

**12th IACC  
REPORT FROM WORKSHOP 5.5**

**“THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES:  
a potentially powerful multi-stakeholder tool for advancing corporate accountability**

17<sup>th</sup> November 2006, Friday 15.00 to 17.30

- Coordinator:** Shirley van Buiren, Head, Corporate Accountability Program, TI- Germany
- Moderator:** Hugh Williamson, Berlin Correspondent, Financial Times
- Rapporteurs:** Karenina Schröder and Shirley van Buiren, TI – Germany
- Panellists:**
- Willem van der Leeuw, Chairman, Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises.
  - Peter Pennartz, Director of IRENE, founding member of OECD Watch.
  - Elena Panfilova, Director, Centre for Anti- Corruption Research and Initiatives, Transparency International Russia.
  - Roland Schneider, Senior Policy Advisor, Trade Union Advisory Council (TUAC) to the OECD
  - Jermyn Brooks, Leader, Private Sector Program Transparency International and former Chairman of Pricewaterhouse Coopers

### **I. Main Workshop Objectives**

The main objectives of the workshop on “The OECD Guidelines for Multinational Enterprises” were to:

- draw the attention of the broader anti-corruption movement to the OECD Guidelines,
- raise awareness of their unique characteristics and advantages over other CSR standards,
- highlight the broad scope of their provisions for combating bribery, and ultimately to
- stimulate TI’s and other CSOs’ interest in systematically testing the potentials of the Guidelines for combating corruption and its concomitant social and economic ills.

### **II. Main Issues Covered**

- 1.) Enforcement problems and the limited scope of legal instruments such as the “*OECD Convention on Combating Bribery of Foreign Public Officials*” have re-energized the quest for supplementary approaches for promoting and achieving a higher degree of business adherence to socially accepted standards of behavior, e.g. not using bribery to achieve unfair advantage and/or exemption from international and national legal standards.
- 2.) In 2000 the “*OECD Guidelines for Multinational Enterprises*” were revised and significantly upgraded. In addition to an enlarged scope of recommendations for responsible business conduct, the up-dated Guidelines prescribe the establishment of an implementation mechanism, a National Contact Point (NCP), in each adhering country. The NCP’s task is to promote and monitor compliance with the enhanced standards and to deal with formal complaints of alleged breaches. The mandated institutionalization of national authorities to deal with formal complaints marks a significant departure from a purely voluntary system to a hybrid of voluntary and prescribed approaches. In view of the revealed relative weaknesses

of formal legal strictures, such as the Bribery Convention, the issue whether enhanced, only nominally voluntary codes of conduct, such as the OECD Guidelines, ought not to assume a far greater role in TI's future anti corruption strategies, merits serious attention.

- 3.) Though legally not enforceable, the Guidelines, nonetheless, due to the multistakeholder involvement in their revision and daily practice, their national and international endorsement and their worldwide applicability, command increasing sociopolitical clout. Might they not with still greater civil society support, including stronger TI involvement, gain further practical relevance in the drive to reduce corruption?
- 4.) In addition to bribery of foreign officials, the Guidelines cover bribery within the private sector, remuneration of agents, transparency requirements, promotion of employee awareness and compliance, relations with subsidiaries and business partners, as well as a number of further important recommendations for preventing corruption. While this extensive scope of the Guidelines' recommendations regarding bribery are undeniably commendable, the ability and willingness of the National Contact Points (NCPs), to promote and oversee compliance with the Guidelines and deal dependably and efficiently with complaints of violations remains an unresolved issue.
- 5.) Should TI test the capacity of the National Contact Points to deal effectively with cases of corruption beyond the jurisdiction of the OECD Convention but allegedly within the scope of the Guidelines? What presumable resource and/or self imposed policy limitations and issues would have to be faced and resolved for TI to systematically broaden its active use of the complaint mechanism provided by the Guidelines?
- 6.) Should TI engage with other CSOs in advocating for strong NCPs with enhanced capacities to monitor compliance with the Guidelines dependably and efficiently? Could increased use of the OECD Guidelines deter progress towards more effective enforcement of anti-bribery laws? Or would a wider use of the Guidelines' rather increase public awareness of the issues and exert pressure for more effective use of all available instruments, legal, voluntary and hybrid?

