

The OECD Guidelines for Multinational Enterprises

Introduction

Among the first cases raised under the revised OECD Guidelines for Multinational Enterprises concerned the operations of two Czech subsidiaries of the German companies Siemens and Bosch.

In June 2001, the Czech National Contact Point (NCP) received two submissions from the Czech-Moravian Confederation of Trade Unions (CMKOS) alleging violations of the Guidelines. In the Siemens case, the management refused to negotiate with the union, while in the Bosch case the workers struggled to establish a union. The Bosch subsidiary also threatened to move and dismiss workers if a trade union was created.

The Czech NCP examined the cases and summoned the companies and the unions to a number of meetings in order to discuss the issues and try to resolve them. The role of the NCP consisted of facilitating the discussions and assisting in the negotiations. It also consulted the German NCP and informed the German Embassy of the situation. In addition, the parent companies were involved in the process.

After six months, the dispute at the Siemens plant was resolved. It took however another five months for the parties involved in the Bosch case to reach an agreement. After a change in management at the Bosch subsidiary, the workers were able to form a trade union and negotiate a collective agreement.

The CMKOS was pleased with the outcome and the action taken by the NCP.

National Contact Points

Although the Guidelines are not legally binding, every government that has adopted them is legally obliged to establish an NCP to promote and implement them.

When a company is believed to be in breach of the Guidelines, a trade union, an NGO or another interested party can raise this as a case with the appropriate NCP. If the violation has occurred in a country that has adhered to the Guidelines, the case should be raised with the NCP of that country. If, on the other hand, the problem has arisen in a non-adhering country, the case has to be submitted to the NCP in the country where the company is headquartered. Thus, if a French company was believed to infringe the Guidelines in a non-adhering country such as Malaysia, the case would have to be filed with the French NCP. If it was a Japanese company breaking the Guidelines in its operations in Malaysia, the case would have to be presented to the NCP of Japan.

When an NCP receives a case, it is responsible for trying to resolve the issue, through a range of available options that include offering a forum for discussion for the parties concerned, allowing conciliation or mediation. In deciding what course of action to take, the NCP is required to make an initial assessment as to whether the case “merits further examination”. It must then respond to the party that raised the case. If the NCP decides that the issue does not merit further consideration, it must give reasons for its decision.

Ultimately, if no agreement can be reached, the NCP is required to issue a public statement on the case. It could also make recommendations to the parties on how the Guidelines apply to the case. NCPs may, therefore, inform a corporation that its activities violate the Guidelines.

Although the Guidelines do not provide for sanctions against companies that do not respect them, the mere fact that the conclusions of NCPs should be in the public domain can have an impact and affect company behaviour. Moreover, the purpose of the procedure is to find solutions to problems rather than to “punish” companies that have failed to live up to the Guidelines.

Governments are free to organise their NCPs in the way they see fit. Consequently, NCPs structures are heterogeneous. Most governments have located their NCP either in the Ministry of Economies or the Ministry of Foreign Affairs. Some involve a single government agency, while others are multi-agency (involving several ministries). Some are tripartite (government, labour and business), eg in Belgium, France and Sweden, or quadripartite (government, labour, business and NGOs) in Chile and Finland, but governments are ultimately responsible for decisions taken. Whatever the form, representatives of labour, business and NGOs must be informed of the availability of the NCP, which is also expected to develop and maintain relations with these groups.

What are the OECD Guidelines?

They are standards and principles for responsible business conduct, developed by the Paris-based Organisation for Economic Co-operation and Development (OECD)¹ and adopted by the member governments already in 1976. They have been revised several times since. The latest review was concluded in June 2000 and resulted in major improvements in the Guidelines such as the strengthening of the implementation procedures, the coverage of corporate activities outside the OECD area, the inclusion of all core labour standards, and their extension to suppliers and sub-contractors.

The Guidelines are government recommendations addressed to corporations based in those countries that adhere to them. These include the 30 OECD countries, plus Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia. Enterprises are, however, expected to abide by the Guidelines in their business operations worldwide.

The Guidelines include prescriptive chapters covering most aspects of company behaviour: disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. Though not binding in a legal sense, they are not optional for corporations, which cannot pick and choose among the provisions of the Guidelines nor subject them to their own interpretations. Their application does not depend on endorsement by companies. They are the only multilaterally endorsed and comprehensive rules that governments have negotiated, in which they commit themselves to help solve problems arising in corporations.

