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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Making Use of the OECD Guidelines for Multinational Enterprises

Summary

This introductory fact sheet, the first in a series of four, explains how the SRI community can use the OECD Guidelines. It outlines how the OECD Guidelines fit into the larger CSR normative framework, vis-à-vis other internationally-agreed guidelines and instruments. The OECD Guidelines are a unique instrument in the CSR domain. On the one hand, they are voluntary for companies, yet they reflect endorsing governments' expectations and complaints can be submitted to "National Contact Points" (NCPs) for alleged breaches. Complaints alleging violations of the Guidelines, as well as corporate responses to these complaints, can serve as a useful indicator of concerns surrounding corporate practices.

The Origins of the OECD Guidelines

The Organisation for European Economic Cooperation (OEEC) was created after World War II to manage American and Canadian aid for Europe's reconstruction. In 1961, the OEEC became the Organisation for Economic Cooperation and Development (OECD). Its 30 member countries, who state that they share a commitment to democracy and the market economy, produce two thirds of the world's goods and services.

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

For more information on the OECD, see www.oecd.org.

The OECD Guidelines

The OECD Guidelines for Multinational Enterprises (referred to here as the OECD Guidelines), were adopted in 1976, at a time when there was growing concern about the negative impact of corporate practices, particularly on developing countries. The OECD Guidelines are part of a package that consisted of the Declaration on International Investment and Multinational Enterprises, for the facilitation of direct investment among OECD member countries, together with four additional instruments related to the Declaration.

The OECD Guidelines are non-binding recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines are signed by the 30 OECD participating countries and nine non-member countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia). This requires them to set up a National Contact Point (NCP) for the OECD Guidelines in each country.

The OECD Guidelines provide voluntary principles and standards for responsible business conduct in areas such as:

- Information disclosure
- Respect for labour standards
- Contribution to sustainable development
- Respect for human rights
- Supply chain responsibility
- Consumer interests
- Science and technology
- Competition
- Taxation
- Environment
- Bribery and corruption
- Whistleblower protection

This is set out in the ten "chapters" of the OECD Guidelines. The OECD Guidelines have application to all sectors of business and cover companies operating in or from OECD member states worldwide and addresses their supply chain responsibilities.

To read the OECD Guidelines and related documents, see http://www.oecd.org/document/28/0,2340,en_2649_201185_2397532_1_1_1_1,00.html.

The legal status of the OECD Guidelines

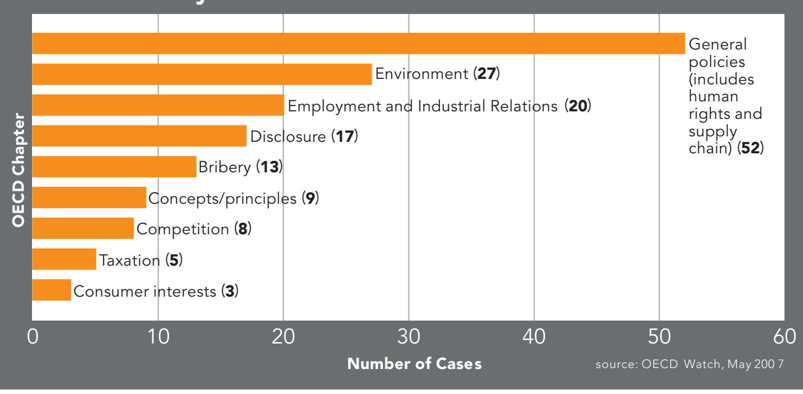
The OECD Guidelines are voluntary. There is no legal enforcement mechanism in relation to compliance with the standards and principles they outline, however the Guidelines do offer a procedure for raising complaints when standards are violated. Since 2000 both trade unions and non-governmental organisations (NGOs) can submit complaints of alleged breaches of the Guidelines to a National Contact Point (NCP) specified for each member country.

To date some 60 OECD complaints have been filed by NGOs. These cases have involved 60 multinational companies and nearly 50 additional companies that are their suppliers or business relations. Cases have involved companies operating in varied sectors, ranging from agriculture, textile and garments, and aviation to banking, mining, and the automotive industry. Some 80 cases have been filed by trade unions, some of which are overlapping with the NGO cases as they have been filed jointly.

