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Implementing the UN-Framework I: the international level

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Overview

- OECD Declaration on International Investment and Multinational Enterprises
- OECD Guidelines for Multinational Enterprises
 - Principles and standards
 - Content
 - Application of the Guidelines to human rights
 - 2011: update of the Guidelines
- National Contact Points (NCPs)
- International Finance Corporation: a different way to implement the UN-Framework



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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

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OECD Guidelines for Multinational Enterprises (1/2)

➤ Legal character

- Legally non-binding recommendations
- 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

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OECD Guidelines for Multinational Enterprises (2/2)

- Implementation and monitoring
 - National Contact Points (NCPs)
 - Information and promotion
 - Forum for discussion and mediation
 - 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

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Content of the OECD Guidelines

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

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OECD Guidelines and human rights

- Before the 2011 update: no detailed guidance on the application of the guidelines to human rights issues
- Update 2011: 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.)

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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

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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.*

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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

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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

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NCP complaint procedure: three stages

	Activity	Timeframe ²
Stage 1	<p>Initial Assessment</p> <p>Confirmation of receipt and forwarding the complaint to the company</p> <p>Issuance of Initial Assessment</p>	<p>Within 10 working days after receipt. The company is offered to provide an initial response to the complaint within 20 working days</p> <p>Within 3 months after receipt</p>
Stage 2	<p>Mediation / Examination</p> <p>From acceptance of case through conclusion of mediation or examination, with possibility for extensions for fact-finding</p>	<p>Within a further 6 - 12 months</p>
Stage 3	<p>Final Statement</p> <p>Drafting and publication of Final Statement</p>	<p>Within a further 3 months</p>
Optional Follow-up	<p>Monitoring and Evaluation</p> <p>Parties to the complaint are, where relevant, offered to submit an Evaluation of the NCP in the Specific Instance</p> <p>After mediation, the parties are, if relevant, invited to submit a progress report to the NCP</p>	<p>Within 3 months following Final Statement</p> <p>Within a year following Final Statement</p>

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Options for establishing NCPs in national law:

- Institutional structure
 - Independent body: Netherlands, Norway
 - Body within a ministry: Most member states, e.g. Switzerland
- Composition
 - Single department: usually, the ministry of economic affairs: e.g. Switzerland, Italy
 - Interministerial: e.g. France, Japan, Korea
 - Multipartite:
 - Tripartite: e.g. Belgium, Latvia, Lithuania, Luxemburg
 - Quadripartite (Government, Business, Labour and Civil Society): Finland, Netherlands, Norway
- Monitoring power



Current Developments: Reform of the Swiss NCP

- Re-organization of the Swiss NCP in 2013 as a reaction to the updated OECD Guidelines
- Clearer framework due to new regulations issued by the Swiss Federal Council
- Broader basis by introducing a high-level multistakeholder advisory committee with reporting duties
- Improved accessibility and mediation mechanisms
- Still based within one ministry (State Secretariat of Economic Affairs)



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Case Study: Norwegian Pension Funds Case (1/2)

- Norwegian, Dutch and South Korean NCPs received a complaint from four NGOs
- The notification concerned alleged breaches of the Guidelines by South Korean Pohang Iron and Steel Enterprise (POSCO) and two of its investors, a Dutch pension Fund and the Norwegian Bank Investment Management (NBIM) of the Norwegian Government Pension Fund
- NBIM has allegedly failed to take the appropriate steps to prevent or mitigate negative human rights and environmental impacts in connection with its investment in POSCO

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Case Study: Norwegian Pension Funds Case (2/2)

- The Norwegian NCP concluded that NBIM violates the OECD Guidelines chiefly on two accounts:
 1. by refusing to cooperate with the OECD NCP NBIM violates the OECD Guidelines Procedural Guidance
 2. by not having any strategy on how to react if it becomes aware of human rights risks related to companies in which NBIM is invested, apart from child labour violations
- The OECD Guidelines apply to the financial, sector, as they do to all sectors. They do not make any exception for sub-groups of investors, nor do they exempt minority shareholders
- The question is not whether the OECD Guidelines apply to the financial sector and minority shareholding but **how** they apply

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International Finance Corporation (IFC) (1/2)

- Background
 - World Bank Group's focus on fighting poverty
 - Need to attract foreign investment in developing countries
 - Establishment of specialized agencies for different target groups within the World Bank Group: IFC, Multilateral Investment Guarantee Agency (MIGA)
- Focus of IFC on fostering investment
 - Supports investment in developing countries by providing loans
 - Obtaining loan depends on fulfilment of specific requirements
 - One of the first economic organisations to address human rights in an investment context

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International Finance Corporation (IFC) (2/2)

- New Policy on Environmental and Social Sustainability (2011)
 - Legally not binding but required for investors to obtain IFC support
 - Para. 12: Reference to „Respect, Protect and Remedy“-Framework
 - Focus on corporate responsibility to respect
 - 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”

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Different approaches to implement the UN-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

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