

TUAC working paper on the OECD Guidelines for Multinational Enterprises for the OECD Annual Meeting of National Contact Points (NCPs)

Paris, 23-24 June 2003

Review of NCPs

Since the beginning of 2001 TUAC is running a special project on the implementation of the OECD Guidelines for Multinational Enterprises. The project has principally focused on raising awareness of the Guidelines in adhering and non-adhering countries, getting National Contact Points (NCPs) to function properly, helping affiliates and other trade union organisations to raise and process cases and promoting linkages to other policy areas.

In order to evaluate the performance of NCPs, TUAC has carried out a survey of the functioning of NCPs among TUAC affiliates and other trade union organisations. This paper is based on replies and comments made by trade union organisations in Belgium, Brazil, Canada, Chile, the Czech Republic, France, Germany, Ireland, New Zealand, Sweden, Switzerland, the UK and the US. The reply frequency was lower than the two previous years. One reason for this is that trade unions do not feel that they have a lot to report on. Both the replies and contacts with affiliates indicate that, apart from some exceptions, there have not been many changes in NCP structures or increase in NCP activities since spring 2002. On the contrary, there is a tendency to cement already existing structures. Passive NCPs remain passive, while active NCPs have stayed active.

Promotion

Since the review of the Guidelines trade unions, NGOs, businesses, NCPs and others have all contributed to raise the visibility of the Guidelines. The OECD Secretariat claims that the Guidelines have become “one of the world’s foremost corporate responsibility instruments”. However, it is of utmost importance that NCPs do not relax their efforts to promote the Guidelines. They are still unknown in countries outside the OECD area, where they can make the biggest contributions. They are also little known in some of the countries that have adopted them such as Argentina and Mexico. The Brazilian trade union confederation CUT organised a seminar on the Guidelines in May 2003, but they found it difficult to engage business in a discussion on the Guidelines. They suggest that the Brazilian NCP should organise seminars and provide information about what the government expects from the multinational enterprises. The initiatives taken by the governments in the Czech Republic and New Zealand are very welcome, while governments in Argentina, Canada, Mexico and Switzerland among others have yet to start some serious work on the promotion of the Guidelines. A good example of how the parties can work together to promote the Guidelines is the seminar organised in the Czech Republic in December 2002 by the employers’ association together with the trade union confederation and the NCP.

TUAC has participated in and co-organised a number of seminars in adhering and non-adhering countries to raise awareness of the Guidelines and disseminate the Users’ Guide. The last such event was organised by the Malaysian Trades Union Congress and APRO, which is the regional organisation of the International Confederation of Free Trade Unions in Asia, in the beginning of June 2003. Another seminar was organised jointly with TUAC and

Caisse des Dépôts in France on the Guidelines at the Johannesburg World Summit on Sustainable Development.

This year TUAC and the FES are running a joint programme on the Guidelines with the support of the European Commission (DG Trade). The purpose of the programme is to raise awareness of the Guidelines through a succession of four workshops covering Central America, Northern and Southern Africa and Asia. These are primarily aimed at trade unionists, but representatives of governments, business organisations and NGOs are also invited in order to strengthen the dialogue between these groups. Furthermore, the workshops encourage non-adhering governments to adopt the Guidelines and to establish NCPs on their own initiative.

The first workshop was held in Mexico City on 31 March-1 April. Among the 60-70 participants were trade unions and NGOs from Mexico, Guatemala and Costa Rica, the Minister of Labour of Costa Rica and a representative of the Ministry of Economics in Guatemala. However, both the Mexican NCP and the business representatives declined the invitation. The second workshop was held in Casablanca on 5-6 May. Representatives of trade unions, business organisations, NGOs and governments from Morocco, Algeria, Tunis and Egypt had been invited. The French NCP also took part in the workshop and shared with the audience its experiences with cases. While trade unions and NGOs have shown a significant interest in these issues, it has been quite difficult to engage some governments and business organisations. The OECD Secretariat has also been reluctant to participate. The two last workshops will be held in the second part of the year, one is provisionally scheduled in Zambia on 6-7 October and one in Southeast Asia in the end of October.

Implementation

Trade unions have raised more than 30 cases with NCPs since the review of the Guidelines (a summary of the cases is attached). Most of the cases concern the non-respect of trade union rights, particularly freedom of association, and closures or transfers of companies/entities or parts of companies. About half of the cases refer to corporate conduct in non-adhering countries.

The responses from NCPs to the cases raised are far from satisfactory. A majority of the cases remain unresolved. Only a few of the cases have been successfully resolved or led to recommendations to companies. Five of the cases have been withdrawn or resolved in other ways than through the efforts of the responsible NCP. One interesting development, though, is that several trade unions have used the Guidelines to negotiate solutions with companies. To avoid having cases being brought to NCPs some companies have preferred to enter into dialogue with trade unions.

TUAC has identified a number of obstacles to the effective treatment of cases. Firstly, there is a lack of transparency throughout the procedures, from the submission of the case to its closure. Some NCPs do not communicate at all with the party raising the case and in some cases several months have passed until the party receives a reply. Some NCPs, such as that of Japan, do acknowledge receipt of the cases, which is important. But the party raising the case should also be kept informed of the measures taken by the NCP to investigate and resolve the case. Moreover, they must be informed of the outcome. Two cases were raised such a long time ago that it can be assumed that the NCPs consider them closed, but the trade unions have

not been notified. These two examples concern the US and Polish NCPs. In May 2001, the US trade union confederation AFL-CIO wrote to the US NCP and requested a meeting to discuss the Guidelines' application in Burma. It never got a reply. In spring 2002, the Polish trade union confederation Solidarnosc contacted the Polish NCP about the conduct of the US-owned Warsaw Marriott Hotel. It too did not get a reply.

