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**CONSULTATIONS ON THE OECD GUIDELINES FOR MULTINATIONAL
ENTERPRISES, PARIS, 19 APRIL 1999**

(Aide-Mémoire)

This aide-mémoire, which has been prepared by the Secretariat, provides an informal summary of the CIME's consultations on the Guidelines with BIAC, TUAC and other non-Governmental representatives. As agreed, this document will be made available on the OECD website [www.oecd.org/daf/cm/cime/mneguide.htm].

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**Consultations on the *OECD Guidelines for Multinational Enterprises*
Paris, 19 April, 1999**

(Aide-Mémoire)

1. Consultations on the Review of the *OECD Guidelines for Multinational Enterprises* were held in Paris on 19 April, 1999. The OECD's Committee on International Investment and Multinational Enterprises (CIME) hosted representatives from BIAC (the OECD's Business and Industry Advisory Council), TUAC (the OECD's Trade Union Advisory Council), as well from non-governmental organisations (NGOs) for a day of discussion on the Review of the *Guidelines*. The primary purpose of the meeting was for CIME delegates to be able to hear and consider the views of social partners with respect to the proposed framework for the Review; thus the contributions of BIAC, TUAC and NGOs will be emphasised in this aide-mémoire as part of the continuing dialogue on the Review.

2. The CIME chairman began by noting that this meeting was the second opportunity to consult on the *Guidelines*, the first being a conference in Budapest, Hungary, in November, 1998. Secretariat papers providing the backdrop to the discussion were "The OECD Guidelines for Multinational Enterprises: Framework for the Review" [DAFFE/IME(99)5] and an "Annotated Agenda" [DAFFE/IME(99)8], which were circulated in advance. An updated version of the OECD *Guidelines* "framework" paper is available on the OECD *Guidelines* website at: www.oecd.org/daf/cm/cime/mneguide.htm.

3. Conference discussion is best captured under the following headings: (i) Opening Remarks; (ii) The Guidelines in a Contemporary Economic and Social Context; (iii) General Considerations in the Review; (iv) Textual Matters; (v) Implementation and Other Procedural Issues, and (vi) Next Steps/Follow-up.

(i) Opening Remarks

4. In opening the day's discussion, the CIME chairman noted that the Review was now at an important stage: as the discussion document indicated, the framework for the Review was taking shape. While CIME had not reached complete consensus on the changes that might be needed in the Guidelines and their operating procedures, there was broad agreement on the issues that needed exploration. First, "*Global Applicability*". The question as to how or whether the status of the *Guidelines* in non-signatory countries should be changed has emerged as an important issue for discussion. Second, "*Textual Issues*". Although all chapters would be covered by the Review, the chapters on employment and industrial relations, and environmental protection, have been highlighted for particular attention while other issues mentioned by delegations include competition, bribery, human rights, and sustainable development. CIME welcomed additional expertise from other OECD Committees and interested parties on these questions, a process for which was now well underway. Third, "*Implementation Procedures*". The CIME has already indicated that these issues may be just as important as revisions to the text, and a number of changes to existing procedures have been suggested and will be discussed in further detail.

5. The chairman of BIAC's Committee on International Investment and Multinational Enterprises outlined business's approach to the Review. BIAC supports the *Guidelines*, and is ready to contemplate modernising the text where necessary, but remains cautious about some of the ideas for implementation that suggest procedures that would undermine business support and co-operation. The world has changed since the *Guidelines* first appeared in 1976. SMEs are increasingly important, and increasingly

international in character and focus. This needs to be taken into account in the Review, as do other new developments and changes to the global economy. Another change is the growth of individual business codes; the *Guidelines* could take some inspiration from them in making a flexible and positive instrument that business interests, particularly new entrants to the international market, would find useful to follow and use. Finally, a BIAC representative observed that it was going to be a challenge to operationalise widely divergent expectations in the *Guidelines*.

