

## **Basic Info Paper on OECD Guidelines**

### **Proposal to engage TI chapters in using the OECD Guidelines on Multinational Enterprises to enhance corporate anti-corruption standards**

#### **Summary**

The OECD Guidelines on multinational enterprises (MNEs) offer an opportunity for TI chapters to help raise anti-corruption standards in major companies. Such activities by chapters would be complementary to TI's work on the OECD Convention and its promotion of a set of Business Principles for Countering Bribery. The Guidelines are the only voluntary global corporate responsibility instrument that has been formally endorsed by governments. Under an OECD agreement from 2000, governments in 39 countries are obliged to set up national mechanisms to deal with complaints against companies under the Guidelines. These institutional mechanisms also guarantee non-governmental organizations a stakeholder role, for instance in raising specific complaints. There is significant potential for increasing awareness about the use of these mechanisms, especially as they represent a ready-made opportunity for chapters to take concrete action against corruption.

This paper, by TI Germany's working group on corporate accountability, makes the case for greater TI involvement worldwide in using the OECD Guidelines. The working group has since 2003 been in a global alliance of 51 NGOs that aims to hold MNEs to the standards in the Guidelines.

#### **What are the Guidelines?**

The guidelines, agreed in the OECD in their current form in 2000, established a set of voluntary social, labour, environmental, transparency and anti-corruption standards for OECD-based multinational enterprises operating anywhere in the world. It is obligatory for OECD member governments and nine other signatory countries to promote adherence to the guidelines by setting up and running a national complaints mechanism (a 'National Contact Point', NCP), allowing trade unions, NGOs and other stakeholders to raise concerns regarding specific alleged violations by MNEs based in any of the 39 signatory countries.

Two aspects make the Guidelines unique - and a potentially powerful lobbying tool for TI chapters - compared with other corporate social responsibility (CSR) codes. First, the Guidelines themselves are both broad ranging and detailed; this is especially true on corruption issues (see below). Second, while the Guidelines are voluntary - ie companies do not have to enforce them - the 39 signatory governments do have to deal with complaints and promote the content of the Guidelines. No other CSR codes have these institutionalised mechanisms.

#### **The Guidelines and corruption**

Section VI of the Guidelines, on "combating bribery" opens with the statement that "enterprises should not directly or indirectly offer, promise, give, or demand a bribe or undue advantage to obtain or retain business or other improper advantage".

In more detail, TI chapters, possibly working with other NGOs, could file complaints against companies based on any (or all) of the following issues.

According to section VI, "enterprises should"

- not pay bribes 'to public officials or the employees of business partners'; this includes not using 'subcontracts, purchase orders or consulting agreements' to channel such payments
- ensure 'remuneration of agents is appropriate'
- 'enhance transparency of activities in the fight against bribery'
- promote employee awareness of anti-bribery steps via training and information
- prevent 'off the books' secret accounts via management control systems
- not pay 'illegal contributions' to political parties or candidates

Corruption rarely happens in a political or economic vacuum, and is likely to be a cross-cutting issue that also plays a role in poor company behaviour regarding, for instance, labour and environmental standards in the other parts of the Guidelines. Indeed, the nine cases lodged since 2000 by NGOs that cited section VI violations have also cited other parts of the Guidelines.

## **The Guidelines as an important instrument for 'shaping globalisation'**

At their adoption in 2000 the then OECD secretary-general Donald Johnston said the Guidelines "will be an important instrument for shaping globalisation". "The integration of national economies into one global economy" not only allows companies to "reap profit" but should also "stimulate development and improve social conditions around the world", with the Guidelines playing a key role in this process, he said.

Since then, the Guidelines have been endorsed by G8 leaders at their summits in 2002 and 2003, and have received the backing of many business organisations. NCPs are now 'open for business' in ministries in Washington, London, Berlin and 36 other capitals.

And yet - despite evidence in the media and elsewhere that corruption in the corporate sector is a serious concern - they have been insufficiently used. As of December 2005, around 100 complaint cases have been lodged by NGOs and trade unions in a number of the NCPs.

