, Cameroon sponsored by the Francophone Union of Internal Auditors. An official of the OECD Office of the Auditor-General presented the OECD Guidelines and described in general terms the Committee's work on weak governance zones. The official also described the work of internal auditors in such zones, and the contribution of the internal auditing profession as a key "link in the chain" for promoting business integrity.
- Stockholm conference on ISO Guidance document on corporate social responsibility. The Secretariat was asked to address a series of questions relating to the theme: would an ISO business ethics standard be a useful tool for business?
- Presentation of Guidelines and corporate responsibility work to 15 officials from the Thai Ministry of Labour who were on an official visit to the OECD.
- Tri-National Conference on the Labour Dimension of Corporate Responsibility sponsored by the Labour Programme of Human Resources and Skills Development Canada in Ottawa.
- Conferences on: 1) business in conflict organised by SwissPeace event in Geneva; 2) environmental health organised by the Institute of Medicine of the National Academy of Sciences in Washington DC; 3) labour codes of conduct organised by the Observatoire sur la Responsabilité Sociétale des Entreprises in Paris, France; and 4) eastern Democratic Republic of Congo organised by the OECD Development Assistance Committee in Berne, Switzerland.

#### **IV. Specific instances**

The OECD Council Decision of June 2000 instructs the NCPs to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP is expected to offer a forum for discussion and to assist the business community, employee organisations and other parties concerned in dealing with the issues raised. Thus, the "specific instances" procedure provides a channel for promoting observance of the Guidelines' recommendations in the context of individual company operations.

In order to improve its reporting on the handling of specific instances, the OECD Investment Committee agreed in April 2004 that an historical archive table should be included in subsequent annual reports on the Guidelines. The first version of this table appeared in the 2004 Annual Report. An updated version – reflecting individual NCP reports received to date -- can be found in Annex 3.

The German NCP was contacted by the management of "UN Global Compact Germany" and asked whether it could provide mediation for possible cases of non-observance with the Compact's 10 principles. The German NCP welcomed this request and responded with a proposal for a two-step

procedure: 1) the Global Compact should first try to address issues within its own reporting system; 2) if the results are not satisfactory, then the problem could be presented to the German NCP as a “specific instance” under the OECD Guidelines. The German NCP would use the Guidelines recommendations as the basis of its consideration in deciding whether to treat a request as "specific instance" and would follow the “Procedural Guidance” set forth in the June 2000 Council Decision. The management of UN Global Compact Germany has agreed and will put this proposal to the German Global Compact's members.

#### ***IV.a. Specific instances – nature and numbers***

Some 106 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCPs reports indicate the following numbers of specific instances have been filed: Argentina (1), Austria (2), Belgium (8), Brazil (4), Canada (7), Chile (1), Czech Republic (5), Denmark (2), Finland (1), France (12), Germany (6), Japan (4), Korea (3), Mexico (2), Netherlands (14), Norway (1), Poland (2), Portugal (1), Spain (2), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (7) and United States (16).

Annex 3 shows that NCPs have actively taken up and considered 72 specific instances. Forty-four of these have been concluded, while 28 are “ongoing”. Forty-two of the 72 specific instances concerned activities in non-adhering countries. Most specific instances deal with Chapter IV recommendations (Employment and Industrial Relations), but there are signs that the range of issues considered has been expanding. Moreover, many specific instances deal with more than one subject – Annex 3 shows that a total of 98 different subject matters were considered. Accounted for in terms of corresponding Guidelines chapters, these were as follows: Preface (1); General policies (18); Disclosure (7); Employment and Industrial Relations (54); Environment (10); Bribery (1); Competition (2); and Taxation (1). Only the “Consumer Interests” and “Science and Technology” chapters of the Guidelines have not yet been the subject of specific instances. In 7 specific instances (all relating to the UN Expert Panel reports on the Democratic Republic of Congo), the subject was “not specified”.

One novel feature of specific instances first discussed at this year’s meeting is the bringing of requests to consider a specific instance by companies – three such requests have been made so far.

#### ***IV.b. Selected specific instances described in NCP reports***

*Argentine specific instance.* In December 2004, the Argentine NCP received a request from a trade union regarding the Argentine subsidiary of a multinational enterprise. The submission cited Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations). The NCP accepted this request and discussed this issue at several meetings. The NCP is currently working in co-operation with officials from the Ministry of Labor on this specific instance.

*Companies request consideration of specific instances.* Austria has received what appears to be the first two requests to consider specific instances that have been brought by companies. The Austrian report notes that both of these cases concern business behaviour in non-adhering countries and both involve several Guidelines chapters. One of the cases was “ceded... by mutual agreement” to the NCP where the company was headquartered while the other was not pursued because it dealt with activities that did not have “the necessary character of an investment relation.”

*Canadian mining operation in Myanmar.* The Canadian NCP received a complaint in November 2002 from a Canadian labour union regarding the operations of a Canadian mining company in Myanmar which it has been pursuing as a specific instance. The complaint alleged non-observance of the Guidelines recommendations regarding forced labour and the right to organise. The union claimed that there were demonstrable links between the company's joint mining venture with the Myanmar government and the mass conscription of forced labour. The company strongly denied these allegations in letters to the NCP in 2003 and 2004. While the NCP held a number of discussion and meetings with each party, separately, and offered to facilitate a dialogue between the two sides, it was unsuccessful in bringing them together to discuss their differences. The NCP has informed the parties that it has decided to discontinue its efforts to facilitate a dialogue between them. A letter will be sent to the union and the company indicating that the NCP is bringing the specific instance procedure to a close.

*Further dialogue on Marine Harvest.* The 2004 Annual Report contains extensive information about this Chilean specific instance (which concerned labour and environmental management in aquaculture). This year, Chile reports: "The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded [in August 2004] with a dialogue involving participation of the parties to the instance and other actors. The parties agreed with the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP<sup>5</sup>. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way."

*Malaysian employees of a Danish owned enterprises.* In February 2002, a trade union organisation asked the Danish NCP to consider whether a company, Unomedical, had observed recommendation of Chapter IV, paragraph 1.a). The same question had been brought before the Malaysian courts, where it had been under consideration for "a very long time". This had an impact on the NCPs consideration of the instance. Subsequently, the enterprise informed the NCP that it would adhere to the ruling of the Malaysian Supreme Court (which identified the trade union as the bona fide workers' representative) and that it had begun negotiations on a collective agreement with the trade union. The NCP concluded its consideration of this matter in May 2005 when it informed the trade union of this result in a letter which was also sent to the company. Denmark's report on this specific instance notes that it "illustrates the difficulties NCPs face when specific instances are considered in non-adhering countries, especially when there is a pending court case in this non-adhering country concerning the issue in question. In countries with a legal system which differs substantially from the OECD country in question this raises even more difficulties."

*NCP exchanges of views on specific instances.* The Finnish and French NCPs have been discussing the handling of the Aspocomp SAS – Evreux case (see 2004 Annual Report on the Guidelines for more information about this specific instance).

*Nam Theun 2 hydroelectric project.* On 26 November 2004, the French NCP was asked to consider Electricité de France's (EDF's) conduct in relations to the development and operation of a hydroelectric project in Thailand (called Nam Theun 2). Friends of the Earth's request concerned Chapter II recommendations on sustainable development and human rights, chapter V (Environment) and Chapter IX (Competition). While the NCP rejected the last part of the request (on competition), it decided to

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<sup>5</sup> The "report" referred to in this quote is the 19-page report drafted by the Chilean NCP on the Marine Harvest specific instance. This report can be accessed at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines) (then click under NCPs and look under NCP statements).

enlarge its consideration of the issue to include Chapter IV (Employment and Industrial Relations). Based on information collected from NGOs, the consortium in Thailand (of which EDF is the principal shareholder), the World Bank and Asian Development Bank and consultations with experts from COFACE (the French export credit agency) and the French Development Agency, the NCP came to the conclusion that it could not attribute any non-observance of the Guidelines to EDF and that EDF had even taken on commitments that go beyond the recommendations of the Guidelines. The French NCP has nevertheless undertaken to monitor the company's implementation of its commitments to respect international environmental and social standards and has agreed to hold a series of meetings with the company in order to follow developments. The NCP's public statement on this specific instance appears in Annex 4 as Archive document 3.

*Conclusion of German/Mexican specific instance.* The Mexican and German reports describe the conclusion of a specific instance dealing with the labour management practices of the Mexican subsidiary (Eukzadi) of a German tire manufacturer (Continental Tire). The specific instance was brought by a German NGO on behalf of a Mexican labour union. The Mexican NCP had lead responsibility for this specific instance. It met with representatives from the trade union as well as representatives of the company. It also contacted the Ministry of Labour in order to exchange views regarding the application of Mexican labour law and its interaction with the Guidelines. The German NCP notes that, in trying to offer its "good services" on this case, it provided several occasions for talks between the Mexican trade unionists, representatives of the German company and Mexico's ambassador in Berlin. The trade union and the company reached an agreement in December 2004. According to that agreement, the Company sold the El Salto plant to Grupo Industrial El Salto, a 50/50 joint venture company formed by the trade union and a company, Llanty Systems. The Company agreed to provide technical assistance for a period of 6 months and raw material required for the manufacturing process. In addition, the Company agreed to buy 500,000 tires annually from that plant. The trade union agreed to withdraw all lawsuits and claims against the company and release Continental and Eukzadi from any liabilities related to the plant's closure.

*Lack of an international dimension.* The United States NCP was asked to consider a specific instance whose circumstances bore on issues resembling those raised in the Swiss request for clarification (see next section of this report). The US report says: "After completing its initial assessment, the US NCP concluded ... that the circumstances did not warrant further involvement by the US NCP. This instance, involved the provisions of Chapter IV on Employment and Industrial Relations, the issues raised related to the actions of a US-owned firm in the United States. The US-owned firm was acknowledged by the party raising the issue to be providing services exclusively within the United States and did not appear to be a multinational enterprise."

## **V. Swiss request for clarification**

In a letter to the Chair of the Investment Committee on July 9, 2004, the National Contact Point (NCP) from Switzerland requested a clarification from the Investment Committee. The request concerns the appropriate handling of a specific instance raised by a Swiss trade union regarding the conduct of a Swiss multinational enterprise in Switzerland (the full text of this letter appears as Archive document 5 in Annex 4).

The Swiss NCP's letter contains the following text:

*The Swiss NCP was contacted by a Swiss trade union that considered that a certain multinational enterprise headquartered in Switzerland did not, in its dealings with one of its subsidiaries, which is also based in Switzerland, adhere to certain recommendations set forth in the Guidelines – namely, Chapter IV (“Employment and Industrial Relations”), and more specifically §1(a) in respect of collective bargaining.*

*In the union’s opinion, the Guidelines are an expression of the universal values of the countries adhering thereto. In particular, reference is made to Chapter 1 (“Concepts and Principles”) §§2 and 4, which stipulate respectively that “Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines “wherever they operate” and that “The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises” [emphasis added]. It follows from this, in the union’s view, which the Swiss NCP should also take up specific instances relating to a Swiss enterprise’s behaviour vis-à-vis its Swiss subsidiary, i.e. instances having no international element.*

The Swiss NCP presented the request to the September 2004 meeting of the Investment Committee, which asked its Working Party to take up this matter in December.

A background paper on this matter was discussed at the December, 2004 meeting of the Investment Committee. Bilateral consultations with BIAC, TUAC and NGOs were held on the basis of a revised version of the background paper. A draft letter was presented to the April 2005 Working Party which amended the draft and sent it to the Investment Committee. After further amendments, the Committee invited the Chair to send the amended reply to the Swiss NCP, which he did on April 19, 2005. This letter is presented as document 6 in Annex 4.

## **VI. Investments in weak governance zones and DRC follow-up**

Follow-up on the UN Expert Panel Report on illegal exploitation of natural resources in the Democratic Republic of Congo and on the generic question of conducting business with integrity in weak governance zones has taken place in the Investment Committee and in individual NCPs<sup>6</sup>.

### ***VI.a. Investment Committee follow-up***

In its earlier work on corporate responsibility, the Committee has stressed the importance of an appropriate allocation of roles between the public and business sectors. In some investment environments, public authorities are unwilling or unable to protect rights (including property rights) and to provide basic public services (e.g. social programmes, infrastructure development and prudential surveillance). These “government failures” lead to broader failures in political, economic and civic institutions that lie at the heart of the problems encountered in “weak governance zones”.

The OECD Investment Committee’s most recent work on weak governance zones is an extension of its long-standing engagement on the issues posed by investments in these difficult environments. The work advances the Committee’s goal of promoting policy environments that attract investment flows and support sustainable growth and development. The work began with the Investment Committee’s

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<sup>6</sup> See the 2003 and 2004 Annual Reports on the Guidelines for additional information on Investment Committee and NCP follow-up on the UN Expert Panel reports.

consideration, in 2001, of the broad range of issues posed by OECD-based multinational enterprises' investments in Myanmar (see 2002 Annual Report on the Guidelines, section V.a).

The Committee's most recent work on weak governance follows up on issues raised by the United Nations Expert Panel Reports on Illegal Exploitation of Natural Resources in the Democratic Republic of Congo (DRC). It also responds to the call made in the 2002 Africa Action Plan of the G8 Summit in Kananaskis that the OECD Guidelines be used to intensify support for NEPAD "for adoption and implementation of effective measures to combat bribery and embezzlement"<sup>7</sup>.

Investments in weak governance zones pose many ethics issues (e.g. management of security forces, combating bribery). Drawing on the OECD Guidelines for Multinational Enterprises and the recognised strengths of the OECD in the integrity area, the Committee agreed to focus the current project on those issues about which the OECD integrity instruments can shed light. These instruments include the OECD Guidelines for Multinational Enterprises, the Corporate Governance Principles, the Guidelines for Corporate Governance of State-Owned Enterprises, the Guidelines for Managing Conflict of Interest in the Public Sector, the Convention and Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions and Best Practices on Budget Transparency.

During the June 2004-June 2005 reporting period, the Committee considered a paper that identified generic challenges that emerge from investments in weak governance zones, based on a case study of investments by OECD companies in the Democratic Republic of Congo. The main purpose of this paper was to generate the list of issues that were to be considered during consultations on investments in weak governance zones. These questions covered such areas as: 1) the role of international investors in weak governance host societies – is it different than in stronger governance host societies?; 2) should small and/or unlisted companies should be held to the same performance, management and reporting standards as large companies?; and 3) what integrity challenges should businesses look out for when conducting business with weak governance state-owned enterprises.

Three sets of consultations were held: 1) an expert consultation in Paris in December 2004; 2) a web-based consultation in early 2005<sup>8</sup>; and 3) a conference involving over 90 people in Addis Ababa held on March 14-15, 2005. A summary of the consultations appears in Annex 6.

At its April 2005 meeting the Investment Committee agreed that, at its September 2005 meeting, it should consider a shorter document setting forth a practical and non-prescriptive checklist of questions which investors might wish to consider as a tool for managing reputational risk associated with investments in weak governance zones. This tool will draw on the OECD Guidelines for Multinational Enterprises as well as other OECD instruments provided that their status and intended purposes are reflected.

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<sup>7</sup> G8 Summit. Africa Action Plan. 2002. section 2.6.

<sup>8</sup> More information about the web based consultation can be found at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines). Click on *Public Consultation on Conducting Business with Integrity in Weak Governance Zones*.

## **VI.b. Follow up by NCPs**

In addition to this generic work, a number of NCPs continue to engage with some of the companies named by the Panel. The following describes steps and decisions taken by NCPs during the reporting period:

- *Belgium.* In November 2004, 4 requests to consider specific instances were introduced by NGOs regarding the activities of companies in the DRC. Two of these will be considered in the course of 2005. With respect to the other cases, the Belgian NCP has decided that it will not consider specific instances relating to companies that are also the subject of judicial procedures in Belgium. Accordingly, five “dossiers” introduced by the Expert Panel have been put aside until the outcome of Belgian judicial procedures is known — these include two of the companies mentioned in the NGO’s request.
- *Canada.* One Canadian company was listed in the Expert Panel’s October 2003 report among “Pending Cases with Governments”. The NCP has been following up with this company. There was further communication between NGOs and the NCP in late 2004 and early 2005 and the company responded to the NCPs follow-up activities with a letter in April 2005. The letter indicated that the company had not performed any work in the DRC since 1997 and that they had officially halted all activities in the DRC as of June 4, 2004. Further NCP follow-up will be with a view to promoting the Guidelines with the company. As a specific instance procedure, the NCP considers this case to be finalised.
- *Finland.* Finland reports that the Finnish and US NCPs have been exchanging views on a US-based company and its Finnish subsidiary with reference to the deletion of the companies from the final Report of the UN Panel.
- *France.* The French NCP has been following up in relation to an air transport company that was named in the two Expert Panel Reports, but which had not taken contact with the Expert Panel when it was meeting with companies to clarify the claims that it had made against them. The Chair of the French NCP met with officials of this company in February 2004 and found out that this company’s situation is linked to a specific instance concerning a Belgian company. The French NCP contacted the Belgian NCP and received information in early May 2005. The French NCP has resumed its consideration of the case.
- *Germany.* The German NCP has conducted exploratory talks with “the German companies concerned.” The NCP has encountered considerable difficulties in obtaining the information on activities in the war-stricken north-eastern part of the DRC that would enable it to determine whether there has been non-observance of the Guidelines. Germany’s report states that: “In any case, the process of contacting companies and discussing the issue with them has led to a considerable increase of awareness of the Guidelines and the likelihood that the Guidelines will be taken into account properly in future activities in the [DRC] (and elsewhere)”.
- *Israel:* The Israeli NCP notes that it has concluded its consideration of a specific instance that arose from the NCPs follow up on the UN Expert Panel Report. It summarised the results of the specific instance as follows: “Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from the DRC.”