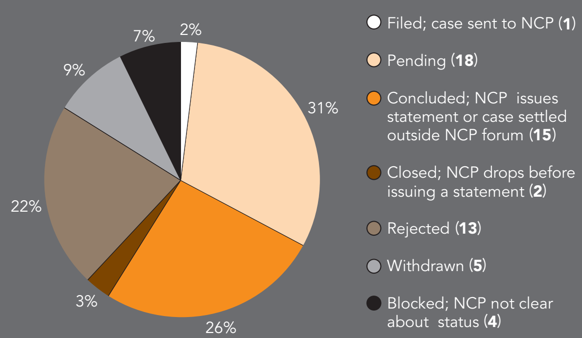
The NCPs report annually to the OECD Investment Committee (IC) on their activities in relation to the implementation of the OECD Guidelines.
It has been argued that the NCPs' follow-up activities on complaints (though quite varied from country to country) and the IC's activities can be viewed to some extent as implementation mechanisms for the Guidelines (see sidebar). Related to this is the suggestion that the OECD Guidelines have entered the sphere of application of international customary law. Customary international laws are those rules that result from a clear consensus among nations, demonstrated both by their conduct and a sense of obligation. Because the OECD Guidelines are signed by all OECD and adhering governments (a legally-binding act) and they have the above-mentioned implementation procedure/complaints process that is in use (as demonstrated by the growing number of cases being filed), it has been argued that this constitutes evidence of state practice, which has trans-

BREAKDOWN OF OECD GUIDELINES VIOLATION CASES PRESENTED BY NGOS

OECD Cases by Violations



OECD Cases by Status



formed some of the recommendations into customary international law.

It has also been suggested that given the broad acceptance of the OECD Guidelines they can and should be utilized as an alternative mechanism for the arbitration of international disputes.

It is noteworthy that a considerable number of complaints that charge companies with practices that violate the OECD Guidelines are disputes in which charges of violations of national law have also been filed. In a case involving Dutch jeans company G-star and its Indian supplier FFI the Guidelines violations were also presented as violations of India's domestic law (Indian Penal Code) and labour laws (Industrial Disputes Act, Industrial Employment Standing Order Act, Karnataka Factories Rules).

FFI also filed legal obstacles to prevent communications between local organisations (NGOs and labour union) with international rights organisations actively supporting them in the case. In this way the OECD Guidelines complaint flagged numerous legal issues. OECD complaints can also be an indication that more legal action will be taken in relation to the disputed issues.

Sometimes cases are also simultaneously being pursued in other fora, such as in the complaint filed against the Finnish company Botnia, with regard to the controversial construction of two paper mills on the Uruguayan and Argentinian border. While a complaint was pending with the Finnish NCP, the case was pursed at the International Court of Justice and the Inter-American Commission on Human Rights.

National Contact Points and the Complaints Procedure

National Contact Points (NCPs) are responsible for encouraging observance of the Guidelines in a national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The NCPs also deal with "specific instances", which is the term used for complaints. If the parties involved do not reach an agreement with regard to the specific instance, the NCP is required to issue a statement. However, NCPs do not monitor whether or not companies are following the Guidelines.

NCPs should respond to enquires about the Guidelines from other NCPs, the business community, employee organisations, NGOs, the public and governments from non-adhering countries. NCPs have the right to screen cases, that is decide if they are admissible or not through the initial assessment procedure. When a party raises a case, the NCP is required to make an initial assessment of whether the issue raised merits further examination and respond to the party. Generally, issues are dealt with by the NCP in whose country the issue has arisen. If there is no NCP in that country, cases can instead be brought before the NCP of the country where the company is headquartered. The institutional set up of the NCP differs from country to country: most NCPs consist of a single government department, while some consist of multiple government departments, some tripartite and some quadripartite.Therefore, there is an obvious risk that NCPs make different initial assessments. After completion of the initial assessment, the focus is on problem solving with help from experts, stakeholders, other NCPs and through mediation with the parties involved.

Any person or organisation may approach a National Contact Point to enquire about a matter related to the Guidelines. Because of the central role it plays, the effectiveness of the NCP is a crucial factor in determining how influential the Guidelines are in each national context.

For a list of NCPs see http://www.oecd.org/dataoecd/17/44/1900962.pdf.

How the SRI community can use the OECD Guidelines

The OECD Guidelines are relevant to the SRI community. The content areas of the Guidelines cover what are now widely recognised as the most important corporate social responsibility (CSR) issues. The endorsement of the OECD Guidelines by governments makes clear the expectations that states have with respect to corporate practices on these important issues. If a company endorses the Guidelines this is a significant policy commitment that the SRI community can take into consideration when assessing the company and use as a point of dialogue with the company.