Trade union cases

Trade unions have raised more than 50 cases with NCPs since the 2000 review. A number of cases have also been raised by NGOs. Most of the cases submitted by trade unions refer to violations of trade union rights. Closures or transfers of companies or parts of companies are also common issues. Almost half of the cases concern corporate conduct in non-adhering countries.

¹ The OECD was established in 1961 and, as of February 2005, consists of 30 member countries: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

About half of the cases have been closed. This means that they have either been resolved, or not accepted by the NCPs or finalised without an agreement between the parties involved. Some of the issues treated include the closure of Marks and Spencer in France and Belgium, violations of trade union rights in Guatemala by the Korean company ChoiShin, union busting activities by a US subsidiary (Brylane) of Pinault-Printemps-Redoute (PPR), the transfer of a plant in Brazil owned by Parmalat and the withdrawal of British American Tobacco from Burma.

Half the cases raised at the time of writing are still pending. Two recent cases have been raised concerning the operations of Bata in Sri Lanka and Ryanair in Europe. Other more prolonged cases regard the anti-union behaviour of Saint-Gobain in the US and the Korean company Kiswire Sdn Bhd in Malaysia. Both cases were submitted in 2003, and it appears that the US and Korean NCPs have done little to resolve the issues.

On average, it takes NCPs about 10 months to deal with a case. TUAC has repeatedly criticised governments for not handling cases in an efficient and timely manner. The NCP procedure needs to be faster. Considering, however, that the aim of the procedure is to negotiate a joint solution, it goes without saying that it may be a process that takes time. Nevertheless, some NCPs barely react to cases. A few cases that were raised already in 2002 are still pending and there are also several cases submitted in 2003 which have yet to be concluded.

Clearly, some NCPs are not fulfilling their mandate. They are reluctant to set up tripartite meetings to try to resolve the problems and appear to be afraid to criticise corporate conduct not compatible with the Guidelines. Besides, although the Guidelines are not legally binding, some NCPs take a legalistic approach in searching for loopholes that allow them to turn down cases.

This being said, there are also NCPs that are functioning properly and are seriously examining cases that may not be straightforward.

Despite the fact that not all NCPs are performing adequately, trade unions are still using the Guidelines. When part of a negotiating strategy or a campaign, the Guidelines become an additional instrument to put pressure on a company. In some of the cases concerning restructuring, the Guidelines have been used to obtain a better result in the negotiations with the employer. The Guidelines, however, cannot prevent a company from closing down a plant. The Brylane/PPR case is an example of a Guidelines case being part of a campaign against a company, which ended successfully with the union gaining recognition.

A few of the cases have been withdrawn as the mere submissions of cases have made companies more inclined to negotiate and find solutions to the problems. At some occasions, the social partners managed to reach an agreement on an issue because the company management was informed of the union's intention to raise a case. One reason for this outcome is that these so called cases involved responsible parent companies that were willing to intervene with the local management. The problem is that local trade unions do not always have access to the management at company headquarters.

Conclusions

Nearly five years after the revision, the Guidelines are becoming increasingly used by trade unions and NGOs. This period has served as a kind of trial and error period for all those

involved with the Guidelines. NCPs have taken the time to establish procedures to handle cases. Some NCPs are now operating effectively, while others have a long way to go to meet acceptable standards. Furthermore, a considerable number of NCPs have yet to deal with their first case. It should be recognised that trade unions and NGOs have not always presented the best cases. We have been trying to find out under which circumstances it is useful to raise a case under the Guidelines. It is clear, however, that for the Guidelines to become an effective instrument, governments must strengthen their efforts to ensure that they have properly functioning NCPs.

Based on our experiences with the Guidelines, we would draw the following lessons. First, a trade union must be clear over the goal when raising a case. What does it want to achieve by raising a case? What is the likely outcome? Before putting time and resources into a case, the union should be aware of the possibilities and not have unrealistic expectations. The Guidelines are not the ultimate solution, but they can play a role in addressing corporate malpractice. Secondly, cases must be well prepared. Although the implementation procedure is not juridical, cases should be well documented. A submission should explain how the Guidelines have been violated. Thirdly, we need to improve inter-trade union co-operation when raising cases. It is important that relevant national and international organisations, notably the Global Union Federations, are informed and that cases that concern several countries are co-ordinated. Fourthly, the Guidelines are essentially a tool for social dialogue. They could be used more proactively in contacts with companies. Two framework agreements currently refer to the Guidelines. Fifthly, the Guidelines need to be linked to other strategies. They should form minimum requirements for corporate conduct. Governments should ensure that the Guidelines are respected in public procurement and only companies that observe the Guidelines should be eligible for public subsidies.