- *United Kingdom.* The UK NCP reports “close cooperation and exchange of information with the Belgian NCP”. It also discussed “issues with a representative from the government of the [DRC].” An All Party Parliamentary Group on the Great Lakes published a report on the OECD Guidelines and the Democratic Republic of Congo (an official response was delayed by the UK election). The UK NCP issued a public statement on its engagement with a company mentioned in the Expert Panel reports. This statement can be found in Annex 4, document 4.
- *United States.* The report of the United States states: “With regards to the request that the US NCP reconsider its decision with respect to US companies identified in the United Nations Panel of Experts’ Report..., the US NCP reiterated its earlier decision, but also took steps to inform the companies that there were continuing concerns being raised with respect to their earlier activities and, further agreed to review additional information provided subsequently by the party raising the issue to determine whether there was nay basis for further reconsideration of its decision.”

## **VII. Follow-up on issues raised at earlier meetings**

This section follows up on a number of the strategic issues for Guidelines implementation that were identified in the Chair’s summary of the 2003 Annual NCP Meeting and of the Corporate Responsibility Roundtable. This section looks at the following issues:

- NCP procedures and parallel legal proceedings.
- Report of the UN High Commissioner on Human Rights.

### ***VII.a. NCP procedures and parallel legal proceedings***

“Parallel legal proceedings” refer to “specific instances” that deal with business behaviours that are also the subject of legal or administrative proceedings in the host country. Over the past several years, the NCPs have been sharing their experiences in handling specific instances with a view to improving the consistency, fairness and effectiveness of their procedures. A survey of NCPs handling of specific instances published in the NCP’s 2003 Annual Report shows that specific instances considered in parallel with legal and administrative procedures are common<sup>9</sup>.

In the past, NCPs have observed that they might have different approaches to this issue. The 2003 Annual Report states: “NCPs differed in their views on whether the fact that a specific instance concerned business conduct covered by host country procedures would influence their decisions to agree to consider a specific instance. Nine NCPs state that it would – or already has – influenced decisions. One NCP refused a specific instance on the grounds that it concerned business conduct that was also the subject of a legal procedure. Another accepted a specific instance being dealt with under parallel home country procedures, but had to modify its own procedures as a result.”

The 2004 Annual Report on the Guidelines describes reports by two volunteer NCPs on specific instances brought to their attention that were also subject to parallel consideration under host country legal or administrative proceedings. At its September 2004 meeting, the Investment Committee agreed

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<sup>9</sup> Of the 12 NCPs that had considered specific instances at the time of the survey, 9 had considered “business conduct that was covered by host country laws, regulations or administrative procedures”.

to follow up on the view, expressed in the Chair's report on 2004 meeting of the NCPs, that the issue of 'parallel legal proceedings' should be further explored during the June 2004-June 2005 cycle of implementation of the Guidelines. In April 2005, the Working Party considered a paper proposing a framework for further information sharing and discussions of this issue. The results of this consideration were that the Working Party:

- Asked the Secretariat to propose an amended list of questions covering both generic issues and NCPs specific experiences with parallel legal proceedings and distinguish carefully specific instances involving business behaviour in adhering and non-adhering countries;
- Agreed that in, after revision, the list of questions could be sent to NCPs, who would be invited to provide answers on a voluntary basis.

In their individual reports for 2005, a number of NCPs have noted that they are waiting to handle specific instances until the Committee's consideration of this issue has produced some practical guidance (e.g. Czech Republic,

#### ***VII.b. Report of the UN High Commissioner on Human Rights***

At the consultations associated with the 2004 Annual Meetings, BIAC invited the Investment Committee, the NCPs, TUAC and NGOs to work with it in promoting the Guidelines in the context of the work of the UN Commission on Human Rights. The Guidelines were referred to by the UN Sub-Commission on the Promotion and Protection of Human Rights – an independent advisory body to the UN Commission on Human Rights in its draft “norms” on the human rights responsibilities of trans-national corporations. The UN Commission did not adopt the draft norms, but, in its 19 April 2004 Decision, it requested that the Office of the UN High Commissioner for Human Rights report to it on existing initiatives and standards relating to the responsibility of trans-national corporations with regard to human rights.

During the 2004 Annual Meetings, NCPs agreed that this report represented an important promotional opportunity for the Guidelines. In accordance with this view and in response to a request from the Office of the High Commissioner on Human Rights, the OECD made a submission in Summer 2004 on the distinctive features and achievements to date of the Guidelines.

Dated February 15, 2005, the “Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Trans-national Corporations and Related Business Enterprises with Regard to Human Rights” included extensive references to the Guidelines<sup>10</sup>. The report considers the scope and legal status of existing initiatives and standards on the responsibilities of trans-national corporations and related business enterprises with regard to human rights as well as outstanding issues that require further consideration by the Commission. The report reviews existing initiatives and standards on corporate social responsibility from a human rights perspective, noting that there are gaps in understanding the nature and scope of the human rights responsibilities of business. Based on the consultative process undertaken in the compilation of the report, the High Commissioner makes conclusions and recommendations to assist the Commission in identifying options for strengthening standards on business and human rights and their implementation.

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<sup>10</sup> This summary of the report is quoted from the Report itself, which can be found at: <http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>.

The Report's references to the Guidelines describe: 1) the overall content of the Guidelines' recommendations and, more specifically, their coverage of human rights issues; 2) their "wide territorial and company coverage"; and 3) their unique implementation mechanisms, including reports on the use of the specific instances procedure.

This spring, the UN Commission on Human Rights met to consider the Report and, on April 19, 2005, it adopted a resolution requesting the UN Secretary General to appoint a Special Representative on the issue of human rights, trans-national corporations and other business enterprises. The appointment is expected to be made later in the year.

## **VIII. Progress to date and considerations for future action**

### ***Progress to date***

The reports for the June 2004-2005 period shows that the Guidelines are being used heavily by stakeholders and that adhering governments have reinforced their commitment to the instrument by stepping up their promotional activities and by actively dealing with specific instances. The specific instances procedure is still the subject of strong interest -- a total of 106 requests to consider specific instances have been brought since the 2000 Review. NCPs are showing more confidence and openness when dealing with specific instances -- they are more likely to issue statements at the conclusion of a specific instance and they are even discussing the procedure in the mass media. Promotional activities ranged from sponsorship of major international conferences and forging formal alliances with academic institutions to engaging in informal contacts with business students.

There are indications that the Guidelines may have helped to "strengthen the basis of mutual confidence between companies and the societies in which they operate"<sup>11</sup>. For example, some NCPs report that the mere fact that they contact a company or that a specific instances procedure has been initiated can provide the impetus for finding solutions to problems. The Chilean NCP reports that the *Marine Harvest* specific instance<sup>12</sup> has helped to relieve tensions in the vicinity of the Dutch company's aquaculture operations. The report on the Mexican/German specific instance (see section IV.b.) shows that joint action by the Mexican and German NCPs has been associated with innovative solutions to managing the adjustment costs of a plant closure and may have contributed to reducing tensions between a German company and Mexican factory workers. Although it is difficult to disentangle the contributions of the Guidelines from those of other processes (e.g. legal proceedings), some believe that the specific instance may have improved the quality and transparency of the dialogue between the workers and the company.

The annual meeting of NCPs also underscored the need for continuing efforts to raise the profile of the Guidelines and to improve their institutions. Several NCPs noted that parties to the specific instance procedure often have *unrealistic expectations* concerning the outcomes of the procedures. In particular, NCPs were concerned about what they viewed as a common misperception that the Guidelines' specific instance procedure is quasi-judicial in nature. In fact, through the specific instance procedures, NCPs are asked to provide a "forum for discussion" and, with the agreement of the parties concerned, to facilitate "access to consensual and non-adversarial means, such as conciliation and mediation, to assist in dealing

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<sup>11</sup> Quote from first paragraph of the Preface of the Guidelines.

<sup>12</sup> See sections IV.b. of the 2004 Annual Report and of this Report.

with the issues<sup>13</sup>.” The NCPs invited all partners in the Guidelines implementation process to ensure that their promotional efforts accurately communicate the Guidelines’ unique strengths – they are an integral part of a broad-ranging inter-governmental dialogue on global investment issues and create a “space” (to quote an NGO participant) for discussing concrete business ethics problems.

NCPs were also concerned about protecting the confidentiality of the specific instance procedure. Many felt that the practice of posting news of a specific instance on stakeholders’ websites or of issuing press releases was not conducive to building the trust needed for effective multi-stakeholder dialogue. NCPs were concerned that these practices could undermine “the quality of the dialogue” and could imperil the successful conclusion of specific instances. They asked stakeholders to reflect carefully on the possible costs of their actions before issuing public statements on specific instances that they bring to NCPs.

The annual half-day consultations with NCPs and the Roundtable on Corporate Responsibility provided an opportunity for stakeholders from adhering and non-adhering countries to make their views on the Guidelines known:

- BIAC expressed broad satisfaction with NCPs’ handling of specific instances, but noted concerns about: 1) alleged breaches of confidentiality by some trade unions and NGOs; 2) a tendency to decouple the Guidelines from the OECD Declaration on International Investment. NCPs reaffirmed that the Guidelines are an integral part of the Declaration and that, indeed, one of their strengths is that they are part of a balanced package defining the rights and responsibilities of both governments and companies. At the same time, it was recognised that the Guidelines do differ in important respects from other elements of the Declaration. In particular, the Guidelines apply to the global operations of multinational enterprises operating in or from the territories of adhering countries – this creates challenges that will never be encountered in implementation of the other instruments of the Declaration. Their implementation involves discussions among governments that have agreed to adhere to the instruments, whereas the Guidelines give rise to consideration of business activities in host countries that may not adhere to the Guidelines. BIAC and NCPs agreed that the emerging *Policy Framework for Investment* would complement the Guidelines by helping governments to assume their responsibilities more effectively.
- TUAC and NGOs noted that, while some NCPs are taking their responsibilities seriously, the goal of “functional equivalence” of NCPs has still not been achieved. They complained that specific instances are not being handled expeditiously and fairly by many NCPs. They proposed that NCPs establish peer reviews of NCP performance, drawing on the rich experience of the OECD in this area (e.g. in monitoring respect for commitments made under the OECD Anti-Bribery Convention). Trade unions and NGOs from non-adhering countries said that their experience shows that serious violations of the Guidelines occur routinely (e.g. forced labour in Myanmar and life threatening violations of occupational safety norms in Zambia). In view of the seriousness of these violations, they felt that NCPs should deal with their specific instances as a matter of the utmost urgency.

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<sup>13</sup> Quotes taken from the Procedural Guidance of the June 2000 Council Decision.

### *Considerations for future action*

*Peer learning.* The NCPs reaffirmed their commitment to continual improvement in Guidelines implementation and agreed that there is a need to reinforce human and institutional capacity. As noted above, NGOs and trade unions proposed that NCPs undertake formal peer reviews of their performance. NCPs were of the view that their current peer review practices have already led to substantial improvements in NCP performance. In addition, many thought that highly structured and costly peer reviews would not serve the dynamic and wide ranging needs of the Guidelines. Nevertheless, support was expressed for increasing efforts to share best practices. Suggestions for reinforcing peer learning among NCPs include: a training workshop for NCPs (e.g. on managing a mediation process); more frequent informal exchanges of NCP experiences during meetings of the Working Party of the Investment Committee; and annual regional meetings for NCPs (the Nordic NCPs had found their annual meetings to be very useful).

*Positive agenda.* All participants at the meetings agreed that more needs to be done to capitalise on the unique strengths of the Guidelines, to raise their visibility, to enhance the positive agenda and to reinforce partnerships. One of the themes of the 2005 report is the acceleration of promotional activities by NCPs. NCPs also noted the extensive promotion efforts undertaken by trade unions, NGOs and business and invited stakeholders – particularly business – to reinforce these efforts. NCPs welcomed BIAC’s commitment to support this positive agenda and, in particular, its desire to focus on projects that provide concrete assistance to international investors. BIAC highlighted two projects on which it would focus its support: 1) the Joint Task Force on Solicitation, consisting of BIAC and interested members of the Working Group on Bribery. BIAC is currently developing an inventory of public and private facilities that provide assistance to companies facing solicitation and extortion<sup>14</sup>; 2) the development of a reputational risk management tool to help companies invest with integrity in weak governance zones (see Annex 6 for a summary of the Investment Committee’s consultations on this issue) and appropriate follow up with companies and international organisations to assist companies in using this tool.

*Non Adhering Countries and the Guidelines.* NCPs and participants in the consultations and the Roundtable identified this as a priority area for further work. The 2005 Corporate Responsibility Roundtable on “The Guidelines and Developing Countries” showed that the Guidelines are based on globally shared values and showed that the pattern of management practices in the corporate responsibility field is similar in adhering and non-adhering countries. However, there are still many outstanding issues in this area. NCPs stressed the need for the Investment Committee and its Working Party to complete its work on parallel legal proceedings and the need to pay special attention to parallel legal proceedings in the context of non-adhering countries (this was already identified as a priority area in the 2004 Annual Report). NCPs also felt that there was a need for informal exchanges of views on the specific challenges of considering specific instances in non adhering countries.

*Trade and Structural Adjustment.* Some NCPs reported that they were considering specific instances dealing with labour management practices during relocations of production sites. The 2005 OECD Ministerial Meeting considered a report on *Trade and Structural Adjustment*. In making the case for open markets, the Report acknowledges both the opportunities and the “acute challenges” raised by structural adjustment and “aims to identify, for both developed and developing countries, the requirements for successful trade-related structural adjustment via the relocation of labour and capital to

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<sup>14</sup> See the 2003 Annual Report on the Guidelines – Summary of the Corporate Responsibility Roundtable Discussions for more background on the nature of and reasons for BIAC interest in this project.

more efficient uses, while limiting adjustment costs for individuals, communities and society as a whole.” The Guidelines are prominently cited in the Report as being one element in a broader approach to managing adjustment costs. NCPs took note of this report and identified a need for possible follow up work, including exchanges of experiences among NCPs.

