



Responsibility of MNEs: OECD and IFC

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Overview

- OECD's mandate and work
- OECD Declaration on international investment and multinational enterprises
- OECD Guidelines for multinational enterprises
 - Principles and standards
 - Content
 - Application of the guidelines to human rights
 - Recent revision of the guidelines
- International Finance Corporation: a different way to implement the Ruggie-Framework



OECD's mandate and work

- Aims (Art. 1 OECD Convention)
 - Sustainable economic growth and employment
 - Rising standard of living
 - Maintaining financial stability
 - Contribute to the development of the world economy
 - Contribute to sound economic expansion of the world trade on a multilateral, non-discriminatory basis in accordance with international obligations
- Instruments (Art. 5 OECD-Convention)
 - Agreements
 - Decisions
 - Recommendations



OECD Declaration on International Investment and Multinational Enterprises

- Context
 - Important role of multinational enterprises (MNEs) in investment
 - Positive contribution of MNEs for economic social and environmental progress
- Declaration
 - Recommendation by Governments to MNEs to observe the guidelines for MNEs
 - National Treatment
 - Avoid or at least minimise conflicting requirements
 - Consultation procedures / review



OECD Guidelines for Multinational Enterprises (1/2)

- Legal character
 - Non binding recommendations
 - Voluntary principles and standards for responsible business conduct consistent with applicable laws
 - Monitoring mechanism
- Objectives
 - Principles and standards of good practice for responsible business conduct
 - Ensure that MNEs' operations comply with government policies
 - Improve situation to attract foreign investment
 - Enhance MNEs' contribution to sustainable development



OECD Guidelines for Multinational Enterprises (2/2)

- Implementation and monitoring
 - National Contact Points (NCPs)
 - Information and promotion
 - Forum for discussion and consulting
 - Annual report to the investment committee
 - Investment Committee
 - Information on and explanation of the guidelines and of the OECD Council decision on implementation of the guidelines
 - Considers the annual reports by the NCPs
 - Assistance and recommendations for NCPs
 - Clarifications of the interpretation of the guidelines



Content of the MNE Guidelines

- I. Concepts and principles
- II. General policies
- III. Disclosure
- **IV. Human Rights (new since revision 2011)**
- V. Employment and industrial relations
- VI. Environment
- VII. Combating bribery
- VIII. Consumer interests
- IX. Science and technology
- X. Competition
- XI. Taxation



MNE Guidelines and human rights

- Before the 2011 update: no detailed guidance on the application of the guidelines to human rights issues
- 2011 Update: Fully fledged human rights chapter (IV.)
- Further references to human rights:
 - Chapter II., General policies, no. 2.: “[MNEs] should respect the human rights of those affected by their activities.”
 - Chapter V., Employment and Industrial Relations: reference to the ILO standards (cf. commentaries on chapter V.)



Update of the Guidelines: Challenges (1/2)

- 2011 Revision based on broad terms of reference (May 2010)
- Issues discussed
 - Which human rights: All human rights are relevant
 - Scope
 - Focus on impact (instead of sphere of influence) for determining responsibilities
 - Should investment nexus be kept?
 - Managing supply chains



Update of the Guidelines: Challenges (2/2)

- contd. issues discussed
 - Due diligence policies
 - Legal dilemmas
 - Potential conflicts between national law and international human rights, interplay of NCPs and existing administrative, criminal and civil legal regimes
 - Universal principles for due process are necessary
 - Procedural questions



Update of the Guidelines: New Human Rights Chapter

- Draws on “Protect, respect and remedy” - framework
- States have duty to protect
- Enterprises have responsibility to respect human rights
 - Minimum standard that applies at all times is International Bill of Human Rights (UDHR, ICESCR, ICCPR, ILO Declaration on Fundamental Principles and Rights at Work 1998)
 - Comply with host country’s international human rights obligations and domestic law
 - Depending on circumstances additional standards may be necessary



Update of the Guidelines: Due Diligence

- Risk-based due diligence as the main tool to prevent adverse impact.

Enterprises should...

Carry out risk-based due diligence , (...), to identify, prevent and mitigate actual and potential adverse impacts (...), and account for how these impacts are addressed.

- Managing the risks of human rights abuses by exercising due diligence (from “naming and shaming” to “knowing and showing”).

Enterprises should...

Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.



Update of the Guidelines: Supply Chains

- Clarity / Apply due diligence for suppliers
 - *Enterprises should... Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.*
 - Scope of application of the Guidelines extended from investment to business relationships, including suppliers, agents and franchises
 - Consideration of influence
- Lending and investment activities of MNEs
 - Impact of financial crisis
 - Responsibility of financial institutions



Update of the Guidelines: NCP Procedures

- Conceptual improvements: NCPs must act in a manner that is impartial, predictable, equitable and compatible with the Guidelines ('Ruggie criteria')
- Practical improvements: additional guidance for the NCP complaints procedure regarding:
 - Issuing statements on cases when closed
 - Dealing with parallel proceedings
 - Indicative timeframes
- Institutional improvements:
 - NCP peer learning to enhance functional equivalence
 - Proactive CSR agenda of the OECD Investment Committee
 - Greater role for the OECD in promotion and supporting NCPs



International Finance Corporation (IFC)

- IFC's objective is fighting poverty
 - Institution of the World Bank Group
 - Supports investment in developing countries
 - One of the first economic organisations to address the human rights in an investment context
- New Policy on Environmental and Social Sustainability adopted in 2011
 - Legally not binding but required for investors to obtain IFC support
 - Para. 12: Reference to „Respect, Protect and Remedy“ – Framework
 - IFC focus on corporate responsibility to respect
 - IFC Performance standards specify requirements
 - Impact assessment as part of due diligence
 - No specific human rights performance standard but each standard “has elements related to human rights”



Different approaches to implement Ruggie framework

OECD	IFC
➤ Limited membership: “Rich countries”	➤ Membership open to all members of the World Bank
<ul style="list-style-type: none"> ➤ Detailed human rights chapter ➤ Specific provisions on human rights in supply chain 	<ul style="list-style-type: none"> ➤ General (short) paragraph on human rights ➤ No specific performance standard for human rights
➤ International Bill of Rights, ILO Declaration 1998	➤ International Bill of Rights, Eight core conventions of the ILO
➤ Specific human rights-related due diligence requirements	➤ Due diligence includes human rights
➤ Addresses states	➤ Addresses investors