The OECD Guidelines and Socially Responsible Investment

Introduction

The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible corporate conduct. They cover a range of issues, including labour and human rights, bribery and corruption, the environment and information disclosure. These guidelines can be a useful tool for the socially responsible investment (SRI) community because of their broad coverage of corporate social responsibility (CSR) issues, commitment from governments, and support from business, labour and some civil society groups. OECD Watch, a network of 70 international NGOs working on corporate accountability, and Eurosif (the European Social Investment Forum) have partnered to develop a series of fact sheets to help investors and SRI agencies better understand the scope of the OECD Guidelines and facilitate their use.

Download the entire fact sheet series at www.oecdwatch.org or www.eurosif.org.

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Assessing Adherence to the OECD Guidelines' Supply Chain Provision

Summary

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises that cover a broad range of corporate activities. This fact sheet, the fourth in a series of four, focuses on the Guidelines' provision on supply chain responsibility. Regardless of sector, following standards of good practice throughout supply chains is recognised to be one of the most important and challenging issues for multinational corporations that are serious about CSR. Assessing such efforts is equally challenging for the SRI community. This fact sheet explains the content and relevance of the OECD Guidelines provision on supply chains to the assessment of corporate practices, proposing a more comprehensive understanding of supply chain responsibility. Key questions are presented to assist SRI rating agencies and analysts in evaluating companies' behaviour in relation to the supply chain provision recommendation.

The OECD Guidelines' Supply Chain Provision

With an ever more globalised economy, it is increasingly common for businesses in many sectors to outsource "risky" activities. In addition, multinational companies strongly influence business practices within their supply chains through the contract terms that they negotiate with or impose on their suppliers. After much debate between business representatives and NGOs who had opposing views on the matter, OECD member states recognised the need to include supply chains within the scope of the OECD Guidelines.

Therefore since 2000 the OECD Guidelines' include a provision (located in

OECD Commentary on Supply Chain Provision

- There are practical limitations to the ability of enterprises to influence the conduct of their business partners.
- The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partner, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its supplier or other business partners.
- The influence enterprises may have on their supplier or business partners is normally restricted to the category of products or services they are sourcing.
- The scope for influencing business partner and the supply chain is greater in some instances than in others.
- Established or direct business relationships are the major object of this recommendation.

chapter 2, "General Policies") on the responsibility that companies have for upholding standards within their supply chains. The provision states that enterprises should "encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines."

In addition to the text of the provision, which, being the result of a compromise is quite vague, there is a "commentary" set out by the OECD to help interpret the provision [see box left].

Understanding Supply Chains and Corporate Responsibility

Supply chains – those sequences of steps that, for example, bring raw materials, finished goods, information, and finances from supplier to manufacturer to trading houses to wholesaler to retailer to consumer – are understandably complex and diverse processes, shaped by the sector in which they are based. These flows, within and between companies, are also quite dynamic and likely to vary as the reality of supply chains are constantly changing (for instance due to developments in technology, quality assurance and pricing).

The garment and apparel sector, for example, is characterised by supply chains that are frequently managed through "arms length" relationships and extensive sub-contracting. Long-term contracts between suppliers and global brands and major retailers are less common. By comparison, capital intensive industries, such as the aluminium sector, are recognised as being vertically integrated with long-term contracts in place.

The diversity of supply chains should be taken into account when developing criteria to assess business practices. It is therefore important to make use of not only general principles for supply chain responsibility valid for all sectors, but also more specific criteria to be determined for each sector grouping and indeed very specific indicators for individual sectors.

Key Supply Chain Information

The following are selected examples of questions to be used to gather information on a company's supply chain. Note that this is no substitute for a thorough mapping process, informed by knowledge of the sector in which the company operates.