There are various reasons for this. The NCPs have only been operational for a few years, awareness of them is low, and few stakeholders have the knowledge or skills to place a complaint.

In addition, the performance of the NCPs has been very patchy. Only a few have actively promoted the Guidelines with companies or the public, and there have been constant battles with unions and NGOs over what constitutes an admissible case.

For these reasons, OECD Watch, an alliance of 51 NGOs that monitors the Guidelines, argued in a 'five years on' report last year that the complaint mechanism was flawed, that the lack of potential sanctions on companies meant there was "little incentive for companies" to implement the Guidelines, and that a "radical overhaul" of the whole process was needed. Ideally, "legally binding..standards and corporate accountability frameworks" were required.

TI-Germany, as an OECD Watch member, shares these frustrations and agrees that regulation is the long term priority. It also believes, however, that the 'soft law' opportunities offered by the Guidelines should not be ignored. Not only is an - admittedly problematic - complaint mechanism in place, but the few cases that have been processed have also produced some positive results.

For instance, as a result of pressure based on complaints under the Guidelines on corruption and other issues:

- Rolls Royce, Airbus and BAE Systems were forced to comment on allegations concerning bribery and the use of agents in connection with the granting to them of export credit guarantees
- British companies operating in the Democratic Republic of Congo were obliged to confront bribery allegations raised by NGOs
- the Anglo-American mining giant improved compensation conditions for employees when it left a project in Zambia
- the Australian government shifted families away from foreigner detention centres run by a controversial private security company
- the German government urged Adidas to respond to specific criticisms of its policies by a clothing sector NGO

Indeed, as the OECD Watch report notes, in some instances "simply submitting a (case to the NCP) has resulted directly or indirectly in positive changes in the company's behaviour".

Concerns over the ways NCPs handle cases have also in the last year spurred legislators in Britain, Canada and the Netherlands to press their governments on the issue, leading to reviews of existing procedures.

## **The guidelines, the OECD Convention and TI's Business Principles for Countering Bribery**

TI members used to the binding legal standards of the OECD Convention against Bribery might at first glance see the Guidelines as a vastly inferior instrument for fighting corruption. While such legal standards are crucially important, the Guidelines, as a soft law instrument, can be complementary to TI's Convention work.

The Guidelines' definitions of what constitutes bribery and corruption, and of who is expected to refrain from engaging in it, are far broader than the limited scope laid down in the Convention.

In addition, the active role accorded to civil society in monitoring compliance with the Guidelines contrasts positively with the total reliance on a pro-active judiciary system foreseen in the Convention.

Campaigning on the OECD Guidelines would also complement TI's excellent work in developing the Business Principles for Countering Bribery. While a good number of companies have used these principles, there are many that still resist adopting rigorous anti-corruption procedures, and pressure from campaigns to meet the Guideline standards could assist in chipping away at this resistance. The Guidelines are also designed to create a positive climate where companies adopt higher standards on corruption and other issues, thus also making TI's business principles more attractive.

### **New skills, areas of expertise and co-operation options for TI chapters**

Finally, campaigns on the OECD Guidelines also provide TI chapters with immediate opportunities to broaden their areas of work and deepen the skills of chapter members.

Campaigning on corruption in the private sector is of growing importance in TI and elsewhere, and lodging complaints or lobbying to improve the working of NCPs are practical ways to increase activity in this field. A broad range of social, environmental and labour NGOs, plus trade unions, are involved as stakeholders in NCPs around the world, thus offering TI chapters opportunities to build alliances with such organisations. The global nature of MNEs means there is also wide scope for cross-border civil society co-operation, including with other TI chapters.

OECD Watch runs regular skills-based training courses on the guidelines and on how to prepare complaints to be lodged with NCPs. Some TI members have in the past taken part and this could be continued if the demand arises.

### **Further information**

The Guidelines themselves, plus related documents can be found at:  
[www.oecdwatch.org](http://www.oecdwatch.org)  
[www.oecd.org](http://www.oecd.org)

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