*Annex 1*  
**Structure of the National Contact Points**

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Argentina	Single department	(National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		
Australia	Single department	Foreign Investment and Trade Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds bi-annual interdepartmental meetings chaired by the Australian NCP to discuss Guidelines issues. The NCP holds bi-annual community consultations with business, trade unions and other NGO representatives. In the assessment of specific instances, the NCP may establish a special advisory consultation group of interested parties, including government, members from the business community, labour federations and other NGOs and experts.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economic Affairs and Labour	Other division of the Federal Ministry of Economic Affairs and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments.	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Brazil	Single department	Ministry of Finance	Ministry of Foreign Relations Ministry of Planning, Budget and Management Ministry of Labour and Employment Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Brazilian Central Bank	Representatives from other government Offices can be asked to participate as well as Trade Unions, like CUT and "Força Sindical"; NGOs that deal with Ethics, like ETHOS; Industry and Trade Confederations; and other institutions like SOBEET (Brazilian Society For Trans-national Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	International Trade Canada	Foreign Affairs Canada International Trade Canada Industry Canada Human Resources Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an "as required" basis. E.g., Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Council of International Business, the Canadian Labour Congress and the Confédération des syndicats nationaux.
Chile	Quadripartite	Ministry of Foreign Affairs, Directorate of International Economic Relations	Ministry of Economics Ministry of Labour General Secretariat of the Presidency Ministry of Labour and Social Affairs	The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Finance	Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners.  The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment	Environmental Protection Agency Ministry of Economic and Business Affairs Ministry of Foreign Affairs	

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Investment Agency Estonian Export Agency Ministry of Foreign Affairs	
Finland	Quadri-partite with several ministries and civil society partners	Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Trade and Industry	Ministry of Trade and Industry Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Social Affairs and Health Ministry of Labour Ministry of Environment	<p>The Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Trade and Industry as a wide-scoped forum of public and private representatives for issues related to investments, acts as the Finnish NCP.</p> <p>The MONIKA Committee, which has been established by the Government Decree 335/2001, takes care of the promotion of the Guidelines as important principles of Corporate Social Responsibility and serves as an advisory forum in other issues related to the Investment Committee. The Ministry of Trade and Industry is responsible for the handling of inquiries and the implementation in Specific Instances.</p> <p>The members of the committee come from various ministries, The Bank of Finland, business and labour organisations and NGOs</p> <p>Social partners are represented in the NCP by TT - The Confederation of Finnish Industry and Employers, The Finnish Section of the International Chamber of Commerce (ICC) and the Central Organization of Finnish Trade Unions SAK. The NGOs are represented by the Service Centre for Development Cooperation KEPA.</p> <p>The committee has met several times over the review period.</p>

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and five Trade Union Federations are part of the NCP.
Germany	Single Department	Federal Ministry of Economics and Labour	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues.
Greece	Single Department	Directorate for International Organisations and Policies, Ministry of Economy		
Hungary	Interdepartmental Office	Ministry of Economy and Transport	Ministry of Economy and Transport Ministry of Finance	In the first quarter of 2005 the composition of the Hungarian NCP changed. Ministry of Foreign Affairs was restructured and its tasks were modified. Current organisational structure is bilateral, the HNCP is an interdepartmental government body with permanent members. Deputy State Secretariat of the Ministry of Foreign Affairs which was responsible for affairs of international organisations (among others for the OECD) and foreign economy was directed to the Ministry of Economy and Transport. Within the MoET new Deputy State Secretariat was formed which absorbed this unit and its tasks.
Iceland	Interdepartmental Office	Ministries of Industry and Commerce		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment		

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	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Welfare Ministry of Agriculture Ministry of Health	An Advisory Committee has been composed of representatives from those ministries mentioned in the previous column, and business and employee organizations The NCP works in close collaboration with representatives of social organisations and its Advisory Committee also includes members of the most important trade unions and business associations.
Italy	Single Department	General Directorate for Productive Development and Competitiveness, Ministry of Productive Activity		
Japan	Interministerial body composed of three ministries.	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental Office, with regional governments and several ministries	Executive Committee on Foreign Direct Investment	Ministry of Foreign Affairs Ministry of Finance and Economy Korean Trade-Investment Promotion Agency	
Latvia	The OECD Consultative Board - Interministerial body including representatives of business & labour organisations,	Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Latvian Employer's Confederation Free Trade Union Confederation	

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

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Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economics	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		
Netherlands	Interdepartmental Office	Ministry of Economic Affairs	All departments, especially: Ministry of Social Affairs Ministry of Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders.
New Zealand	Single Department	Ministry of Economic Development	All departments, particularly the Ministry of Foreign Affairs and Trade, Department of Labour, Ministry for the Environment and Treasury	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Department for Trade Policy, Environment and Resources, Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Industry and Trade	
Poland	Single Department	Polish Information and Foreign Investment Agency		
Portugal	Single Department	ICEP Portugal Ministry of Economy		

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Romania	Interdepartmental Office	<p><i>Coordination</i> - Minister of State for coordination of the activities from business environment and small and medium sized companies fields, Ministry of Foreign Affairs;</p> <p><i>Executive function</i> - Minister of State for coordination of the activities from business environment and small and medium sized companies' fields and the Romanian Agency for Foreign Investments.</p> <p><i>Technical secretariat</i> Ministry of Foreign Affairs and Romanian Agency for Foreign Investments</p>	<p>Ministry of Foreign Affairs</p> <p>The Cabinet of the minister of state for coordination of the activities from business environment and small and medium sized companies fields – Business Environment Department</p> <p>Ministry of European Integration</p> <p>Ministry of Public Finances</p> <p>Ministry of Justice</p> <p>Ministry of Education and Research</p> <p>Ministry of Labour, Social Solidarity and Family</p> <p>Ministry of Economy and Commerce</p> <p>Ministry of Transport, Constructions and Tourism</p> <p>Ministry of Environment and Waters Management</p> <p>Romanian Agency for Foreign Investments</p> <p>National Agency for Small and Medium Sized Enterprises and Cooperation</p> <p>Romanian Academy – National Institute for Economic Research</p> <p>Alliance of Romanian Patronage Confederation</p> <p>Chamber of Commerce and Industry of Romania and Bucharest</p>	<p>Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.</p>
Slovak Republic	Single Department	Ministry of Economy		The NCP belongs as a single department to the Ministry of Economy, under the Division of Enterprise and Tourism, Department of Economic Strategy.

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	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Slovenia	Single Department	Foreign Economic Relations Division, Ministry of the Economy	Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency	The Advisory Committee has considered if a Single department structure is the best solution. No decision has been made, yet.
Spain	Single Department	General Secretary for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment Ministry of Justice Ministry of Health and Consumption Ministry of Labour and Social Affairs	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	Ministry of Industry, Employment and Communications Ministry of Environment Ministry of Justice National Board of Trade	The Ministry for Foreign Affairs, Department for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets as required.
Turkey	Single Department	General Directorate of Foreign Investment, Undersecretariat of Treasury		
United Kingdom	Single Department	Trade Negotiations and Development Unit, Department of Trade and Industry	Foreign and Commonwealth Office HM Treasury Department for International development	The NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives. The NCP holds 2 formal 'Stakeholder' meetings a year.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an ad hoc basis.

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

## *Annex 2*

### **Contact Details for National Contact Points**

#### **OECD Guidelines for Multinational Enterprises Principes directeurs de l'OCDE à l'intention des entreprises multinationales**

##### **Allemagne - Germany**

Bundesministerium für Wirtschaft und Arbeit  
- Auslandsinvestitionen VC3  
Scharnhorststrasse 34-37  
D-10115 Berlin

Tel: (49-30) 2014 7577, 75 21  
Fax: (49-30) 2014 5378  
Email: [buero-vc3@bmwa.bund.de](mailto:buero-vc3@bmwa.bund.de)  
Web: [www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html](http://www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html)

##### **Argentine - Argentina**

Ambassador Felipe Frydman  
National Direction of International Economic Negotiations (DINEI)  
Ministry of Foreign Affairs, International Trade and Worship  
Esmeralda 1212, 9th floor  
Buenos Aires

Tel: (54-11) 4819 7020/7568  
Fax: (54-11) 4819 7566  
Email: [fef@mrecic.gov.ar](mailto:fef@mrecic.gov.ar)  
[igf@mrecic.gov.ar](mailto:igf@mrecic.gov.ar)

##### **Australie - Australia**

The Executive Member  
Foreign Investment Review Board  
c/- The Treasury  
Canberra ACT 2600

Tel: (61-2) 6263 3763  
Fax: (61-2) 6263 2940  
Email: [anpc@treasury.gov.au](mailto:anpc@treasury.gov.au)  
Web: [www.ausnrcp.gov.au](http://www.ausnrcp.gov.au)

##### **Autriche - Austria**

Director  
Export and Investment Policy Division  
Federal Ministry of Economic Affairs and Labour  
Abteilung C2/5  
Stubenring 1  
1011 Vienna

Tel: (43-1) 711 00 5180 or 5792  
Fax: (43-1) 71100 15101  
Email: [POST@C25.bmwa.gov.at](mailto:POST@C25.bmwa.gov.at)  
Web: [www.oecd-leitsaetze.at](http://www.oecd-leitsaetze.at)

### Belgique - Belgium

Service Public Fédéral Economie,  
PME, Classes Moyennes & Energie  
Potentiel Economique  
Rue du Progrès 50  
1210Bruxelles

Tel: (32-2) 277 72 82  
Fax: (32-2) 277 53 06  
Email: [colette.vanstraelen@mineco.fgov.be](mailto:colette.vanstraelen@mineco.fgov.be)

### Brésil - Brazil

Mrs. Angela Semíramis de Andrade Freitas  
International Affairs Secretariat  
Ministry of Finance  
Esplanada dos Ministérios, Bloco P – Sala 225  
70048 – 900 Brasília DF

Tel: (+5561) 412 22 27 or 412 22 33  
Fax: (+5561) 412 17 22  
Email: [pcn.ocde@fazenda.gov.br](mailto:pcn.ocde@fazenda.gov.br)  
[angela.freitas@fazenda.gov.br](mailto:angela.freitas@fazenda.gov.br)  
Web: [www.fazenda.gov.br/multinacionaispcn](http://www.fazenda.gov.br/multinacionaispcn)

### Canada

Canada's National Contact Point  
Room C6-273  
International Trade Canada  
125 Sussex Drive  
Ottawa, Ontario K1A 0G2

Tel: (1-613) 996 3324  
Fax: (1-613) 944 0679  
Email: [ncp.pcn@dfait-maeci.gc.ca](mailto:ncp.pcn@dfait-maeci.gc.ca)  
Web: [www.ncp-pcn.gc.ca](http://www.ncp-pcn.gc.ca)

### Chili - Chile

Chef du Département OECD/DIRECON  
Dirección de Relaciones Económicas Internacionales  
Ministerio de Relaciones Exteriores de Chile  
Teatinos 20, tercer piso,  
Santiago

Tel: 56 2 565 93 25  
Fax: 56 2 696 06 39  
Email: [clojas@direcon.cl](mailto:clojas@direcon.cl)  
Web: [www.direcon.cl](http://www.direcon.cl) > "acuerdos comerciales" > OECD

### Corée - Korea

Director  
Ministry of Commerce, Industry and Energy  
1 Chungang-dong  
Gwacheon-si  
Kyonggi-do

Tel: 82-2-2110-5356  
Fax: 82-2-503-9655  
Email: [fdikorea@mocie.go.kr](mailto:fdikorea@mocie.go.kr)  
Web: [www.mocie.go.kr](http://www.mocie.go.kr)

**Danemark - Denmark**

Deputy Permanent Secretary of State  
Labour Law and International Relations Centre  
Ministry of Employment  
Ved Stranden 8  
DK-1061 Copenhagen K

Tel: (45) 33 92 99 59  
Fax: (45) 33 12 13 78  
Email: [eed@am.dk](mailto:eed@am.dk)  
Web: [www.bm.dk/kontaktpunkt](http://www.bm.dk/kontaktpunkt)

**Espagne - Spain**

National Contact Point  
General Secretary for International Trade  
Ministry of Industry, Tourism and Trade  
Paseo de la Castellana nº 162  
28046 Madrid

Tel: (34-91) 91 349 38 60  
Fax: (34-91) 457 2863  
Email: [pnacional.ssc@mcx.es](mailto:pnacional.ssc@mcx.es)  
Web: [www.mcx.es/sgcomex/home1fra.htm](http://www.mcx.es/sgcomex/home1fra.htm)

**Estonie - Estonia**

National Contact Point of the OECD Declaration on  
International Investment and Multinational Enterprises  
Foreign Trade Policy Division, Trade Department  
Ministry of Economic Affairs and Communication  
Harju 11  
15072 Tallinn

Tel: 372-625 6399  
Fax: 372-631 3660  
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Web:

**Etats-Unis - United States**

Director  
Office of Investment Affairs  
Bureau of Economic and Business Affairs  
Department of State  
2201 C St. NW  
Washington, DC 20520

Tel: (1-202) 736 4274  
Fax: (1-202) 647 0320  
Email: [usncp@state.gov](mailto:usncp@state.gov)  
Web: [www.state.gov/www/issues/economic/ifd\\_oia.html](http://www.state.gov/www/issues/economic/ifd_oia.html)  
[www.state.gov/e/eb/oecd/](http://www.state.gov/e/eb/oecd/)

**Finlande - Finland**

Secretary General, Chief Counsellor  
Advisory Committee on International Investment and  
Multinational Enterprises of Finland (MONIKA)  
Ministry of Trade and Industry  
PO Box 32  
FIN- 00023 Valtioneuvosto  
Helsinki

Tel: +358-9- 1606 4689  
Email: [jorma.immonen@ktm.fi](mailto:jorma.immonen@ktm.fi)  
Web: <http://www.ktm.fi/monika>

### France

Mr Ramon Fernandez	Tel:	(33) 01 44 87 73 60
Sous-Directeur "Affaires multilatérales et développement"	Fax:	(33) 01 44 87 74 59
Direction Générale du Trésor et de la Politique Economique	Email:	<a href="mailto:ramon.fernandez@dgtppe.fr">ramon.fernandez@dgtppe.fr</a>
139, rue de Bercy		<a href="mailto:anne.muxart@dgtppe.fr">anne.muxart@dgtppe.fr</a>
75572 Paris cedex 12	Web:	<a href="http://www.minefi.gouv.fr/TRESOR/pcn/pcn.htm">http://www.minefi.gouv.fr/TRESOR/pcn/pcn.htm</a>

### Grèce - Greece

Directorate for International Organisations and Policies	Tel:	(30210) 328 6231
General Directorate for Policy Planning and Implementation	Fax:	(30210) 328 6404
Ministry of Economy and Finance	Email:	<a href="mailto:evgenia.konto@mneec.gr">evgenia.konto@mneec.gr</a>
Ermou & Cornarou 1	Web:	<a href="http://www.elke.gr">www.elke.gr</a>
GR-105 63 Athens		

### Hongrie - Hungary

Department of Economic Development Programmes	Tel:	(36-1) 374-2877
Ministry of Economy and Transport	Fax:	(36-1) 332-6154
V., Honvéd utca 13-15	Email:	<a href="mailto:tejnora.tibor@gkm.gov.hu">tejnora.tibor@gkm.gov.hu</a>
H-1055 Budapest	Web:	<a href="http://www.gkm.gov.hu/balmenu/gkm/nemzetkozikapcsolatok/oced_nkp.html">http://www.gkm.gov.hu/balmenu/gkm/nemzetkozikapcsolatok/oced_nkp.html</a>

### Irlande - Ireland

National Contact Point for the	Tel:	(353-1) 631 2605
OECD Guidelines for Multinational Enterprises	Fax:	(353-1) 631 2560
Bilateral Trade Promotion Unit	Email:	<a href="mailto:Pat_Hayden@entemp.ie">Pat_Hayden@entemp.ie</a>
Department of Enterprise, Trade and Employment	Web:	<a href="http://www.entemp.ie">www.entemp.ie</a>
Kildare Street		
Dublin 2		

### Islande - Iceland

Director for Financial Markets and Economic Affairs	Tel:	(354-1) 609 070
Ministry of Industry and Commerce	Fax:	(354-1) 621 289
Arnarhvoli		
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**Israël - Israel**

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**Italie - Italy**

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Email: [pcn1@attivitaproductive.gov.it](mailto:pcn1@attivitaproductive.gov.it)  
[pcn2@attivitaproductive.gov.it](mailto:pcn2@attivitaproductive.gov.it)  
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**Japon - Japan**

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Web: [www.mofa.go.jp/mofaj/gaiko/oecd/](http://www.mofa.go.jp/mofaj/gaiko/oecd/)

Director  
International Affairs Division  
Ministry of Health, Labour and Welfare  
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Fax: (81-3)-3502-2532  
Web: [www.mhlw.go.jp](http://www.mhlw.go.jp)

Director  
Trade and Investment Facilitation Division  
Ministry of Economy, Trade and Industry  
1-3-1 Kasumigaseki  
Chiyoda-ku  
Tokyo

Tel: 81-3)-3501-6623  
Fax: (81-3)-3501-3638  
Web: [www.meti.go.jp/policy/trade\\_policy/oecd/html/cime.html](http://www.meti.go.jp/policy/trade_policy/oecd/html/cime.html)

**Lettonie - Latvia**

Director	Tel:	+ 371 7016258
Economic Relations Department	Fax:	+ 371 7321588
Ministry of Foreign Affairs of the Republic of Latvia	E-mail:	eu.econ.dep@mfa.gov.lv
36 Brīvības Bulvāris	Web:	http://www.mfa.gov.lv
Rīga LV - 1395		

**Lituanie - Lithuania**

Director	Tel:	370 5 262 0582
Company Law Division	Fax:	370 5 263 3974
Enterprise Economics and Management Department	E-mail:	<a href="mailto:m.rucinskaite@ukmin.lt">m.rucinskaite@ukmin.lt</a>
Ministry of Economy of the Republic of Lithuania	Web:	<a href="http://www.ukmin.lt">http://www.ukmin.lt</a>
Gedimino ave. 38/2		
LT-01104 Vilnius		