The diverse SRI community, including financial institutions, fund managers, non-profit organisations, and financial services providers can integrate the OECD Guidelines into their SRI strategies. Some suggestions include:

- **Ethical exclusions/simple or norms-based screenings:**

Alleged violations of the OECD Guidelines can flag serious concerns regarding corporate practices.
The Norwegian Government Pension Fund, for example, uses information about OECD Guidelines complaints as part of their

in-depth screening of companies in their portfolio. Explaining how they use the cases in their screening process, a representative from the Secretariat of the Fund's Ethics Council said *"We look at the type of violation: how serious is it? Does it involve forced labour? Child labour? We look at the scale: how is it spread? Is it systematic or an isolated event? Is it ongoing? Is there a risk for this event to re-occur in the future?"* SRI agencies can use services such as OECD Watch's Case Alert System, information contained in OECD Watch's *Quarterly Case Update*, and other resources (see box 1) to learn about pending cases. The manner in which a company responds to allegations of wrong-doing is also important to consider when assessing corporate practice.

- **Positive screening:** In their in-house codes of conduct or other relevant policies, do companies make reference to the OECD Guidelines or outline the same minimum level of responsibility called for by the Guidelines? Is there a credible system in place for assessing compliance with these standards? Fact Sheet #2 provides a basic checklist of points covered by the Guidelines.

- **An engagement tool:** SRI practitioners can use the OECD Guidelines to engage in a dialogue with companies. The Guidelines provide a framework for raising questions about how multi-national companies address important CSR issues. Violations of the Guidelines point to areas where companies could improve their practices (see box 2).

BOX 1 OBTAINING INFORMATION ON OECD GUIDELINES COMPLAINTS FILED AGAINST COMPANIES

OECD Watch's **Quarterly Case Update** presents highlights of complaints filed by NGOs that allege violations of the OECD Guidelines. The Quarterly Case Update provides an overview of pending and recently concluded or rejected cases filed with NCPs by NGOs that OECD Watch has been informed of. Case information includes companies charged with violations, name of the complainant, the NCPs involved and the issues at stake. Downloadable at www.oecdwatch.org.

The OECD Watch **Case Alert System** sends SRI agencies and other interested groups an electronic alert each time OECD Watch is informed about a new OECD Guidelines complaint filed by NGOs at an NCP. To sign up for this service send a message to info@oecdwatch.org.

While OECD Watch tracks down and documents cases filed by NGOs, the **Trade Union Advisory Committee** to the OECD (TUAC), an international trade union organisation that has consultative status with the OECD and its various committees, periodically publishes a list of cases filed by trade unions. For the most recent list of cases filed by trade unions, please visit the TUAC website: www.tuac.org. The **OECD Investment Committee** also periodically publishes a list of cases, based on the information they receive from NCPs. See for example "OECD Guidelines for Multinational Enterprises: 2006 Annual Meeting of the National Contact Points", available at http:/www.oecd.org/dataoecd/23/33/37439 881.pdf.

BOX 2 CORPORATE RESPONSES TO OECD GUIDELINES COMPLAINTS

A complaint charging that a company has violated the OECD Guidelines can be not only an important indicator of past behaviour and serious ongoing concerns raised by stakeholders (such as workers, local communities, NGOs and trade unions) but also provides an opportunity to see how companies deal with problems. Companies' reactions to OECD complaints have been varied:

- When a complaint was filed with the Canadian NCP against Canadian First Quantum Mining, the Canadian co-owner of Mopani, a Zambian mining company, the company agreed to undertake positive action: to set aside land for farmers, drop levies on land and withdraw the immediate threat of evictions. However, in the long-term the company did not follow up and breached every aspect of the resolution.
- After a complaint was filed simultaneously with the UK and Australian NCPs against Global Solutions Limited (Australia) Pty. Ltd (GSL) – a wholly owned subsidiary of the UK parent company Global Solutions Limited – which runs Australia's immigration detention centres, they agreed to implement significant changes to ensure they operate under international human rights standards.
- In a case filed with the German NCP against Bayer, with regard to their Indian supplier's use of child labour, the company refused to attend a meeting with the NCP because they objected to the participation of one of the complainants.

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

Fact Sheet #2 in this series presents information to better understand the specific issues covered by the different standards and principles referred to in the OECD Guidelines.

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

Fact Sheet #4 examines in more detail how the SRI community can use the supply chain provision of the OECD Guidelines.

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 practices. 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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