Secondly, several NCPs do not follow the procedural guidance. When an NCP has decided that a case merits further examination it is supposed to "offer a forum for discussion" and "offer good offices to help the parties involved to resolve the issue". Yet some NCPs do not respond to the trade union raising the case, nor do they use its good offices to set up tripartite meetings between the trade union and the company.

Furthermore, NCPs should "deal with the issues raised in an efficient and timely manner". Some of the ongoing cases were raised more than a year ago: IHC Caland was raised with the Dutch NCP in July 2001, Choi & Shin with the Korean NCP in February 2002, Maersk Medical Inc. with the Danish NCP in February 2002, and Aspocomp with the French NCP in April 2002. There may be various reasons why some cases take longer than others, but the fact is that few cases are resolved within a year of their submission. Trade unions, NGOs and others raising cases are entitled to a more ambitious handling of the NCPs. TUAC therefore welcomes the initiatives taken by some NCPs, for instance the UK NCP, to impose a time limit for the handling of cases.

NCPs are also supposed to "make publicly available the result of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines". Again, some NCPs appear to ignore the expectations to make results public. They do not even explain to the party raising the case why it would be in the best interest of the Guidelines to keep the result confidential. Not one of the outcomes in all the cases raised with the US NCP has been reported upon publicly.

Thirdly, some NCPs appear to be using the fact that Guidelines cases are being treated in legal jurisdictions to avoid dealing with them: the Choi & Shin case in the Korean NCP and the Maersk case in the Danish NCP. They have both been reluctant to take action as the cases are also pending in courts in Guatemala respectively Malaysia. Yet the Guidelines are supplementary to national law and not legally binding. Therefore NCPs should not await juridicial procedures in order to resolve an issue or determine whether a company has violated the Guidelines. Moreover, the rule of law cannot be guaranteed in some countries and the legal procedures may therefore be of little relevance. This is the case with the specific issue on Choi & Shin which has been raised with the Korean NCP. The ILO Committee on Freedom of Association has urged the government in Guatemala to "ensure that the investigation covers all the allegations made in this case concerning serious acts of violence and other anti-union acts at the ChoiShin and Cimatextiles enterprises in the Villanueva free zone, with a view to clarifying the facts, determining responsibility and punishing those responsible".

Conclusions

Despite the fact that three years have passed since the review of the Guidelines was concluded, several NCPs are still not fully operating. In order to change this, NCPs must be held accountable. At present there is no peer pressure within the CIME. The committee must

start monitoring the performance of the NCPs. The current OECD annual NCP report merely provides the reader with a sample of what NCPs are doing. It should instead be turned into an analysis of the functioning of NCPs. It should evaluate their performance, identify problems and weaknesses and make recommendations, so as to improve their performance.

NCPs have to take measures to reach speedier resolutions to the cases raised. TUAC do realise that some cases are more complicated than others and all factors are not within the control of the NCPs, but so far NCPs have had the main responsibility for the slow procedures. It is not unusual that trade unions have had to wait for months for a first reply from the NCP. If NCPs refuse to deal with cases in an efficient and timely manner, the CIME must interfere and give advice on what should be considered a reasonable amount of time for managing a case. The CIME should also set a time frame for the different parts of the procedures, from acknowledgement of receipt of a case to the first meeting with the parties concerned to the public report of the case. Such a time frame would of course have to be flexible, but it would be helpful as a way to give guidance to NCPs as well as to the public on what they could expect from NCPs. It would avoid creating unrealistic expectations on NCPs and it would also put pressure on the parties to reach a solution to an issue.

In order to increase transparency and learn from the cases that have been raised, the OECD Secretariat has an important role in keeping track of the cases. At the moment there is no overview of all the cases that have been raised since the review of the Guidelines. The more the Guidelines will become known the more people will want to learn about the procedures and the outcomes of cases. The OECD Secretariat should set up a register of cases, which should contain information about all the cases raised. NCPs should be obliged to report to the OECD on their cases in a more detailed way than is currently the case in their annual reports.

In the trade union statement¹ to the Evian G8 Economic Summit and OECD Ministerial Council, trade unions called on the OECD to put in place a programme to improve the effectiveness of the Guidelines so as to:-

- Ensure that all NCPs are operating and meet the standards of the best performers;
- Set targets on efforts to promote the Guidelines;
- Raise awareness of the Guidelines, both in the OECD - so that the Guidelines are included in relevant meetings and activities - and also in other relevant intergovernmental fora;
- Establish an outreach programme with non-members on the Guidelines including regional meetings/seminars to raise awareness of the Guidelines;
- Review the experience with particular chapters of the Guidelines and,
- Provide guidance on the time frame for dealing with cases.

¹ This statement has been prepared by the Trade Union Advisory Committee to the OECD (TUAC) in co-operation with our partner organisations, notably the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL) and the European Trade Union Confederation (ETUC).