**Luxembourg**

Secrétaire du Point de Contact national	Tel:	(352) 478 - 41 73
Ministère de l'Economie	Fax:	(352) 46 04 48
Secrétariat du Comité de Conjoncture		<a href="mailto:marc.hostert@eco.etat.lu">marc.hostert@eco.etat.lu</a> ou
L-2914 Luxembourg		<a href="mailto:anne-catherine.lammar@eco.etat.lu">anne-catherine.lammar@eco.etat.lu</a>

**Mexique - Mexico**

Secretaría de Economía	Tel:	(52-5) 5729-9146
Attn: Kenneth Smith	Fax:	(52-5) 5729-9352
Alfonso Reyes # 30, Piso 18	Email:	<a href="mailto:pcn-ocde@economia.gob.mx">pcn-ocde@economia.gob.mx</a>
Col. Condesa C.P. 06140		<a href="mailto:ksmith@economia.gob.mx">ksmith@economia.gob.mx</a>
Mexico, D.F	Web:	<a href="http://www.economia-snci.gob.mx/">www.economia-snci.gob.mx/</a>

**Norvège - Norway**

Ministry of Foreign Affairs	Tel:	(47) 2224 3418
Department for Trade Policy, Environment and Resources	Fax:	(47) 2224 2784
WTO/OECD-section	Email:	s-wto@mfa.no
PO Box 8114	Web:	<a href="http://odin.dep.no/ud/norsk/handelspolitikk/032061-990006/index-dok000-b-n-a.html">http://odin.dep.no/ud/norsk/handelspolitikk/032061-990006/index-dok000-b-n-a.html</a>
N-0032 Oslo		

**Nouvelle Zélande - New Zealand**

International Technical and Regulatory Co-ordination Team	Tel:	(64-4) 462 4287
Regulatory and Competition Policy Branch	Fax:	(64-4) 499 8508
Ministry of Economic Development	Email:	<a href="mailto:oeecd-ncp@med.govt.nz">oeecd-ncp@med.govt.nz</a>
PO Box 1473	Web:	<a href="http://oeecd-multinat.med.govt.nz">http://oeecd-multinat.med.govt.nz</a>
Wellington		

**Pays-Bas - Netherlands**

Trade Policy Department  
Ministry of Economic Affairs  
P.O. Box 20102  
NL-2500 EC The Hague

Tel: 31-70-3796485  
Fax: 31-70-3797221  
Email: [ncp@minez.nl](mailto:ncp@minez.nl)  
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\* The European Commission is not formally a “National Contact Point”. However, it is committed to the success of the Guidelines.

*Annex 3*

**Specific Instances Considered by National Contact Points to Date**

(14 June 2005)

This table provides an archive of specific instances that have been or are being considered by NCPs as of June 2004. This archive seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines.

Discrepancies between the number of specific instances described in this table and in other reports could arise for at least two reasons. First, there may be double counting – that is, the same specific instance may be handled by more than one NCP. In such situations, the NCP with main responsibility for handling the specific instance would generally note its co-operation with other NCPs in the column “NCP concerned”. Second, the NCP might consider that it is not in the interests of effective implementation of the Guidelines to publish information about the case (note that recommendation 4.b. states that “The NCP will... make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines”).

The texts in this table are submitted by the NCP. Company, NGO and trade union names are mentioned when the NCP has mentioned these names in its public statements or in its submissions to the Secretariat.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Argentina	Argentine subsidiary of a multinational enterprise involving employment relations	December 2004	Argentina	II: General Principles IV: Employment and Industrial Relations	ongoing	n.a	The NCP has offered to facilitate a dialogue between the parties and continues to pursue this goal.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A.	September 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group	September 2003	Democratic Republic of Congo	Not specified in the UN report	Ongoing	n.a.	The case is handled together with the NGO complaint.
Belgium	Forrest Group	November 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment V. Environment IX. Competition	Ongoing	n.a.	Under consideration.
Belgium	Tractebel-Suez	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Two meetings organised by the NCP, in presence of both parties took place. The case is nearly finished. A press release is in preparation.
Belgium	KBC/DEXIA/ING	Mai 2004	Azerbaijan, Georgia and Turkey	I Concepts and Principles II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Coordinating with lead UK NCP.
Belgium	Cogecom	November 2004	RD Congo	I Concepts and Principles II. General Policies IV. Employment	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Belgolaise	November 2004	RD Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Belgium	Nami Gems	November 2004	RD Congo	I Concepts and Principles II. General Policies X. Taxation	Ongoing	n.a.	
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [ <a href="http://www.ncp-pcn.gc.ca/annual_2002-en.asp">www.ncp-pcn.gc.ca/annual_2002-en.asp</a> ]. The Swiss company was kept informed of developments
Canada	Follow-up to allegations made in UN Experts Report on DRC	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.
Canada	Complaint from a Canadian labour organization about Canadian business activity in a non-adhering country.	November 2002	Myanmar	Employment and Industrial Relations; Environment	Concluded	n.a.	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	October 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	January 2004	Czech Republic	IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP set it aside until results of a parallel legal procedure are available for further consideration.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	February 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Denmark	Trade union representation in Danish owned enterprise in Malaysia	February 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country	January 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see <a href="http://www.minefi.gouv.fr/minifi/europe/relations_ecofi/index.htm">www.minefi.gouv.fr/minifi/europe/relations_ecofi/index.htm</a>
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003 (see Documents archive). <a href="http://www.minefi.gouv.fr/TRESO/R/pcn/compcn131103.htm">http://www.minefi.gouv.fr/TRESO/R/pcn/compcn131103.htm</a>
France	Marks and Spencer's announcement of closure of its stores in France	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 <a href="http://www.oecd.org/dataoecd/33/39/2489273.pdf">www.oecd.org/dataoecd/33/39/2489273.pdf</a>
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	February 2003	France	V. Environment plus chapeau; III. Information and disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	February 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
France	Accusation of non-observance of the Guidelines in the areas of environment, "contractual" and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	October 2003	Turkey, Azerbaijan and Georgia	II. General Principles	Ongoing	n.a.	In consultation with parties
France	DRC – Report by the expert Panel of the United Nations. Violation of the Guidelines by a transport company in the Congo, named in the third report as not having responded to the Panel's requests for information.	October 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Ongoing	n.a.	In consultation with parties
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	November 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 <a href="http://www.minefi.gouv.fr/minefi/europe/rerelations_ecofi/index.htm">http://www.minefi.gouv.fr/minefi/europe/relations_ecofi/index.htm</a>
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	February 2005	France	IV. Employment and Industrial Relations	Ongoing		

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Germany	Labour conditions in a manufacturing supplier of Adidas	September 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 <a href="http://www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oeed.html">www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oeed.html</a> (see Documents Archive).
Germany	Employment and industrial relations in the branch of a German multinational enterprise	June 2003	Philippines	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties. The German NCP is still waiting for the necessary further information by the party that brought the original complaint.
Germany	Child labour in supply chain	October 2004	India	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	MNE was unable to join the meeting due to a question of principle based on a management-decision with regard to a categorical (non-) cooperation with one of the NGOs involved. Notwithstanding that, the MNE has notified the NCP in detail that it has already taken constructive and concrete steps to solve the problems raised. The NCP is currently conducting separate talks with the parties involved.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	February 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - there is a parallel legal proceeding.
Japan	Industrial relations of a Philippines subsidiary of a Japanese company	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - There is a parallel legal proceeding.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - there is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' labour relations	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. Korean NCP decided, in May 2004, to specify the NCP procedures and promote the Guidelines more aggressively. The Swiss NCP issued an intermediate press statement: <a href="http://www.seco.admin.ch/news/00197/index.html?lang=en">http://www.seco.admin.ch/news/00197/index.html?lang=en</a>
Korea	Korean company's business relations in Malaysia's wire rope manufacturing Sector	2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Mexico (consulting with the German NCP)	Closing of a plant	2002	Mexico	IV. Employment and Industrial relations	Ongoing	n.a.	The conflict was settled on 17 January 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican <i>Llanti Systems</i> and a cooperative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and <i>Llanti Systems</i> bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Netherlands	Adidas' outsourcing of footballs in India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 <a href="http://www.oecd.org/dataoecd/33/43/2489243.pdf">www.oecd.org/dataoecd/33/43/2489243.pdf</a>
Netherlands	Dutch trading company selling footballs from India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues	July 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties could agree on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found on <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> (English version)

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the U.S.A.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company	August 2002	Netherlands	IV. Employment and Industrial Relations	Ongoing	No, expected July 2005	The fact that the Dutch affiliate is bankrupt makes it difficult to close the instance.
Netherlands (consulting with Chile)	On the effects of fish farming	August 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the DRG.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned. ( <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> )
Netherlands	Closure of an affiliate of an American company in the Netherlands	September 2003	Netherlands	IV Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union	August 2004 - April 2005	United States	IV Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, through its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Treatment of the employees of an Irish company in the Netherlands	October 2004	Netherlands	IV Employment and Industrial Relations	Ongoing	Investment nexus/legal proceedings?	Research is being conducted as part of the initial assessment.
Netherlands	Closure of an affiliate in the Netherlands of a European company	October 2004	Netherlands	IV Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Travel agencies organising tours to Myanmar	2003-2004	Netherlands	IV Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make statement about discouraging policy on travel to Myanmar, see <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> (in Dutch only).

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Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2004	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2002	Poland	IV. Employment and Industrial Relations	Resumed	n.a.	In contact with representatives of parties involved.
Portugal	Closing of a factory	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	December 2004	Peru	IV. Employment and Industrial Relations	Concluded		
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 <a href="http://www.oecd.org/dataoecd/16/34/15595948.pdf">www.oecd.org/dataoecd/16/34/15595948.pdf</a>
United Kingdom	Complaint from an international labour organisation over BAT activities	2003	Myanmar	II. General Policies IV. Employment and Industrial Relations	Concluded	No	There was previously some dialogue between the parties which had reached an impasse. The U.K. NCP acted as a communications facilitator, a dialogue resumed, the company disinvested from Myanmar and the complaint was withdrawn.

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
United Kingdom	Activities of De Beers alleged in a UN Expert Panel report.	2003	Democratic Republic of Congo	This was not specified in the UN Panel report	Concluded	Yes	The U.K. NCP issued a statement in May 2004 <a href="http://www.dti.gov.uk/ewft/debeers.doc">www.dti.gov.uk/ewft/debeers.doc</a> .
Lead UK NCP and Turkish NCP	Oil Pipeline across three states	April 2003	Azerbaijan, Georgia and Turkey	I, II, III, V,	Ongoing	N/A	Coordinating with lead UK NCP; keeping relevant parties informed.
United Kingdom	Activities of Avient Ltd alleged in a UN Expert Panel report.	2003	Democratic Republic of Congo	This was not specified in the UN Panel report	Concluded	Yes	The U.K. NCP issued a statement in September 2004 <a href="http://www.dti.gov.uk/ewft/avient.doc">www.dti.gov.uk/ewft/avient.doc</a>
United States (consulting with French NCP)	Employment and Industrial Relations - Freedom of Association and Collective Bargaining	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached settlement
United States (consulting with French NCP)	Employee representation	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement
United States included among numerous NCPs and the Investment Committee, working with the UN	Conducting business in conflict zones and illegal exploitation of natural resources	October 2002	Democratic Republic of the Congo (DRC)	Numerous	Concluded	No	UN Panel Report concluded all outstanding issues with the U.S.-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the U.S. companies
United States (consulting with Austrian and German NCPs)	Employee relations in global manufacturing operations	November 2002	Global, with focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	USNCP concluded that the issues raised were being adequately addressed through other means.
United States	Employee representation	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement

<b>NCP concerned</b>	<b>Issue dealt with</b>	<b>Date of Notification</b>	<b>Host Country</b>	<b>Guidelines Chapter</b>	<b>Status</b>	<b>Final Statement</b>	<b>Comments</b>
United States	Investigate the conduct of an international ship registry	November 2001	Liberia	II. General Policies III. Information and Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the specific conduct which was the basis of the concerns raised was being effectively addressed through other appropriate means, including through a United Nations Security Resolution In consultation with parties
United States consulting with the French NCP	Employment and industrial relations, collective bargaining	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	
United States consulting with the German NCP	Employment and industrial relations, representation and collective bargaining	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties

Note: n.a. = not applicable

*Annex 4*

**Archive of Documents**

*Document 1. Letter from Investment Committee Chair to EITI*

**Extractive Industries Transparency Initiative**

**London Conference 2005**

*Central London, 17 March 2005*

*OECD Investment Committee  
Statement by Manfred Schekulin, Chair*

As Chair of the OECD Investment Committee, I am pleased to convey the OECD's support for the general principles of transparency and accountability underpinning the Extractive Industries Transparency Initiative (EITI). These principles are essential to achieving the international community's goal of promoting integrity and sustainable growth in the global economy. The OECD fully subscribes to this goal and the recognition of the important steps governments must take to enhance transparency. It also recognises that multinational enterprises can make an important contribution to the sustainable development of the countries in which they operate and considers that enhanced transparency by multinational enterprises should go hand in hand with improved public sector governance.

The OECD was a participant in the first EITI conference in June 2003. Since, the OECD has continued to make progress with activities in such areas as combating bribery and corruption, promoting improved corporate governance and encouraging corporate responsibility which all complement EITI's efforts to enhance transparency:

- The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* requires each signatory to criminalize the bribery of foreign public officials by companies based in its territory. The Convention, and its related Recommendations, provides a broad blueprint for eliminating the pernicious practice of foreign bribery by companies to obtain or retain business in foreign markets. Thirty six countries now have ratified the Convention, and several applications for accession have been made.
- Improving corporate governance is another area where the OECD makes a distinctive contribution. The OECD is currently completing its work on Guidelines on Corporate Governance of State-Owned Enterprises which supplement and build on the *OECD Principles of Corporate Governance*. This work is of obvious interest to the many state-owned oil and mining companies, whose governance practices also form important parts of the broader transparency picture in extractive industries.
- Transparency is also one of the themes of the *OECD Guidelines for Multinational Enterprises*. The OECD Guidelines are voluntary recommendations to multinational enterprises which are applicable world-wide. All OECD governments, the European Commission and a growing number of non-OECD governments are committed to their effective implementation. They are supported by follow-up procedures which allow discussion among governments, business, trade unions and NGOs of issues relating to implementation of the Guidelines and clarification where needed of the meaning of the Guidelines in specific circumstances.

The OECD Committee is currently completing a project aimed at assisting companies operating in weak governance zones -- that is, areas where governments are unable or unwilling to protect the general rights framework and to provide other public services. Based on extensive consultations with African and other government partners and business and other civil society stakeholders, the expected output of this project is an OECD risk management tool for investors wishing to conduct business with integrity in weak governance zones.

The project focuses on those issues about which the OECD integrity instruments can shed light. These include the OECD Guidelines for Multinational Enterprises, the Corporate Governance Principles, the Guidelines for Managing Conflict of Interest in the Public Sector, the Anti-bribery Convention. The project is also a contribution to addressing the generic issues raised in recent United Nations Council Security discussions on illegal exploitation of natural resources in the Democratic Republic of Congo

I welcome that the OECD has been given opportunity to make a contribution to the second meeting of EITI. I believe that further co-operation, consistent with our institutions' respective functions, mandates and procedures, could be useful.

**Document 2. References to the Guidelines in the Commission for Africa Report**

**Report of the Commission for Africa published 11 March 2005**

[www.commissionforafrica.org/english/report/introduction.html](http://www.commissionforafrica.org/english/report/introduction.html)

Page 40. “..some companies knowingly fuel conflict. They pay substantial sums to oppressive governments or to warlords. Some firms even assist with arms purchases... but many of their actions are not crimes – and at present the various voluntary corporate codes of conduct, such as the OECD Guidelines for Multinational Enterprises, do not provide clear enough guidance on what companies should do in these situations.”

Page 69. The following recommendation is made under the heading *Tackling the causes of conflict, and building the capacity to manage them*: “OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict for incorporation into the OECD Guidelines on Multinational Enterprises.”

Page 150. Under the heading *Corruption: procurement*. “Recommendation: The international community should encourage more transparent procurement policies in both Africa and the developed world, particularly in the areas of construction and engineering.... It should also strengthen existing instruments aimed at curbing corruption. This includes ratifying the UN Convention against Corruption... and wider accession to the 1999 OECD bribery convention by countries engaged in commercial activity on Africa. Governments should also take strong action to encourage companies registered in their territories to adhere to the various international guidelines, such as the OECD Guidelines for Multinational Enterprises, that exist, among other things, to prevent corrupt commercial practices in developing countries.”