6. TUAC has always been a supporter of the Guidelines, but is now concerned that they are no longer used and little known. A TUAC representative recalled the 1998 OECD Ministerial communiqué, which called for work on the *Guidelines* "...to continue to update them in a timely manner, to ensure their relevance and effectiveness". The *Guidelines* Review in fact had been delayed, and was now more urgent than ever given the backlash over globalisation. In addition, Kofi Annan's 1999 address to the World Economic Forum at Davos proposing a global compact on human rights, labour, and environment suggested that this Review was indeed timely.

7. One of the NGO representatives tabled his opening statement, in which he welcomed the OECD's greater openness to dialogue with civil society. He noted that the *Guidelines* could serve as a motive force to better social and ecological standards, and to serve as standardising rules for codes of conduct. Existing examples in this regard were mentioned, including recent attempts to create international standards comparable to the ISO series (social accountability 8000 or ISO 21000). These proposals have been characterised by a dialogue between business, trade unions, and NGOs; the OECD could support this process by incorporating these ideas into the *Guidelines*. NGOs opposed giving MNEs and investors rights without corresponding responsibilities. Chief among these responsibilities are social accountability and sustainable development.

(ii) The *Guidelines* in a Contemporary Economic and Social Context

8. An international environment with different characteristics since the 1970s suggests that the role of the *Guidelines* will be different as we approach the next millennium. Issues such as confirming the global applicability of the *Guidelines*, as well as enhancing the credibility of the *Guidelines* – in the public eye as well as for business – would be important to address during this Review.

9. A BIAC representative contrasted the situation in the late 70s, when the *Guidelines* were first adopted, with today. In the late 70s, a relatively limited number of large MNEs, mostly headquartered in the US, were multinational in scope. Today, it is estimated that there are 40,000 enterprises with international interests, from a variety of countries. The *Guidelines* have a role to play in this regard, in particular for new entrants in new marketplaces with respect to their interactions with governments and civil society.

10. Comments on this section of the report from one NGO representative began with noting the importance of a vision for the *Guidelines* in a world of increasing importance of foreign direct investment (FDI). The growing role of NGOs was important, too, which was reflected in Agenda 21 at Rio. In this environment, the *Guidelines* could help to set medium level standards for companies, rather than either a minimum level or "best practice". Best companies tend to compete with each other to achieve the highest standards of corporate responsibilities. Minimum standards tend to be covered by formal legal norms. If pitched at "good practice" level, the *Guidelines* could come into their own, by providing (a) a reference for good practice; (b) transparency for many corporate practices; (c) a basis for pressure on poor performers. In this context, multilateral standards such as the *Guidelines* were useful if there was real transparency and public recognition of company performance in relation to the benchmark standards of the *Guidelines*. The *Guidelines* could also be useful in the context of the bilateral investment treaties.

11. A TUAC representative expressed support for a higher profile for labour and environmental issues, and noted that implementation would be the key during this Review. They were encouraged by the BIAC perspective with respect to the potential for the *Guidelines* given the changing business environment. However the low profile of National Contact Points remained a concern. It was increasingly important to take into account the social dimension of globalisation, and the *Guidelines* should play a role in this – emphasising them in OECD FDI reviews for example.

12. BIAC intervened to note that the *Guidelines* were part of a balanced package of OECD investment instruments, including the National Treatment Instrument, which was important to take into account for the credibility of the *Guidelines* in the business community. Procedures associated with the *Guidelines* have to be credible, and there has to be accountability in the process.

13. An NGO representative argued that there was nothing to prevent business from applying higher standards than those required by law. With respect to credibility, it would help to make the *Guidelines* more binding, and how to do this needs to be further explored. One thing that could help would be to require National Contact Points to hold public hearings regarding the application of the *Guidelines*. Alternatively, enforcement could be furthered by attaching eligibility for export credits to respect for the *Guidelines*.

14. A TUAC representative stated that the key *Guidelines* problem is lack of public profile. Indeed better awareness of the *Guidelines* was more important than textual changes, since greater awareness and even the threat of adverse publicity in extreme cases could encourage companies to adhere to the *Guidelines*.