- Has the company mapped its entire supply chain? Are suppliers' details publicly disclosed or available upon request?
- How many suppliers does the company have? How many of them are direct suppliers (i.e., first tier)?
- Is the company in direct contact with its suppliers or does the company use intermediaries, such as trading houses?
- Where are suppliers located? Does the company's supply chain, for example, include activities in countries where there are issues of workers' rights or environmental standards violations?
- Who is the "chain governor"? Does the company, for example, act as a "bottleneck" that many suppliers have to work through to access markets? Or are there suppliers, on the contrary, more powerful and larger than the company?
- How "critical" is each supplier to the company? Is it the only or key supplier or one of many?
- What percentage of a supplier's capacity is taken up by production/service delivery to the company?
- How long has the company had a relationship with each business within its supply chain? A short relationship does not exempt a company from any responsibilities, however the longer the relationship the greater the sphere of influence.
- Does the company have licensing arrangements to source goods and services?

The Supply Chain Provision in Practice - Narrowed Scope of Applicability

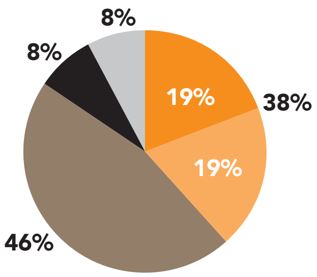
Interpretation has remained an ongoing point of debate and in 2003 the OECD's Committee on International Investment and Multinational Enterprises (CIME), now known as the Investment Committee, issued a statement indicating that the Guidelines apply only to investment, not trade, and that the applicability of the Guidelines rests on the presence of an "investment nexus", which would be assessed on a case-by-case basis. Not all of the National Contact Points (NCPs) of OECD member states, who are mandated to follow up on charges of violations of the Guidelines, supported the change. Many have also found the distinction between a trade relationship and an investment relationship difficult to draw, and not representative of global business practice.

NGOs and unions have voiced concerns that the 2003 clarification by CIME resulted in a weakening of the Guidelines. They noted that companies often do have considerable influence on their suppliers even when there is no ownership or direct investment relationship.

Varied Interpretations Based on Investment Nexus Criteria

A significant number of cases of alleged Guidelines violations have been closed or rejected because the NCP concluded that the evidence of an "investment nexus" was insufficient. NGOs and unions have raised concerns that rejecting these cases is unjust and has prevented the Guidelines from being used to their full potential. Furthermore, the ongoing lack of clarity around the "investment nexus" criteria has been used to shield companies from acting upon the supply chain provision of the Guidelines. For example, one NGO has pointed out that in complaints filed against companies operating in the Democratic Republic of Congo during wartime, activities originally defined as investment in the context of bilateral agreements were reclassified as trade by some NCPs to block a Guidelines' complaint.

As with other provisions contained within the Guidelines, a complaint that has been filed on the basis of an alleged violation of the supply chain provision should be noted by SRI agencies and analysts seeking to gather information on corporate practices. Details of the complaint and the manner in which the company responds, for example, provide insight into the company's practices and its possible associated risks. SRI analysts should keep in mind that when a complaint is rejected on the grounds of "no investment nexus" this does not mean that no violation of the Guidelines/law took place within the supply chain, merely that no "investment nexus" was established (which, again, is a criteria that varies in interpretation from NCP to NCP).



Cases of Alleged Supply Chain Provision Violations

Total number of cases filed by NGOs alleging violation of the OECD Supply Chain provision: 26.

- Number of these cases accepted: **10** (38%), • **5** (19%) of which have reached conclusion
- Number of these cases rejected: **12** (46%)
- Number of these cases withdrawn by NGOs: **2** (8%)
- Number of these cases still pending initial assessment by NCP: **2** (8%)

Source: OECD Watch's Case Database, October 2007

Examples of Alleged Violations of Supply Chain Responsibility

Sector	Description
Textile/Garment	In 2006 NGOs filed a complaint with the Dutch NCP charging that Indian suppliers of jeans company G-Star violated numerous workers' rights including freedom of association and collective bargaining and engaged in abusive and discriminatory practices.
Chemical	In 2004 NGOs filed a complaint with the German NCP alleging that Bayer used child labour in their supply chain in India.
Oil	In 2002 an NGO filed a complaint with the German NCP against the German Branch of Total Fina Elf charging the company with serious environmental damage as a result of practices within its pipeline operations in the Russian Federation.
Financial	In 2006 Norwegian and Argentinian NGOs filed a complaint with the Swedish and Norwegian NCPs against financial services group Nordea for their role in arranging possible financing for Finnish company Botnia's pulp mill project in Uruguay, where numerous rights/legal violations were alleged.