Pages 165-166. Under the heading *Corporate activity in conflict areas*.

“Recommendation: OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict, for incorporation in to the OECD Guidelines for Multinational Enterprises.

One of the negative impacts of instability is reduced foreign and domestic investment.... However, while this investment is often desperately needed, companies that are actively engaged in such countries can also have a negative effect on peace and security. .... Many such actions are in breach of international laws. But many unhelpful acts are not actually crimes and cannot be controlled using existing channels of regulation. The regulatory gap is currently filled by various standards and codes for behaviour, such as the OECD Guidelines on Multinational Enterprises. Although voluntary, OECD governments are obliged to promote and ensure adherence to the guidelines. The G8 has already committed to 'encouraging the adoption of voluntary principles of corporate social responsibility by those involved in developing Africa's natural resources'. That obligation now needs to be implemented.

However, existing guidelines make inadequate provision for economic activity in areas at risk of, or actively engaged in, violent conflict. Corporate guidelines need to be revised with conflict zones in mind, setting out the best current practice on security arrangements, transparency and revenue-sharing arrangements. Such guidelines should be aimed at helping companies to avoid the potential risks to their own business of operating in such environments, and thus allow them to invest with greater confidence. They should set out the importance of using conflict analysis and risk assessments to avoid

creating or worsening conflicts. The mechanisms for the implementation of the OECD Guidelines through National Contact Points (NCPs) should be strengthened, for example through establish NCPs in resource rich African countries, as recommended by participants at the Commission's regional consultations.

Page 174. Under the heading *Tackling the causes of conflict, and building the capacity to manage them*, the following recommendation is made: OECD countries should promote the development and full implementation of clear and comprehensive guidelines for companies operating in areas at risk of violent conflict, for incorporation into the OECD Guidelines for Multinational Enterprises.

Pages 246-247. We call on the business community to identify actions it can take in support of the priority actions set out in this Report... This means businesses moving beyond CSR strategies that focus on philanthropy to a more fundamental look at how they do business. It means better coordinated, outcome-focused efforts centered around leading initiatives, including the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the Global Reporting Initiative, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policies and the OECD Bribery Convention.... The Commission urges greater participation of African countries – and their private sectors, including small enterprise and civil societies – in the global CSR debate, including in the context of the next review of the OECD Guidelines.”

Page 303. As discussed elsewhere in this report (Chapter 4), a strategy of development through extractive industries is difficult and requires a high degree of transparency. This is why the Commission is urging a strengthening of the Extractive Industries Transparency Initiative..., agreement of a common definition of conflict goods... and changes to the OECD Guidelines for Multinational Enterprises to cover behaviour in conflict situations.

*Document 3. Public statement by French NCP*

**Recommendations of the French National Contact Point to EDF and its partners  
regarding the “Nam Theun 2” Project in Laos**

*Thursday 26 May 2005*

A specific instance was submitted to the French National Contact Point (NCP) by the non-governmental organisation “Les Amis de la Terre” (“Friends of the Earth”), on 26 November 2004, in connection with the project for the construction in Laos of a hydroelectric dam known as “Nam Theun 2” by the NTPC consortium, of which Électricité de France is the principal shareholder.

The case submitted is based on a number of chapters of the OECD Guidelines for Multinational Enterprises: Chap. II (General Policies) concerning sustainable development and respect for human rights; Chap. V (Environment) concerning the gathering and communication of information on the potential effects of the activities carried out, consultation with the local population and assessment of the environmental, health and safety impacts on the persons involved; Chap. IX (Competition) concerning compliance with the rules of international competition (this part of the case was rejected by the NCP). In addition, the NCP considered that it was appropriate to broaden this case so as to include Chap. IV concerning Employment and Industrial Relations.

On the basis of all the documents gathered from the NTPC consortium, the World Bank, the Asian Development Bank and the international network of the Ministry for Economic Affairs, and consultations with experts from the Coface and the French Development Agency (AFD), the NCP has reached the conclusion that, in the light of the information available, no violation of the OECD Guidelines could be attributed to EDF and that EDF had even made commitments that went beyond these Guidelines. In this regard, the NCP takes note of the fact that, on 24 January 2005, EDF signed an agreement on social responsibility defining the group’s commitments with respect to its activities.

However, considering that the NCP also has responsibility for monitoring the effective implementation of the company’s commitments to comply with international environmental and social standards, the NCP members have decided to make the following recommendations in this regard:

1. The NCP is of the opinion that EDF and its partners – through the NTPC consortium – must remain involved in the implementation of all compensatory measures, in the framework of the agreed sharing of responsibilities with the Laotian national authorities. The institutions participating in this project are also asked to ensure that there is an equitable sharing of responsibilities. The NCP takes note of the studies conducted by the consortium on the potential environmental impact of its activities and encourages NTPC, in accordance with its obligations, to continue these evaluations and participate actively in the appropriate protective measures.
2. The NCP is also of the opinion that multinational enterprises doing business in countries where the legislative and regulatory system in the environmental and social field is considered to be weak should do their utmost to apply the same internationally recognised good practices that they follow in their own country at construction sites and with regard to the people affected by their activity. In this respect, the fundamental ILO standards – in particular regarding trade union rights – constitute appropriate rules of conduct for enterprises to follow in their activities.

The NCP also proposes to engage in regular consultations with the company (at least on an annual basis), in order to monitor the project and its impacts, and in constructive exchanges regarding the corrective action to be taken to maintain a high level of good practice and the exemplary standard set for this project.

#### ***Document 4. Public statement by UK NCP.***

### **Statement on Avient**

#### *Introduction*

Avient were named in Annex 3 (Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises) of the initial UN Expert Panel report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (DRC) published in October 2002.

In the final Panel report published in October 2003 Avient were listed in Category 3 (unresolved cases referred to NCP for updating or investigation).

These lists contain the names of entities that the UN Expert Panel on the DRC alleged had been in breach of the OECD Guidelines for Multinational Enterprises.

#### *Basis of Allegations*

Specifically the Panel alleged Avient provided military supplies to both the Congolese Army (FAC) and the Zimbabwe Defence Force (ZDF), thus contributing to the conflict in the area.

It was alleged that Avient provided crews for Antonov 26 aeroplanes and Mi 24 helicopters stating that these types of aircraft were used in offensive action in the DRC at the time Avient were contracted by the government of the DRC. The Panel did not supply further details nor evidence of any specific actions undertaken by Avient crews.

Finally the Panel alleged that Avient brokered the sale of six military helicopters to the DRC Government. No evidence was supplied by the Panel to support this allegation.

The Panel did not, however, identify which provision(s) of the OECD Guidelines for MNEs they alleged Avient to be in breach of.

#### *Co-operation with the UN Expert Panel*

In the Panel documentation the company is described as 'Avient Air'. The company has denied ever being incorporated as Avient Air and for the purposes of this process the U.K. NCP has conducted all dialogue with representatives of Avient Ltd.

The Panel stated in a letter to the U.K. NCP dated 26 September 2003 that some progress had made with Avient over the allegations but that it could not come to definitive conclusions before the Panel's mandate expired in October 2003. Avient met with the Panel in May 2003 and corresponded with the NCP, the Panel and the UN on a number of occasions subsequently. Avient were, and remain, unhappy with the conduct of the Panel throughout— although they agreed to cooperate with the Panel, the U.K. NCP and to abide by the Guidelines. Specifically Avient feel aggrieved that the allegations were presented as fact, but without evidence to substantiate such assertions. Subsequently these allegations have been produced by banks, organisations and governments as reasons as to why they cannot conduct business with the company.

*NCP Comment on Panel Accusations*

The Panel supplied very little evidence to support the allegations made. Some documentation was supplied by the UN in May 2004 and, informed by this documentation and discussion with Avient, the NCP asked Avient to respond formally to the specific accusations.

1. The Panel allege that Avient Air had a close relationship with Oryx (another company named in the UN report) and that Avient Ltd. was a military company which supplied services and equipment to the ZDF and the FAC.

Avient Ltd. has confirmed that they carried commercial cargo from Zimbabwe and South Africa to the DRC (Mbuji-Mayi) for Oryx and had done so for a number of years, providing a selection of manifests, as requested by the NCP, to support this. The equipment carried was commensurate with mining activity.

From the evidence provided, the NCP finds that although owned and partly managed by a former military person, Avient Ltd. is not a military company.

Avient Ltd. denies supplying equipment to the ZDF and FAC, but concede supplying services (“carriage, re-supply and movement of personnel and equipment”) to the ZDF. They stress this was not a tactical or military role but a supply function.

Avient Ltd. also provided engineering, training and crews for the FAC for a short period of time. They claim certain issues within the DRC made such work ineffective and these also meant that the crews supplied by Avient Ltd. hardly ever flew. Their major support function was the airdropping of food and supplies to DRC Government forces who were cut off in places by rebel forces. Avient Ltd claim its staff respected all cease-fire agreements.

2. *Crewing for Antonov cargo planes, Mig 23 Jet fighters and MI 24 attack helicopters.*

Avient Ltd. admits carrying cargo and supplies under a commercial arrangement with the Government of the DRC using their Antonov aircraft.

Avient Ltd. provided crew for a Mig 23 jet fighter to train DRC crews to fly and maintain the aircraft. On arrival in the DRC the staff found the aircraft were in poor condition and supplied to the FAC a list of spare parts required to make them airworthy. This resulted in one aircraft flying a circuit of Kinshasa airport and thereafter a flight training course was arranged as agreed. Events overtook such training and the course was cancelled after 3 days; the aircraft never flew again and the whole crew returned home.

Avient Ltd. admits that it provided crew for an MI 24 helicopter and that they were involved in the relief of isolated places but shortly afterwards it suffered a technical problem and the staff returned home.

Avient Ltd. claim that the FAC became disillusioned with the methodology employed by the Company and the contractual arrangements were dissolved after 8 months. This is supported by UN documentation.

The Panel alleges that Avient Ltd. brokered the sale of six military helicopters to the DRC Government.

Avient Ltd. absolutely denies this allegation. No evidence has been supplied by the UN to support this allegation. No evidence from other enquiries across government by the NCP has arisen. In the circumstances the NCP finds this allegation unsubstantiated.

### *Conclusions*

The U.K. Government is firmly committed to the Guidelines as a baseline for corporate behaviour and an aid to companies drawing up their own codes of conduct. The purpose of the Guidelines however, is not to act as an instrument of sanction nor to hold any company to account. The implementation procedures within the Guidelines are a problem solving mechanism with a view to parties coming to an agreement or for the NCP to make recommendations for future behaviour in similar circumstances. In this case, given that there is no complainant, it falls to the NCP to make recommendations.

The DRC and surrounding area is a difficult business environment. During the period under consideration there was a lack of regulation coupled with lawlessness and poor governance. With this in mind, although difficult, it is important for companies to act in a way which would support the development of the region.

The NCP accepts Avient Ltd's contention that they were working within a contractual arrangement with the officially recognized governments in the area.

In future Avient Ltd. should carefully consider the recommendations of the Guidelines particularly, but not exclusively, Chapter 2 before entering into contracts with Governments and businesses in the area.

Specifically Chapter 2 of the Guidelines states enterprises should;

- contribute to economic, social and environmental progress with a view to achieving sustainable development;
- respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments;
- abstain from any improper involvement in local political activities.

**Document 5. Swiss NCP's request for clarification.**

**From:** Head, Swiss National Contact Point  
**To:** Chairman of the Investment Committee  
**Re:** Request for clarification regarding implementation  
of the Guidelines for Multinational Enterprises (Ref: 438387 – kau)

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Bern, 9 July 2004

Dear Sir,

Pursuant to the June 2000 Decision of the [OECD] Council regarding the *Guidelines for Multinational Enterprises*, the Committee on International Investment and Multinational Enterprises is responsible for providing clarification in the event a National Contact Point makes a substantiated submission regarding interpretation of the *Guidelines*. Herein, we should like to submit the following request.

**Case in point:**

The Swiss NCP was contacted by a Swiss trade union that considered that a certain multinational enterprise headquartered in Switzerland did not, in its dealings with one of its subsidiaries, which is also based in Switzerland, adhere to certain recommendations set forth in the *Guidelines* – namely, Chapter IV (“Employment and Industrial Relations”), and more specifically §1(a) in respect of collective bargaining.

In the union’s opinion, the *Guidelines* are an expression of the universal values of the countries adhering thereto. In particular, reference is made to Chapter 1 (“Concepts and Principles”), §§2 and 4, which stipulate respectively that “Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate” and that “The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises” [emphasis added]. It follows from this that, in the union’s view, the Swiss NCP should also take up “specific instances” relating to a Swiss enterprise’s behaviour *vis-à-vis* its Swiss subsidiary, i.e. instances having no international element.

**Interpretation of the Swiss NCP**

The Swiss NCP recognises that the *Guidelines* are a multi-dimensional instrument, and that the issue of their applicability must be envisioned flexibly. We therefore deem that the *Guidelines*, as governments’ recommendations to “their” enterprises, are universal in nature.

Notwithstanding, as stated in the “Report by the Chair” of the 2003 Annual Meeting of the National Contact Points (Chapter VI – Scope of the Guidelines), “the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of [such] an investment nexus.”

Consequently, the Swiss NCP considers that a distinction should be made between the substance of the *Guidelines* and their implementation in particular cases. While the recommendations contained in the

*Guidelines* are aimed at the activities of businesses both at home and abroad, the procedure for implementation by the National Contact Points in “specific instances”, as formulated in the 2000 Decision of the Council, should theoretically be limited to issues arising in a context of international investment.

**Question**

Does the Investment Committee share the Swiss NCP’s interpretation, or does it consider that the “specific instances” procedure should also apply to issues having no international dimension?

Thanking you in advance for your reply, I am,

Yours faithfully,  
*Ivo Kaufman*

Head, Swiss National Contact Point  
State Secretariat for Economic Affairs

**Document 6. Letter of clarification to Swiss NCP.**

Mr. Ivo Kaufman  
Head, Swiss National Contact Point  
State Secretariat for Economic Affairs  
Switzerland

Vienna, 19 April 2005

Dear Mr. Kaufman,

**Re: Request for clarification regarding implementation of the Guidelines for Multinational Enterprises dated 9 July 2004 (Ref: 438387 – kau)**

I am writing you in answer to your letter of 9 July 2004 requesting a clarification regarding appropriate approaches to specific instances that have “no international element”.

Your letter provides factual background about a Swiss trade union's request that you consider a specific instance “relating to a Swiss enterprise's behaviour vis-à-vis its Swiss subsidiary.” You also offer your own interpretation of this factual background and ask whether the Investment Committee agrees with your interpretation.

Your interpretation states the following: “The Swiss NCP recognises that the Guidelines are a multi-dimensional instrument, and that the issue of their applicability must be envisioned flexibly. We therefore deem that the *Guidelines*, as governments' recommendations to ‘their’ enterprises, are universal in nature. Notwithstanding, as stated in the “Report by the Chair” of the 2003 Annual Meeting of the National Contact Points (Chapter VI – Scope of the Guidelines), ‘the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of [such] an investment nexus.’ Consequently, the Swiss NCP considers that a distinction should be made between the substance of the *Guidelines* and their implementation in particular cases. While the recommendations contained in the *Guidelines* are aimed at the activities of businesses both at home and abroad, the procedure for implementation by the National Contact Points in “specific instances”, as formulated in the 2000 Decision of the Council, should in principle be limited to issues arising in a context of international investment.”

Your letter then poses the following question:

*Does the Investment Committee share the Swiss NCP's interpretation, or does it consider that the “specific instances” procedure should also apply to issues having no international dimension?*

The Working Party of the Investment Committee discussed your request for clarification at its December meeting (based on background document DAF/INV/WP(2004)2) and reported to the Investment Committee on its findings. The Working Party asked the Secretariat to solicit written comments from BIAC, TUAC and NGOs on this issue, based on paragraphs 1 to 14 of DAF/INV/WP(2004)2. They contributed three sets of comments that can be found in DAF/INV/WP/RD(2005)1. The request for clarification was the subject of further discussions at the 5 April 2005 Working Party and during consultations with BIAC, TUAC and NGOs held in conjunction with the April 2005 meetings.

.../...