15. An NGO representative noted the relationship between burgeoning codes of conduct and the *Guidelines*. Examples of two recent successful codes were the “Clean Clothes Campaign” and the “Ethical Trading Initiative”. Companies could do much more with respect to monitoring their conduct using the *Guidelines*. Concerning non-Member countries, it was noted that consumer pressure and other influences can have a positive demonstration effect on local industry, which was another reason why the *Guidelines* should have standing outside the OECD.

16. A BIAC representative argued that responsibility for the dissemination of the *Guidelines* should continue to rest with National Contact Points.

17. Several national delegations signalled their strong support for the continued participation of civil society representatives in the *Guidelines* Review process. Other points were registered, including the desirability of strengthening National Contact Points (on a tripartite basis with government, labour, and business representatives, or alternatively on an intradepartmental basis within national administrations), and the importance of taking into account NGO views, although some delegations pointed out that NGOs did not speak with one voice. A number of delegations found the classification of “minimum standards” vs. “best practice” in Section I of the Secretariat framework paper a useful way of conceptualising where the *Guidelines* could stand in relation to other instruments.

18. One delegation suggested that modifying the CIME consensus rule could help decision-making. Another expressed concern that the *Guidelines* were “complaint driven”; there needed to be more positive aspects associated with implementation to ensure business commitment to support the *Guidelines* and respect their recommendations. Furthermore, the *Guidelines* Review was not an isolated exercise, and was indeed related to the debate over the rights and responsibilities of investors, which included the relationship between the *Guidelines* and the principles embodied in other OECD investment instruments, notably the commitment of governments to provide national treatment to foreign enterprises.

(iii) Other General Considerations in the Review

19. These issues tend to pertain to both textual and implementation considerations, in particular the global applicability of the *Guidelines*, but also the nature of the OECD *Guidelines* as a non-binding instrument. In addition, other “new” issues (such as those connected with the Rio conference on the environment) have also emerged into public debate since the last Review in 1991.

20. An NGO representative identified two important general issues that would have to be taken into account: sustainable development, and transparency and accountability with respect to MNE activities in the societies in which they operate.

21. A BIAC representative differentiated between agreeing on a revised set of *Guidelines* vs. negotiating a “social contract” with binding rules covering all sorts of social issues. On global application, caution was expressed about the desirability of unilaterally imposing rules on developing countries in the OECD, which should rather be done in partnership with them.

22. Also on the global application of the *Guidelines*, TUAC noted that the *Guidelines* are recommendations of generally accepted principles. Two different standards between OECD and non-OECD countries was not a desirable outcome. The *Guidelines* were in fact stronger than most company codes, since they were comprehensive, were explicitly supported by governments, and contained implementation and monitoring procedures. Promotion was the responsibility not only of National Contact Points, but also of unions and business. It was true that globalisation had changed international relationships and that smaller and more companies were now involved in the process; another consequence of this was the development of supply chains and subcontractors, which should be taken into account in the *Guidelines* context.

23. According to BIAC, the issue of global applicability of the *Guidelines* presented challenges and opportunities. Business liked to set global standards for their operations. However, caution was needed with respect to how non-OECD countries would feel about applying the *Guidelines* in their countries because they set a more demanding standard for MNE behaviour than is enforced in many developing countries.

24. An NGO expanded on the nature of “more binding” instruments, noting that this could be done in different ways aside from hard international law. Annual reports, or summons to National Contact Points, could both serve to strengthen the implementation procedures of the *Guidelines*. It was also noted that the draft UN Code on multinationals (now abandoned) had been supported by developing countries. And as far the environment was concerned, the “precautionary principle”, it was noted, was already embodied in Agenda 21, and endorsed by business. Finally, in developing countries a key problem is not the existence of standards, but rather their enforcement. The *Guidelines* could be very useful in all these contexts, in particular in developing countries.