Source: OECD Watch's Case Alert Database

Criteria for Assessing Supply Chain Responsibility

The OECD Guidelines' supply chain provision is limited by the "investment nexus" criteria and therefore has limitations as a tool for assessing corporate responsibility across supply chains. OECD Watch's position is that supply chain responsibility should be considered regardless of whether it is an investment or trade relationship. OECD Watch recognises that in addition to the levels of influence a company exercises, for example when a direct investment relationship or shareholder investment relationship exists between companies, there are other levels of influence that exist and carry responsibilities. The following selected indicators ("key questions") have been formulated based on this more comprehensive understanding of supply chain responsibility. They are meant to help assess whether a company is engaged in a process to apply standards of good practice throughout its supply chain.

Key questions on policy:

- Does the company have a policy towards its suppliers with relation to the implementation and monitoring of standards of good practice, for example as outlined in the OECD Guidelines? [see fact sheet #2 for more information on the content of the Guidelines]
- Does the company apply these policies throughout its supply chain, i.e., beyond the first tier of suppliers?
- Does this policy include a process for information provision and/or training for suppliers on social and environmental issues?

Key questions on practice:

- If violations of CSR standards are reported, were they gross violations of human rights, workers rights, environmental standards?
- Are the reported violations incidental or structural problems? How often do violations take place? Continuously?
- Does the company work with its suppliers to develop and follow up on remediation plans to resolve outstanding issues?
- Is compliance to the CSR policy throughout the company's supply chain independently monitored and verified (for example, through participation in multi-stakeholder monitoring and verification schemes)?
- Do workers at all levels of the supply chain have access to a credible complaints mechanism to voice concerns about violations of standards of good practice?
- Does the CSR/compliance department influence decision making in other departments within the company which have an impact on standards of practice throughout the companies' supply chain? For example, are processes in place to ensure that purchasing practices (ex. prices paid to suppliers, schedules for delivery) do not compromise compliance with standards of good practice at suppliers' workplaces (ex. do prices paid allow for payment of a living wage to production workers? Do schedules necessitate excessive overtime?).
- Does the company cooperate with other companies to address issues of compliance with standards of good practice throughout the sector?

Additional tools available to facilitate the use of the OECD Guidelines:

Fact Sheet #1 in this series provides an introduction as to how the SRI community can make use of the OCED Guidelines.

Fact Sheet #2 outlines the relevant content of the 10 chapters of the OECD Guidelines for the SRI community, making links to key CSR indicators and presenting key questions for use in developing a profile of a company's practices.

Fact Sheet #3 goes into more depth on how the SRI community can make use of the OECD Guidelines' human rights provision.

This fact sheet series is a co-publication of OECD Watch and Eurosif.

OECD Watch is an international network of civil society organisations promoting corporate accountability. OECD Watch aims to inform the NGO community about policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. For more information visit www.oecdwatch.org.

Eurosif (The European Social Investment Forum) is a pan-European group whose mission is to address sustainability through financial markets. Member affiliates of the association include pension funds, financial service providers, academic institutes, research associations and NGOs. For more information visit www.eurosif.org.

OECD Watch and Eurosif are working together to promote dialogue on better integration of the OECD Guidelines into SRI practise. To share your feedback on this fact sheet or other issues related to the Guidelines and SRI please contact contact@eurosif.org and info@oecdwatch.org.

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