Based on these discussions, the Investment Committee confirms that the specific instances procedure was created to deal with issues arising in the context of international investment. The Committee notes that it did not attempt to assess the appropriateness of the Swiss NCP's application of the generic interpretation to the specific instance at hand. It also wishes to stress the following:

- *Furthering the effectiveness of the Guidelines.* NCPs approach to specific instances (including those having “no international element”) should, above all, be oriented toward furthering the effectiveness of the Guidelines. All decisions as to whether or not to consider a specific instance should be evaluated in light of this consideration. The Guidelines aim “to ensure that the operations of [multinational 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.” NCPs are asked to fulfil this mandate while operating within resource constraints and within the bounds of authority defined by their positions as investment officials of adhering governments. In general the interests of the Guidelines will be best served by: 1) NCPs demonstrating clearly that they are willing to accept the responsibilities that have been given to them under the Guidelines; 2) by not using the scarce resources dedicated to the Guidelines to address problems that other national institutions have been specifically designed to address; 3) by taking maximum advantage from the expertise of the group of officials charged with responsibility for the Guidelines – the international investment community; and 4) by working effectively with other policy communities.
- *The Guidelines express global principles applicable to both domestic and international operations of companies.* The Guidelines text is quite clear on this matter and there is strong agreement among delegations, NCPs and Guidelines partners on this point. Your letter makes this point and the comments by BIAC, TUAC and NGOs broadly concur that the “values the Guidelines stand for are universal in scope” (quote from BIAC letter). As pointed out in earlier Investment Committee statements, the Guidelines “reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines.”
- *Level playing field.* The discussions of your request for clarification raised concerns about what one delegate described as the need to “create a level playing field”. The Committee agrees that this is a concern. However, it also recognises that many different actors – other agencies within adhering and non-adhering governments, other international and regional organisations as well as non-public actors such as business associations, trade unions and NGOs – are working in their own ways to uphold the values and principles from which the Guidelines are derived and which they reinforce. They are seeking to level the playing field by making these meaningful in the day-to-day operations of a broad cross-section of companies. The implementation procedures of Guidelines are just one among many such processes and NCPs should seek to complement other processes.

.../...

- *Differences between purely domestic and international dialogue on matters of business ethics.* Past Investment Committee work recognises that systems for encouraging appropriate business conduct are complex and, for the most part, rooted in local social, civil and legal processes. These include informal pressures on company employees coming from family and peers, scrutiny from the national press, and formal deterrence stemming from local law enforcement. International companies may have a different relation to these processes than domestic companies do -- they might not pick up and interpret host country signals and pressures in the same way as domestic companies would; host country actors might be more suspicious of or discriminate against foreign actors; the international dimension of economic transactions might introduce complexities of interpretation that would not be present in purely domestic transactions. The Guidelines implementation procedures are designed to help fill a gap left between the largely national institutions of dialogue and the international character of many business transactions. The Guidelines provide an international perspective on business ethics that is backed by 39 governments whose territories are home to most large multinational enterprises. Much of the value-added of the Guidelines lies in this international-national link and the Investment Committee encourages the NCPs to make the most of this link.
- *Boundary between international and domestic issues.* The global economy and international investment – while shaped by what might be thought of as a mosaic of national policy environments – do not always give rise to clear cut boundaries between home and host country operations or between foreign and domestic issues. During the discussions, several delegations argued that, the mere fact that a company is a multinational enterprise means that its business decisions are, almost by definition, international in nature. It is precisely because of the difficulty of establishing crisp typologies of economic transactions that many NCPs and delegations stressed the importance of a case-by-case approach to this issue. This message is reinforced by the 2003 Statement by the Committee on Scope of the Guidelines, which notes: “When considering the application of the Guidelines flexibility is required”.

We hope that this answers your question in a way that is useful for you and for the parties to this specific instance.

Sincerely yours,



Manfred Schekulin  
Chair, OECD Investment Committee  
[www.oecd.org/investment](http://www.oecd.org/investment)

cc. Investment Committee delegates

**Joint OECD-UN document on the UN Global Compact and the OECD Guidelines**

**THE UN GLOBAL COMPACT AND THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: COMPLEMENTARITIES AND DISTINCTIVE CONTRIBUTIONS**

*This document, by the UN Global Compact Office and the OECD Secretariat, has been developed as an input to the OECD Investment Committee's work on the implementation of the Guidelines. It has been commented on by Committee delegates and posted on the UN and OECD websites.*

**Introduction**

The UN Global Compact and the OECD Guidelines for Multinational Enterprises (“the OECD Guidelines”) are the world’s foremost comprehensive, voluntary corporate responsibility initiatives. In articulating principles of responsible business conduct, they draw on international standards enjoying widespread consensus.

This document seeks to clarify the complementarities and distinctive contributions of these two initiatives by setting forth the initiatives’ major premises and objectives, scope and coverage, and implementation and follow up mechanisms. In so doing, it aims to lay the foundation for closer cooperation.

**The United Nations Global Compact**

The Global Compact is an open and voluntary corporate citizenship initiative engaging a wide spectrum of multi-stakeholder participants across the globe. With more than 2000 companies and other societal actors participating from more than 80 countries, the Global Compact is the world’s largest corporate citizenship initiative. Local networks, launched in more than 40 countries, are helping to carry forward the Global Compact at the local level. The United Nations Secretary-General first proposed the Global Compact in an address to the World Economic Forum on 31 January 1999. The Compact’s operational phase was subsequently launched at UN Headquarters on 26 July 2000.

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core principles in the areas of human rights, labour standards, the environment and anti-corruption. The ten Global Compact principles enjoy universal consensus being derived from: The Universal Declaration of Human Rights; the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development; and the United Nations Convention against Corruption.

As a voluntary initiative, the Global Compact seeks to promote responsible corporate practices through a variety of engagement mechanisms, including learning, dialogue and projects. The initiative’s core comparative advantages are the universality of its principles, the international legitimacy that only the United Nations embodies, and the Compact’s potential to be a truly global platform with great appeal to companies all over the world. The Global Compact is grounded in universally accepted declarations and conventions, which has enabled strong support in developing countries, one of the Organization’s

unique characteristics. To date, over half of all Global Compact participants are from non-OECD countries, bolstering the initiative's credibility and promise of positive social impact where the need is greatest.

To achieve its mission of a more sustainable and inclusive global economy, the Global Compact pursues two complementary objectives: Making the Global Compact and its principles an integral part of business strategy and operations everywhere, and facilitating cooperation among key stakeholders promoting partnerships in support of UN goals.

Although the Global Compact enjoys a large measure of government support, it operates mainly as a network that brings together companies with UN agencies, labour and civil society organisations to advance universal social and environmental principles. It is supported by the Global Compact Secretariat, which is composed of the Global Compact Office and six UN agencies: the Office of the High Commissioner for Human Rights, International Labour Organization, the UN Environment Programme, the UN Industrial Development Organization, and the UN Office on Drugs and Crime. Business participants include large as well as small and medium-sized enterprises (SMEs) from virtually all industry sectors and geographic regions.

### **The OECD Guidelines for Multinational Enterprises**

The OECD Guidelines are recommendations by governments to multinational enterprises (MNEs) operating in and from the territories of the 39 countries that adhere to the Guidelines<sup>15</sup>. The Guidelines are a multilaterally endorsed and comprehensive code of conduct that enjoys the backing of governments whose territories are home to almost 90 per cent of foreign direct investment flows and to 97 out of the top-100 multinational enterprises.

The Guidelines establish non-binding principles and standards covering such areas as human rights, disclosure of information, anti-corruption, taxation, labour relations, environment, competition and consumer protection (see Table 1 for a mapping of the two initiatives' coverage). These principles and standards draw on the same set of core values in the areas of human rights, labour standards, the environment and anti-corruption as the UN Global Compact. The Guidelines are the means through which the OECD Investment Committee seeks to integrate these core values into its work on international investment so as to help it advance its mission of enhancing the contribution of investment to growth and sustainable development.

The Guidelines aim to promote the positive contributions multinational enterprises can make to economic, environmental and social progress and to ensure that MNEs act in harmony with the policies of the countries in which they operate and with societal expectations. By adding the weight of adhering governments' views to the general public debate on many issues in international business ethics, the Guidelines process has already succeeded in raising the legitimacy and profile of corporate attempts to address these issues.

The fact that the Guidelines implementation processes are government-backed lends significant credibility to them. Their unique implementation procedures (described more fully below) provide a unique channel for exploring concrete issues of business ethics.

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<sup>15</sup> These are the 30 OECD countries and 9 non-member countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia) that have adhered to them.

The Guidelines are part of a broader, balanced instrument of rights and commitments – the OECD Declaration on International Investment and Multinational Enterprises. The Declaration promotes a comprehensive, interlinked and balanced approach for governments’ treatment of foreign direct investment and for enterprises’ activities in adhering countries.

The OECD instruments on international investment and multinational enterprises are one of the main means by which the OECD helps adhering countries to work towards a liberal regime for foreign direct investment, while at the same time ensuring that multinational enterprises operate in harmony with the countries where they are located.

### **Complementarities between the initiatives and their distinct contributions**

*Premises.* The two initiatives are based on complementary premises. The Guidelines are founded on the assumption that internationally agreed principles can help prevent misunderstandings and build an atmosphere of confidence and predictability among business, labour, governments and society as a whole. The Global Compact is based on the premise that business has an interest in sustainable and inclusive global markets underpinned by universal principles, and that the UN’s unique convening power can be used to build consensus and promote substantive positive action and practical solution finding to the challenges of globalization.

*Scope.* The initiatives complement each other well in terms of the topics they address and their geographical coverage. Both initiatives are based on broad international consensus: both the OECD Guidelines and the UN Global Compact are deeply rooted in international conventions and declarations enjoying universal consensus.

The Global Compact principles are general and broad. Their breadth and simplicity are part of their appeal, rendering them accessible for all types of businesses, regardless of size, industry, location or level of experience with corporate citizenship. In many cases, the OECD Guidelines provide more detail. They also cover topics – e.g. taxation and competition -- which are not addressed in the Global Compact’s ten principles.

The Global Compact’s global reach and its focus on company initiatives and networking with UN Agencies complement the strongly inter-governmental character of the Guidelines. There are companies to whom the recommendations in the OECD Guidelines are not applicable – namely, companies that do not operate either in or from the territories of any of the 39 adhering countries (which are, for the most part, developed countries). By contrast, the Global Compact has a particularly strong uptake in developing countries, where most of its local networks are located. It is open to participation by all companies, wherever they are based or operate as long as they express their support for the ten principles and are willing to work toward their implementation

The Global Compact is based on a set of 10 universal principles in the areas of human rights, labour, environment and anti-corruption. Being derived from four key international declarations and conventions, the principles enjoy universal consensus. The OECD Guidelines are recommendations – drawing on largely the same normative sources as the UN Global Compact -- by 39 adhering governments to multinational enterprises operating in or from their countries. They contain voluntary principles and standards in the areas of employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and

taxation. The following table maps the Global Compact principles with relevant chapters of the OECD Guidelines.

**Table. A Comparison of the Coverage of the UN Global Compact Principles and Selected OECD Guidelines**

<b>GLOBAL COMPACT PRINCIPLES</b>	<b>OECD GUIDELINES' CHAPTERS</b>
<b>Human Rights</b>	
<b>Principle 1:</b> Businesses should support and respect the protection of internationally proclaimed human rights;	<b>Chapter II</b> – General Policies <b>Chapter VII</b> – Consumer Interests
<b>Principle 2:</b> Make sure that they are not complicit in human rights abuses.	<b>Chapter II</b> – General Policies
<b>Labour</b>	
<b>Principle 3:</b> Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 4:</b> The elimination of all forms of forced and compulsory labour;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 5:</b> The effective abolition of child labour;	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Principle 6:</b> The elimination of discrimination in respect of employment and occupation.	<b>Chapter IV</b> – Employment and Industrial Relations
<b>Environment</b>	
<b>Principle 7:</b> Businesses should support a precautionary approach to environmental challenges;	<b>Chapter V</b> – Environment
<b>Principle 8:</b> Undertake initiatives to promote greater environmental responsibility;	<b>Chapter V</b> – Environment
<b>Principle 9:</b> Encourage the development and diffusion of environmentally friendly technologies.	<b>Chapter V</b> – Environment
<b>Anti-corruption</b>	
<b>Principle 10:</b> Business should work against all forms of corruption, including extortion and bribery.	<b>Chapter VI</b> – Combating Bribery
<b>Other issues</b>	
	<b>Chapter III. Disclosure</b> <b>Chapter VII. Consumer Interests</b> <b>Chapter VIII. Science and Technology</b> <b>Chapter IX. Competition</b> <b>Chapter X. Taxation</b>

Since the OECD Guidelines' text is relatively long and detailed, it covers some areas that are not covered explicitly by the UN Global Compact. These include chapters on disclosure (which contains recommendations on both financial and non-financial disclosure), consumer interests, science and technology, competition and taxation.

*Manner and degree of engagement with business.* The initiatives also complement each other in their different manner and degree of engagement with business. Companies initiate their participation in the Global Compact through a leadership commitment by their CEO and (where appropriate) Board that is communicated to the United Nations. Business and other societal actors also engage directly in the various engagement mechanisms that the Global Compact offers at the global, regional and local level, such as practical solution finding, identification of good practices and projects on the ground. Although the OECD welcomes expressions of support for the Guidelines, its implementation process does not depend on them – the normative framework upon which the Guidelines is based is deemed to be so fundamental that its relevance to companies is taken for granted. Responsibility for promoting the recommendations in the Guidelines lies primarily with the adhering governments as does the administration of the Guidelines' unique follow up mechanism.

*Implementation.* The Global Compact offers five different types of engagement opportunities for its participants: networks, dialogues, learning, initiatives and partnership projects. Companies and other Global Compact stakeholders are encouraged to take an active role in country networks. Global Compact networks support implementation of the Global Compact in a local context through dialogue, learning and projects, and provide support for quality assurance.

In policy dialogues, the Global Compact supports action-oriented local, regional or international meetings that focus on specific issues related to globalisation and corporate citizenship.

To promote learning, the Global Compact fosters the development of tools and publications to assist participants with the process of implementing the principles and sponsors opportunities for participating companies to share best practices and lessons learned. As a voluntary initiative, the Global Compact seeks to establish the business case for responsible corporate citizenship. In furtherance of this aim, it has, for example, facilitated a number of initiatives with the financial community to promote responsible corporate practices.

Global Compact participants are also encouraged to undertake partnership projects with UN agencies and civil society organizations in support of global development goals, such as the Millennium Development Goals.

The distinctive, government-backed implementation mechanisms of the OECD Guidelines include the operations of National Contact Points (NCP). These are government offices located in each of the 39 adhering governments. They are responsible for encouraging observance of the Guidelines and for ensuring that the Guidelines are well known and understood by the national business community and other interested parties. NCPs promote the Guidelines; handle enquiries about them; assist in solving problems that may arise; gather information on national experiences with the Guidelines; and report annually to the OECD Investment Committee.

*Accountability and follow up mechanisms.* Both initiatives are voluntary from the perspective of the corporations that choose to engage with them in that neither relies on formal legal sanctions to achieve their objectives. Rather, they each have their own unique means of promoting observance.

The Global Compact is not a regulatory instrument – it does not ‘police’, enforce or judge the behaviour of companies – it relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share best practices in pursuing the principles upon which the Global Compact is based. To promote basic engagement quality, the Global Compact asks participating companies to publish in their annual report (or similar corporate report) a description of the ways in which they are supporting the Global Compact and its ten principles. This ‘Communication on Progress’ is an important tool to demonstrate the continuous performance improvement to which the Global Compact aspires. Companies that do not communicate their progress for two years in a row are declared inactive until they communicate their progress. To further promote continuous quality improvement and better accountability, the Global Compact has introduced other integrity measures that utilize dialogue to help participants raise the quality of their implementation efforts. Under these integrity measures, it is anticipated that local networks will play an increasingly important role in practical solution finding.

The OECD Guidelines provide a unique follow up mechanism for raising “specific instances”. This facility allows interested parties to call a company’s alleged non-observance of the Guidelines’ recommendations to the attention of an NCP. Since the creation of the specific instance facility in 2000, it has been used 80 times as a forum for discussing concrete problems of business ethics – those encountered by managers “on the ground”. For example, the facility has been used to discuss a Korean company’s labour management practices in a Guatemalan export processing zone, a Canadian company’s resettlement of populations in the vicinity of its mine in the Zambian copper belt, and a sporting goods manufacturer’s management of the risk of employing child labour in the sporting goods supply industry in India. NCPs are still refining their use of the specific instances procedure to ensure that all parties – businesses, civil society and trade unions, other governments – find it a useful tool. Promising developments include the use of embassy networks and official development assistance programmes as sources of information about investment projects in non-OECD countries and the issuance of public statements explaining the nature and conclusions of the discussions held under the specific instance.