## **II. Main Outcomes**

The exchanges and discussions in preparation of and during the workshop contributed to the following outcomes:

- 1.) Workshop participants obtained excellent, up-to-date information about the chief characteristics of the OECD Guidelines as an instrument for strengthening corporate social responsibility in the broadest sense and more specifically for reducing corruption.
- 2.) Awareness and interest rose in further exploring the practical significance of the differences between legally binding instruments, purely voluntary business codes of conduct and the still uncharted potentials of a mix of both approaches as manifest in the OECD Guidelines of the year 2000.
- 3.) There was recognition and ultimately mute agreement, that a government-endorsed code of conduct such as the OECD Guidelines backed-up by internationally mandated national promotion and compliance oversight institutions, e.g. National Contact Points, and supported and used by a wide array of different stakeholders including trade unions and NGOs, should also be embraced and tested by the greater anti-corruption movement.
- 4.) Critique of National Contact Points' uneven performance expressed by trade union and NGO representatives led to a series of constructive proposals as to what could and should be done to rectify operational weaknesses and bridge the gap between the Guidelines' promise and the NCPs' uneven performance.

- 5.) No immediate solutions were identified as to how the prevalence of extortion in certain highly corrupt, resource rich or otherwise foreign investment glutted countries might be addressed. Certainly the usefulness of the OECD Guidelines for countering corruption and extortion in such an environment seemed pre facie limited. Further thought and the development of specific approaches to such issues were seen to be needed.

#### **IV. Recommendations and follow-up actions**

Based primarily on the oral and written presentations and proposals of the panellists, the following recommendations for further action were developed:

**1.) The anti-corruption community definitely should play a role in the implementation of the OECD Guidelines.**

- **1.1)** Anti-corruption NGOs such as Transparency International have extensive knowledge of corruption in many different countries. For that reason TI should participate more actively in the OECD Investment Committee's regular dialogue with the business community, labour unions and other stakeholders. In this way TI could contribute to a stronger focus on corruption in the regular discussions about the implementation of the OECD Guidelines and, with their expertise, greatly enrich the debate on how the Guidelines can be used to fight corruption.
- **1.2)** Given TI's expertise in fighting corruption in different countries, TI chapters' active involvement in the work of their National Contact Points or where non-exist in the NCP of the appropriate signatory state could be most useful in promoting the use of the Guidelines in the fight against corruption. An awareness raising campaign within TI on the relevance and potentials of the Guidelines for fighting corruption and subsequent training of TI Chapters on how to work with National Contact Points, file complaints etc. seems a pre-requisite for TI to take up such a program of work. A TI focal point person should probably be selected to drive this initiative forward.

**2.) TI should use the OECD Guidelines' "Specific instances procedure" to test this instrument's potential for reducing corruptive, legally not (yet) prohibited behaviour and in cases where the evidence requirements of criminal proceedings cannot be met.**

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- **2.1)** Enforcement of anti-corruption legislation is difficult, requiring legally convincing proof of facts and actions. The "specific instances procedure" by contrast offers civil society a comparatively easy, non-legal mechanism for launching a formal complaint against corrupting corporation(s). As the Guidelines cover many more aspects of corruption than just the bribery of public officials, the pressure generated by a formal complaint or alone the prospect of a formal complaint might possibly undermine many different types of corruptive behaviour.
- **2.2)** Bribery of public officials is a means to an end, e.g. buying exemption from observance of environment, labour, taxation or other legal requirements. Most such exemptions of legal requirements are likely to constitute a violation of the OECD Guidelines and could be the subject of a formal complaint. Where proof of criminal bribery under the OECD Convention might be impossible to obtain, and in any case the task of the judicial system and not CSOs, drawing up the complaint against the circumvention of other Guideline recommendations in co-operation with appropriately specialised NGOs, offers the possibility of tackling the corruption issues by other routes.

**3.) Given the seriousness of the corporate bribery and corruption problem, TI has a considerable stake in a satisfactory functioning of the NCPs and should strive in collaboration with other stakeholders to motivate the OECD and relevant national governments to upgrade the NCPs performance.**

- **3.1)** The OECD Guidelines detailed recommendations are too little known in civil society including among its main target groups, the business community. As promoting the Guidelines undeniably constitutes a key NCP responsibility, a more systematic results-oriented approach to this task must be demonstrated.
  - **3.2)** Ubiquitous differences between countries on how complaints are handled, even to the point of not being handled at all, continue unabated. Despite the fact that the unevenness in NCPs performance is well documented in the OECD's own annual reviews of NCPs work, concrete NGO proposal such as the introduction of systematic peer reviews have not received their due consideration in the Investment Committee. This major challenge to the Guidelines' and the NCPs' credibility must be faced and the unevenness in NCPs handling of complaints rectified so that business and civil society can rely on a common effective NCP practice.
- 4.) TI should assume a role vis a vis other NGOs, such as those combined in OECD Watch, to ensure they become more aware of the cross cutting nature of bribery and corruption and how it can negatively effect their aspirations to achieve universally acceptable environment, human rights and labour standards.**

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