The National Contact Points meet every year in order to engage in a “peer review” of their activities, including their handling of specific instances. In this way, Guidelines implementation involves continual improvement, both by NCPS and by other users. An annual report on implementation of the Guidelines is published which includes information on specific instances and how other parts of government (e.g. export credit agencies) use the Guidelines in the context of their work.

Responsibility for oversight of the functioning of the Guidelines falls to the OECD Investment Committee, which is expected to take steps to enhance their effectiveness. It can also issue clarifications on the application of the Guidelines in specific circumstances.

## **Conclusions**

The Global Compact and the OECD Guidelines are two of the world’s foremost corporate responsibility initiatives. They complement and reinforce each other in many ways.

That the initiatives have mutually reinforcing missions is clear: The government-backed OECD Guidelines uses an inter-government process to promote the positive contribution that multinational enterprises can make to economic, environmental and social progress. The Global Compact seeks to advance responsible corporate citizenship by inspiring voluntary action in support of universally agreed principles. Opportunities for mutual advocacy and promotion will be explored.

Given their common interest in promoting responsible corporate citizenship, there is scope for exploring opportunities for mutually beneficial cooperation. Some concrete examples already exist. For example, the Secretariats have invited each other to participate in and contribute their expertise to relevant events, including on the topics of business in zones of conflict, transparency and anti-corruption. In March 2005, they co-sponsored – along with NEPAD and Transparency International -- a major anti-corruption conference in Addis Ababa. Other joint efforts on substantive work could be undertaken on a case-by-case basis.

## Annex 6

### Investments in Weak Governance Zones – Summary of Consultations

*The Guidelines aim to ensure that the operations of 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.*

*OECD Guidelines for Multinational Enterprises, first paragraph of the Preface*

#### Introduction and background

Weak governance zones are areas where governments are unwilling or unable to carry out their responsibilities<sup>16</sup>. This means that public authorities do not protect rights (including property rights) or provide basic public services (e.g. social programmes, infrastructure development and prudential surveillance). These “government failures” lead to broader failures in political, economic and civic institutions that the OECD Investment Committee refers to as “weak governance”. A recurrent theme of the OECD Investment Committee’s work on the OECD Guidelines for Multinational Enterprises is that corporate responsibility goes hand-in-hand with government responsibility. The current document summarises the results of a multi-stakeholder dialogue that has sought to provide inputs to an answer on the following central question: Do companies have different roles and responsibilities when operating in weak governance zones, where governments are not working well, than in healthier investment environments?

In late 2004, the Investment Committee discussed a Secretariat background paper that identifies some of the ethical challenges posed by investments in weak governance zones. This paper focused on the challenges about which the OECD integrity instruments can shed light. The Committee then held three consultations organised around the issues identified in the paper: 1) an expert consultation held in Paris in December 2004; 2) a web-based expert consultation held in early 2005<sup>17</sup>; and 3) a conference in Addis Ababa attended by over 90 participants and co-sponsored by the OECD, UN Global Compact, NEPAD and Transparency International<sup>18</sup>. This Annex reports on the results of these consultations.

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<sup>16</sup> Estimates made by the UK Department of International Development. See *Why we need to work more effectively with fragile states*, January 2005, page 5.

<sup>17</sup> The contributions to the web-based consultation are compiled in DAF/INV/RD(2005)3 and can be found at: [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment). Then click under What’s new.

<sup>18</sup> Information about this conference, including contributions by participants, can be found at [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment) (then click under What’s new) and at <http://www.unglobalcompact.org/content/NewsDocs/addis.htm>

## Summary of consultations

### *General issues*

*Human dimension of the problem.* Some participants recalled the human suffering caused by the institutional problems being addressed in the consultations -- this discussion is not a dry policy debate. One NGO participant recalls that “what is at stake is not simply the credibility or profitability of OECD investment, but the physical, social and economic well-being of millions of people throughout the developing world<sup>19</sup>.”

*Primacy of the roles of host country actors.* The primacy of the roles of host country actors in reforming their own institutions was stressed both in the background paper and in the consultations. Indications are that host country actors – even in weak governance zones – are starting to assume these roles. Angola has taken the first steps toward enhancing revenue transparency, Nigeria has moved forward on fiscal reform and, in the DRC, an evaluation of SOE performance recently led to the suspension of six Ministers. At the Addis Ababa conference, one business representative noted the emergence of new African leadership whose goal is to leave a lasting political legacy. This augurs well for reform. Home country and international organisations can play important -- but only supporting -- roles in assisting weak governance host countries to get on the path to reform.

*Missing issues.* A number of participants remarked that, while the Investment Committee project addresses some highly relevant concerns in the anti-corruption and governance areas, it leaves aside many important issues<sup>20</sup>. Missing issues mentioned by consultation participants are: human rights and humanitarian law, handling of extortion and relations with rebel authorities and other belligerents, conducting business in the midst of war crimes, supply chain management, protection of workers’ rights, management of security forces and the possible role of investment embargoes.

*Rapid growth of initiatives in this area.* Many initiatives have been undertaken that, in various ways, help weak governance countries to find solutions to their problems. Initiatives cited by participants include: the Convention on Business Integrity in Nigeria; the OECD Development Assistance Committee’s Guidelines on Conflict, Peace and Development Cooperation; Extractive Industry Transparency Initiative (EITI); Global Reporting Initiative; International Budget Project; International Association of Oil and Gas Producers’ Guidelines on Reputational Due Diligence; Sarbanes Oxley; South Africa’s King II Report (a corporate governance code); Transparency International (TI) and Social Accountability International’s Business Principles for Countering Bribery; TI’s Integrity Pacts; the Voluntary Principles on Security and Human Rights; the United Nations Convention against Corruption; the UN Global Compact Conflict Guidelines; and the Wolfsberg Principles.

*These initiatives draw on the distinctive competences of many organisations.* The rapid growth of initiatives to help improve the situation in weak governance zones – sponsored by home and host governments, international organisations, businesses and business associations, NGOs and trade unions – suggests that a broad, global effort to address these issues has developed. Organisations’ contributions reflect their distinctive competences and have given rise to a framework that, while far from complete,

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<sup>19</sup> Fourth paragraph of FAFO’s written contribution to consultation questionnaire. The same point was also made by Transparency International at the December 2004 consultation.

<sup>20</sup> See, for example, submissions from BIAC, International Alert, Rights and Accountability in Development and the All Party Parliamentary Group on the Great Lakes Region.

nevertheless represents progress. Thus, while the consultations underscored the daunting nature of the challenges posed by weak governance zones, they also conveyed a hopeful message that many people are working in many different ways to help these countries in their quest for reform and for a higher quality of life. These diverse initiatives have been undertaken by home and host governments, business, trade unions and NGOs operating in both adhering and non-adhering countries. With this project, the OECD Investment Committee's aims to draw on the OECD's established strengths in the area of integrity and governance instruments so as to complement and reinforce other initiatives.

*Strategic partnerships.* Many of these initiatives are the fruit of collective action and strategic partnership was one of the major themes of the consultations<sup>21</sup>. These partnerships have involved and will continue to involve business, host and home governments, NGOs, trade unions and international organisations.

### ***Nature and allocation of public sector and business responsibilities***

*Mixing politics and economics.* Mixing politics and economics is, according to participants, a feature of weak governance zones – one contribution notes that “the political system in these environments is often closely intermingled with the economic framework”<sup>22</sup>. This intermingling is unhealthy in weak governance zones in the sense that it creates a situation in which neither the public sector nor the business sector does its job well. Participants reported that foreign investors (like their domestic counterparts) in weak governance zones tend to already be deeply involved in host country politics – they need to nurture political contacts to protect their investments and can also to use them to gain competitive advantage. This makes it difficult for companies operating in these countries to maintain credibly an apolitical, “strictly business” stance<sup>23</sup>. Given this situation, companies need to distinguish between appropriate and inappropriate political engagement.

*Constructive political involvement.* Participants underscored the double-edged position that companies find themselves in with respect to political involvement – for while consultation participants were concerned about excessive mixing of politics and economics, most them also felt that companies have a role in supporting reform in weak governance host societies. For example, all written responses to the question as to whether companies have a role in supporting reform are either an emphatic or a (sometimes highly) qualified “yes”. Some participants emphasised the particular importance of this role in weak governance zones, where multinational enterprises are not only relatively powerful (compared with most host country actors), but also better informed about international “rules and standards”<sup>24</sup>. On the other hand, participants often expressed concern that “even the most well-meaning initiatives by companies to support host state reform will carry the risk of inappropriate involvement in host country

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<sup>21</sup> See, for example, Soji Apampa's (SAP, Nigeria) answer to consultation questionnaire and his presentation to the Addis Ababa conference ([www.oecd.org/daf/investment](http://www.oecd.org/daf/investment)).

<sup>22</sup> Paragraph 2 of Edward Nathan Corporate Law Advisors' answer to question 1. The unhealthy intermingling of politics and business was described by numerous participants at the Addis Ababa conference.

<sup>23</sup> See for example, the junior mining company's contribution on standards of political involvement and use of political relationships to gain competitive advantage, page 1 and 2. This point was also made in the background paper for the consultations.

<sup>24</sup> Contribution of Asif Saeed, Government College University, Lahore Pakistan, page 1.

politics or the appearance of misconduct...<sup>25</sup>.” Participants identified a number of characteristics of constructive political engagement:

- Subject and purpose of involvement -- appropriate involvement promotes better participatory processes and a competitive market environment; strengthens reputational agents such as accounting, audit and legal professionals and civil society; promotes the integrity-enhancing institutions (e.g. business associations and chambers of commerce<sup>26</sup>);
- Good faith test – “the test involves a company ensuring that its intention in the particular context is candid, *bona fide* and for the best interest of the host community and country in the long run<sup>27</sup>;
- Competence – the company is well informed about the local political situation and has taken steps to ensure that it understands the national, regional, local and ethnic dimensions of host country politics<sup>28</sup>.
- Partnership – Most contributions stressed the importance of partnership – for example, an NGO asks companies to engage in “multi-stakeholder dialogue ... which will enable different actors to pool their core competencies ... and will also facilitate the development of stronger inter-relationships, co-ordination and transparency<sup>29</sup>.” Partnerships with international organisations and with local embassies were also frequently mentioned.

*No double standard.* Participants noted that it is both possible and necessary to respect international standards (e.g. on human rights, anti-bribery and avoidance of conflict of interest) in weak governance zones. They stressed that it is in weak governance zones that these standards become doubly relevant and useful – they help frame and provide boundaries to corporate responsibilities in countries where the political and legal framework is not providing reliable guidance for companies. One business participant states that “... not only is adherence to international standards sufficient, but clear internal guidelines and support should be given to management and staff deployed in such zones.... It is essential for companies to ensure that their own standards of operation are emphatically consistent – whatever the state of governance... in the regions in which they conduct business<sup>30</sup>”.

*Greater due diligence and managerial care.* Participants considered that, while the same standards of business conduct apply in all the countries of the world, observing these standards requires more extensive due diligence and greater managerial care in weak governance zones. There is a need for a context-sensitive “heightened degree of caution” according to one mining company official. The International Association of Oil and Gas Producers’ contribution notes that “companies that conduct due

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<sup>25</sup> Karen Ballentine, FAFO written contribution on question 2, second bullet point, page 2. Also Edward Nathan Corporate Law Advisers, page 3.

<sup>26</sup> Edward Nathan Corporate Law Advisers page 2. See also FAFO response, page 2 on building local competence, building ‘remedial technical assistance into Production Sharing Agreements’ and strengthening civil society organisations.

<sup>27</sup> Edward Nathan Corporate Law Advisers page 3, answers to second bullet of question 2.

<sup>28</sup> Edward Nathan Corporate Law Advisers page 3, answers to second bullet of question 2.

<sup>29</sup> International Alert’s contribution, page 3. Question 10.

<sup>30</sup> Edward Nathan Corporate Law Advisers page 2.

diligence will be better positioned to identify areas of risk and reduce the likelihood of reputation damage” and calls attention to its *Guidelines on Reputational Due Diligence*. Thus, at one level, the consultation participants appear to have answered the central question addressed to them: “Do companies have different roles and responsibilities when operating in weak governance zones than in healthier investment environments?” Broadly described, their answer appears to be: “Companies’ responsibilities are largely the same in weak governance zones as they are in other investment environments. What is different is the amount of due diligence and managerial care needed to ensure that these standards are adhered to – this has to be much greater in weak governance zones.”

*Bearing witness.* Consultation participants generally supported the view that companies have some kind of responsibility to “report wrongdoing to the appropriate authorities<sup>31</sup>” and provided indications that companies are already doing this<sup>32</sup>. One business executive at the December consultations noted that, in his company’s experience, when companies do speak out, they are often ignored – by host and home governments and by international organisations. Participants also stressed the obvious risks of whistle-blowing – losing business, “getting shot” and expropriation. Some doubted that companies could play an important role in this respect because of the gravity of the threats against them. One NGO suggested that there is a need for a “witness protection programme” for businesses and that, if companies felt they could not “report serious wrongdoing to an international body and/or host country institution without suffering negative consequences,” then this was a reason not to invest in that host country<sup>33</sup>. Noting that “unilateral action under such conditions is usually suicidal<sup>34</sup>”, participants highlighted the value of collective action<sup>35</sup> – e.g. operating through business associations or in partnership with international organisations<sup>36</sup> – in facilitating effective whistle-blowing. The useful role played by some OECD embassies in channelling such information was acknowledged<sup>37</sup>.

*Small- and medium-sized enterprises (SMEs).* Participants (including SMEs themselves<sup>38</sup>) generally held that “the same minimum standards apply to all companies, large or small. Whilst it may be unreasonable to expect small companies to adopt the same levels of reporting as large and listed companies, in weak governance countries in particular any lowering of the requirements on integrity and transparency will encourage irresponsible elements<sup>39</sup>.” Understandably, the SME contributions tended to

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<sup>31</sup> De Beers contribution, page 3. DeBeers stressed that illegal activity needs to be reported.

<sup>32</sup> Canadian junior mining company’s contribution. Groupe Forrest contribution, page 10.

<sup>33</sup> Rights and Accountability in Development, page 3.

<sup>34</sup> Soji Apampa (SAP Nigeria) contribution, page 2.

<sup>35</sup> This theme – the fact that business has information that could be useful to anti-corruption practitioners, but that it is often difficult to use it – was also an raised by participants at the June 2003 Corporate Responsibility Roundtable (see summary of discussions published in the *2003 Annual Report on the OECD Guidelines for Multinational Enterprises*). Follow up on this Roundtable is being undertaken Joint Task Force on Bribe Solicitation.

<sup>36</sup> DeBeers stated that governments and international organisations have a comparative advantage in speaking out on matters of public sector management.

<sup>37</sup> Junior Mining Company contribution.

<sup>38</sup> At least 5 SMEs participated in the consultation events.

<sup>39</sup> De Beers contribution page 5.

stress the high standards to which they already adhere<sup>40</sup>. One NGO contributor stated that the real question was not so much whether international standards apply to SMEs, but how they can be made meaningful: “Quite clearly, due to their lesser visibility and, in the case of small unlisted companies, their imperviousness to shareholder accountability, these companies have fewer incentives to adopt best practices...<sup>41</sup>”. One SME noted that some listed SMEs face growing legal pressure for fuller disclosure (e.g. from Sarbanes-Oxley) and that complying with these demands is quite costly for them.<sup>42</sup>

*Know your business partners and clients.* Many participants underscored the importance of companies knowing their business partners and clients. According to the former Chairman of the Wolfsberg Group (speaking at the December 2004 consultation), “knowing your clients” is a core responsibility for banks. He advocated the use of the *Wolfsberg Principles* as a basis for designing bank procedures in this area. The International Association of Oil and Gas Producers’ *Guidelines on Reputational Due Diligence* help companies to design due diligence procedures and to “establish a framework for in-house programmes.” In particular, the *Guidelines* propose “red flags” (i.e. possible danger signals) that companies should research and take into account when deciding whether to conduct business with another company or an individual<sup>43</sup>. Thus, the consultations provided indications that business – mainly through business associations – is moving forward in this area.

### ***Management and reporting practices – maximising value with integrity***

*Enterprises should...*

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.*

*OECD Guidelines for Multinational Enterprises, Chapter 2. General Policies*

Weak governance zones confront companies with many decisions in areas over which they have only partial control, but they have almost complete control of their choice of corporate governance arrangements. A company’s management and reporting practices are probably the best indicator of the importance that it attaches to facing various ethical and business challenges. One of the questions considered by consultation participants was whether or not companies operating in weak governance zones should use basic business tools – boards, internal management systems, external audit and

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<sup>40</sup> See, for example, the written contributions by Groupe Forrest and the junior mining company.

<sup>41</sup> FAFO contribution, page 5. Soji Apampa’s contribution (page 3) makes the same point and notes the role of regulation and stock market listing requirements in helping to “level the playing field”.

<sup>42</sup> Canadian junior mining company, pages 4 and 5.

<sup>43</sup> According to the International Oil and Gas Producers submission, these include: “Public officials holding shares or other interests in the company in his own right; an officer, senior executive or key employee of the company has an interest in another company that might be considered to be a competitor; there are uncertainties in the business or financial references; payment instructions requested by the company include split payments, payments to an apparently unrelated third party or to a bank account in an offshore tax regime; and the company asks that the identify of the directors, owners or employees not be disclosed.”

disclosure -- to manage the serious risks (human rights, corruption, etc.) encountered in these difficult business environments.

Participants generally answer “yes” to this question. For example, a junior mining company, states that “the greater level of independence within the Board..., more rigour, responsibility and independence for audit committees, ... increased independent auditor responsibilities... will be helpful in better managing our roles in difficult environments<sup>44</sup>”. Consultation participants stressed the need to undertake more extensive due diligence and use greater managerial care in supporting employees and business partners “on the ground” in weak governance countries<sup>45</sup> -- propriety in this area is “is one aspect in which there is no room for flexibility”<sup>46</sup>. One NGO notes that companies’ behaviour in these areas is central to how they will be viewed by surrounding societies – she states “companies are only expected to act in their ‘sphere of influence’. Companies will be assessed on the way in which they negotiate deals; the transparency of their transactions; their relations with local communities not merely in providing ‘services’ but whether they disclose relevant information about their activities, the composition of their boards, their ultimate beneficial owners and the scale and duration of their investment.”<sup>47</sup>

### ***Doing Business with State-Owned Enterprises (SOEs)***

*Enterprises should take fully into account established policies in the countries in which they operate ... In this regard, enterprises should:*

1. *Contribute to economic, social and environmental progress with a view to achieving sustainable development ...*
3. *Encourage local capacity building through close co-operation with the local community, including business interests....*
6. *Support and uphold good corporate governance principles and develop and apply good corporate governance practices.*

*OECD Guidelines for Multinational Enterprises, Chapter 2. General Policies*

The Addis Ababa conference provided an opportunity to survey country experiences with SOEs (countries covered were the DRC, Ethiopia, Namibia, Nigeria, Senegal, South Africa and Tanzania). The SOE sector also featured prominently in more general discussions of public and private governance and of corporate responsibility at the conference. The sector was described by conference participants as “obstacle to development” and as a “liability to the African economy”. Thus, the Addis Ababa conference underscored the significance that African actors attach to the SOE sector, both as a target for promoting corporate responsibility and as an integrity issue for private companies conducting business with it.

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<sup>44</sup> See junior mining company contribution, page 4. This statement is made in relation to governance changes imposed by “Sarbanes-Oxley-type initiatives”.

<sup>45</sup> See contributions from DeBeers, International Association of Oil and Gas Producers and Edward Nathan Corporate Law Advisers (page 2).

<sup>46</sup> Contribution of Asif Saeed, Government College University, Lahore Pakistan, page 4, question 7.

<sup>47</sup> Contribution of Rights and Accountability in Development. Page 2. See also contributions from Asif Saeed, DeBeers, the junior mining company, Edward Nathan Corporate Law Advisers, International Alert.

Although the discussion of African experiences with SOEs showed some differences among countries (e.g. in the degree of privatisation achieved to date), the overall picture painted at Addis Ababa was one of serious, but strikingly similar problems (including inefficiency and corruption, especially political corruption). SOE governance problems mentioned by conference participants include:

- *Regulator and ownership roles of the state not separated.* SOE relations with Ministries and top political actors are generally close. This gives rise to conflicts of interest in the formulation of a number of policies, including regulation, competition and procurement. Many African SOEs enjoy monopoly powers in their sectors.
- *Ineffective Boards of Directors.* Boards of directors often do not have *de facto* rights to exercise their responsibility to set the strategic direction of the company and to ensure that management acts in the best interest of the shareholders (for example, real control may reside outside the Board with political parties or top government officials). Board appointments are made on the basis of political connections, not business competence. SOE Board nominations can be a channel for political patronage and Boards are often beset with conflicts of interest.
- *Slack Internal Management Systems and Other Controls.* SOEs' internal control systems are often defective or non-existent. SOEs are frequently "excluded from the Auditor General's purview"<sup>48</sup>, and sometimes hire their own auditors, who do not follow international audit standards and are subject to conflicts of interest.
- *Low standards of disclosure.* One participant at the conference noted that SOEs should adhere to higher transparency standards than privately owned companies because SOEs act in trust for the public. In reality, the average standard of disclosure observed by SOEs in most countries surveyed is low.

Thus, overall, the Addis Ababa conference confirmed the relevance of the focus placed by the background report on the way OECD-based companies structure their business transactions with state-owned enterprises. The consultations revealed no general view that companies should avoid all business relations with weak governance SOEs; rather the tenor of the conversation was that companies should give carefully monitor the structure of individual transactions; should be particularly diligent in monitoring relations with problematic SOEs; and should promote improved SOE governance arrangements. The consultations showed clearly that companies themselves recognise that how they manage their relations with weak governance SOEs is an important issue and that they are willing to try to promote better governance with these business partners (as recommendation II.6 of the OECD Guidelines for Multinational Enterprises urges them to do). At the same time, companies wished to avoid giving the impression that they can assume full responsibility -- one business contribution, while expressing a willingness to engage on this issue, stresses that the "responsibility for proper governance of SOEs lies with governments, not industry"<sup>49</sup>.

The consultations indicated, in particular, that there is a role for OECD-based companies who sit on boards of partially-privatised SOEs to protect the rights of "other shareholders", notably those of host

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<sup>48</sup> Participant in the parallel session on state-owned enterprises at the Addis Ababa conference.

<sup>49</sup> De Beers contribution, page 5.

country citizens who are (or should be) the ultimate owners of their SOEs<sup>50</sup>. FAFO's contribution states that larger multinational enterprises sitting on SOE Boards "have a legitimate shareholder right to demand accountability from these companies and the leverage to make a difference, something that local citizens in weak governance zones do not have<sup>51</sup>."

### ***Dealing with the authorities of weak fiscal systems***

*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 arrangements to the arm's length principle.*

#### *OECD Guidelines for Multinational Enterprises, Chapter 10. Taxation*

Fiscal policy determines who gets what out of government spending and who has to pay for it. Many societies have developed elaborate systems for meeting their collective needs and implementing their models of social justice. These policies have created their own distinctive rent seeking opportunities and have contributed to fiscal imbalances in many countries, but they are also widely recognised to have helped create prosperous, just and peaceful societies. Spending and taxation programmes need effective political oversight to ensure that money is well spent and to prevent abuses. As stated by the contribution from the Institute for Democracy in South Africa (IDSA): "In a democracy, citizens have a right to know what public money is being spent on, and what decisions their elected representatives make on their behalf. It is only with this knowledge that elected officials can be held accountable for their budget planning, allocations and implementation."

The OECD Guidelines are one of the few major corporate responsibility instruments that recognise the importance of the business responsibilities as taxpayers – Guidelines Chapter 10 deals with this issue. Consultation participants generally accepted the importance of these responsibilities, but had mixed views about the willingness and ability of OECD-based companies to play a major role in supporting fiscal reform. Generally, the importance of partnership was stressed: "[companies] should not be unilateral proponents of reform but must be willing to get involved in a coalition of interests seeking reform<sup>52</sup>." As one business executive states, companies can "use best endeavours to encourage [fiscal] transparency. Business can help to create a positive environment and influence such reform – and it is in its interest to do so – but is a guest in the host country and cannot dictate. Again, the EITI is leading the way on this issue<sup>53</sup>." In general, the effective and useful role played by the EITI in this area was acknowledged by many participants in all the consultation processes. The OECD Investment Committee

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<sup>50</sup> See, for example, Asif Saeed, DeBeers, Edward Nathan Corporate Law Advisers, FAFO, International Alert and the junior mining company's answers to Question 10.

<sup>51</sup> FAFO contribution, page 7.

<sup>52</sup> Contribution of Soji Apampa, SAP Nigeria, page 5. answer to question 11.

<sup>53</sup> DeBeer contribution, page 6.

has twice associated itself with the EITI<sup>54</sup> and considers that the current project reinforces and complements the EITI.

IDSA states that companies, in partnership with civil society and international organisations, can make a significant contribution to improving budget systems. Companies are often important revenue sources for weak governance fiscal systems and are potentially a powerful force for promoting budget reform. IDSA's contribution proposes a number of ways that non-governmental actors (including companies) might be able to contribute to improving budget systems. These include helping to build a culture of accountability and advocating more public access to budget decision-making.

### *Bribery of Public Officials*

Chapter VI of the OECD Guidelines – Combating Bribery -- is the Organisation's main direct communication to business on the subject of combating bribery to obtain or retain business or other improper advantage<sup>55</sup>. As such, it is an essential complement to the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions and to the Revised Recommendation on Combating Bribery in International Business Transactions. An NGO consultation participant notes the particular relevance of this chapter for investors in weak governance zones and “the fact that the OECD [member countries] also have legislation on this issue is of particular significance. The link between bribery and corruption and poor development is well-documented – as is the cycle of bribery, extortion and violent conflict. Paying bribes directly implicates companies in these dynamics...<sup>56</sup>”.

Participants emphasised the need for a “zero tolerance” policy and for “tone from the top”. Business representatives working in African subsidiaries of OECD-based multinational enterprises described incidents where they were forced to assume very high costs in saying no to bribe solicitors (for examples, a Nigerian executive abandoned \$250,000 of production inputs blocked in a Nigerian port rather than pay a bribe to have it released). They noted the importance of support from headquarters for resisting solicitation<sup>57</sup>. In this sense, the consultations reinforce a finding of the Phase II reviews of signatories' implementation of enabling legislation under the OECD Convention. These have shown that, if support from headquarters is to be effective, it requires a clear chain for reporting corruption (sometimes through a hotline) as well as whistleblower protection. Such measures should be set forth in company guidelines and supported with regular awareness and training activities.

An NGO and a trade union participant addressed a word of caution to international business – prosecutions and investigations are underway and are becoming more common among the 36 countries that have signed the OECD Convention<sup>58</sup>. In addition, since the Convention came into force there have

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<sup>54</sup> A formal statement was made by the Investment Committee Chair at its June 17, 2003 meeting of the EITI and a statement by the Chair was also submitted to the March 17, 2005 meeting (DAF/INV/RD(2005)6).

<sup>55</sup> Chapter 6 was added to the Guidelines at the June 2000 Review. The text of the chapter and its commentary was developed by the Working Group on Bribery in conjunction with the Investment Committee.

<sup>56</sup> International Alert contribution, page 7.

<sup>57</sup> Two business executives speaking at the Addis Ababa conference.

<sup>58</sup> Transparency International and UNICORN – Global Unions Anti-Corruption Network, speaking at the Addis Ababa conference.

been several convictions – for example, in Canada, Korea, Mexico, Norway, Sweden (under appeal) and the United States. The Addis Ababa conference showed that – beyond the OECD Convention -- the anti-corruption framework is being built up at the international, regional and national levels. Companies engaging in bribery now run greater risks.

Chapter 6 of the OECD Guidelines provides guidance on the appropriate use of agents. The OECD Convention requires signatories to criminalise bribery of foreign officials “whether directly or through intermediaries” – thus, bribery through agents is clearly covered by the Convention<sup>59</sup>. Current good practice suggests that companies should first ascertain if the use of an agent is really required. If it is, then companies need to handle their relationship with care *inter alia* by” 1) engaging in due diligence in the selection and appointment of the agent; 2) ensuring that the amount paid to the agent is reasonable and that it corresponds to a real service; and 3) establishing a clear contractual relationship in which the agent is informed of and accepts the policies of the company.

The Expert Panel Report on the DRC revealed a case where a company found that one of its agents had bribed public officials – its letter to the Panel<sup>60</sup> states that the company severed its relations with the agent as soon as it became aware of the problem. Participants were asked whether this measure is sufficient, or whether other remedial activities should be undertaken by a company confronted with such a situation. Many noted the need to change the way the company selects and manages agents. In addition, consultation participants proposed a number of other measures that might be undertaken in the event that an agent is found to have engaged in bribery. These include: 1) reporting the agent to the appropriate authorities<sup>61</sup>; 2) reduction in the discretionary powers of agents to release payments<sup>62</sup>; 3) publication of a press release explaining the company’s decision to sever its ties with the agent (but also take action to protect company against potential backlash)<sup>63</sup>; 4) and communication with other stakeholders.<sup>64</sup>

### ***Responsibilities of home governments and international organisations***

The responsibilities of home governments and international organisations identified by consultation participants were of three types.

- First, they are responsible for supporting integrity in weak governance zones via the financial support they provide for businesses operating in these zones (e.g. via overseas development assistance and export credit and investment guarantee schemes). Although the message was mixed, consultation participants sometimes questioned these organisations’ willingness and ability to become deeply involved in the fight against corruption in these areas. The need for Official

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<sup>59</sup> In addition, the agent is liable under the Convention for aiding and abetting the bribery transaction, where he or she has the requisite intent.

<sup>60</sup> See Reaction number 4 (page 13) in the Addendum to the report of the UN Panel of Experts to United Nations Security Council on the Illegal Exploitation of Natural Resources in the Democratic Republic of Congo. S/2002/1146/Add.1. Distributed 20 June 2003.

<sup>61</sup> Groupe Forrest contribution, page 10.

<sup>62</sup> Asif Saeed contribution, page 8.

<sup>63</sup> Soji Apampa of SAP Nigeria, page 5.

<sup>64</sup> Edward Nathan Corporate Advisers, page 18.

Development Assistance (ODA) programmes to become more sophisticated and rigorous in dealing with corruption in all its forms was noted by many consultation participants, particularly in Addis Ababa. One consultation participant jokingly advocated the creation of a Kimberly Process for tracking ODA funds. A keynote speaker at the conference described the arsenal of “Weapons of Mass Diversion” that is arrayed against African economies -- home governments need to increase the sophistication of their policies, controls and reporting as they face this arsenal.

- Second, many participants looked to home governments and international organisations to provide guidance and assistance to companies in the fight against corruption.
- Third, home governments and, especially, international organisations were viewed as having a comparative advantage (relative to companies) in promoting institutional reform in weak governance host countries and were urged to continue to play this role. However, a keynote speaker at the Addis Ababa conference noted that “Northern” interventions in “Southern” reform processes sometimes had unintended and undesirable consequences and that, in undertaking reform, there can be no substitute for genuine political commitment in the host country.

## Summing up

The themes and views that emerged from the consultations may be summarised as follows:

- *No double standard.* Consultation participants were of the view that companies have the same responsibilities when operating in weak governance zones as in healthier investment environments – they are expected to comply with law and with other widely held international standards (e.g. on human rights, management of security forces, protection of local populations, corporate governance). While business responsibilities are the same everywhere, what is different in weak governance host countries is: 1) the amount of due diligence and managerial care that has to be taken to ensure that these standards are adhered to; and 2) the effort companies need to make to ensure that they can be held accountable for their performance in these weak governance zones (where such transparency-enhancing institutions as business associations, legal and accounting institutions, free press and civil society do not function well).
- *Political involvement and the business community.* The consultations brought into relief the extreme importance of political involvement as an ethics issue for investors in weak governance zones – investors' cultivation of political relations is a necessary condition for survival (e.g. to protect their investments or to ward off competitors). The difficult (and still open) question is: what kind of political involvement is acceptable under these circumstances? How can companies and others tell the difference between constructive political involvement and inappropriate involvement? The consultations provided some interesting answers to these questions (e.g. constructive involvement is transparent and done in partnership with other civil society actors). In general, though, OECD and non-OECD societies will need to continue dialogue on this important question.
- *Home governments and international organisations* can and do play a role in helping weak governance countries develop healthier institutions. The importance of the EITI and the positive roles of home country embassies were frequently mentioned during the consultations. More generally, though, the consultations highlighted the need for home governments and international organisations to become more sophisticated in and more committed to ensuring that their operations do not contribute, directly or indirectly, to corruption. In addition, it was felt that both could do more to assist companies in dealing with the many difficult challenges they face as they try to conduct business with integrity in weak governance zones. This assistance could include providing advice to companies and helping them channel information about wrongdoing to authorities who are in a position to make use of it.