25. TUAC noted that para. 3 of the introductory chapter already endorsed international co-operation amongst “all states”, and that it the OECD could not go backwards in the face of globalisation. A good exploration of different approaches to “binding” was in the discussion paper presented by Prof. A.A. Fatouros of the University of Athens [DAFFE/IME/RD(99)3 – “The OECD Guidelines in a Globalising World”, also available through the OECD Guidelines website].

26. National delegations intervened on a number of points during the discussion of this section of the report. While many spoke in favour of “global applicability”, they also acknowledged that this was an issue whose implications needed to be further explored, including with non-members. In addition, a number of delegations noted the increasing number of individual codes, and also suggested that the relationship between these instruments and the *Guidelines* warranted further examination, and that the

changing context in which the *Guidelines* operated needed further exploration. Concerning the conditionality of eligibility for export credits with *Guidelines* adherence, one delegation recommended caution with respect to the OECD's legal position since these programmes were in private hands in some countries.

(iv) Textual Matters in the *Guidelines* Review

27. No chapter has been excluded from this process, but the chapters on employment and industrial relations (chapter seven), and environmental protection (chapter eight) have been singled out for particular attention in light of developments in these spheres since 1991. The expertise of other interested parties has been welcomed by the CIME, and a process of consultations with other OECD Committees is well in train. In addition, a number of other "new issues", among them sustainable development, human rights, and corporate governance have also emerged as possible avenues for further discussion as the Review progresses. Conference participants broadly agreed with the issues identified thus far with respect to textual revision of the *Guidelines*.

28. A business representative said that it was possible to use the OECD *Guidelines* without an internal code of conduct; indeed his company had done so following the 1976 OECD Declaration on International Investment and Multinational Enterprises (of which the *Guidelines* was a part). A second business representative said that business priorities included competition, tax policy (though references to harmful tax competition would be problematic), and corporate governance. Human Rights should be primarily the responsibility of governments.

29. A TUAC representative argued that it was not desirable to talk about a complete revision of the *Guidelines*; rather we needed to strengthen them before taking about, say, legal sanctions against businesses. Similarly, we should not leap to blacklists. Human rights were indeed a primary responsibility for governments, but companies could use the principles in the *Guidelines* to create "islands of liberty" within jurisdictions. There may be a role for the CIME in avoiding bad or misleading publicity, or in exposing falsehoods. Environment and sustainable development were important, and that we should not lose sight of the purpose and value-added of the *Guidelines*, which were after all "agreed expectations of governments for MNEs".

30. An NGO representative stated that MNEs were not fragile institutions, and that the OECD *Guidelines* could be more robust. If Corporate Governance Principles were referred to, we would need to expand references to stakeholders. Human rights have to be in the *Guidelines*, as do references to consumer health and safety, sustainable development (wherever relevant). The "precautionary" and "polluter pays" principles were also recommended.

31. Another BIAC representative observed that this consultations session was taking place in a much more positive atmosphere than in Budapest, which was constructive. Viewing the *Guidelines* in a positive light, in the context of their advantages for business, was important. It is good business to have good corporate practices.

32. National delegations intervened to note concerns but also to outline their hopes and aspirations for the instrument. Some delegations preferred to concentrate on the positive aspects of procedural issues; on whitelists rather than blacklists, and the credibility and transparency that would be fostered by a "carrot" approach in this regard. Others noted that it would be necessary to strengthen procedures to make the *Guidelines* work effectively. Thus, the emphasis should not be on talk of legal enforcement, but rather recommendations and more effective implementation mechanisms. It was important to be able to reinforce procedures to further our goals with respect to workers' rights, environmental standards, and social norms.

(v) Implementation and Other Procedural Issues in the Guidelines Review

33. These issues have been signalled by the CIME as having particular significance during the current review. Alternative suggestions with a view to enhancing the credibility of the *Guidelines*, including implementation procedures as well as increasing public understanding and business support remain to be discussed.

34. TUAC opened this session by emphasising the importance of modernising National Contact Points. High level government participation was advocated, and to invigorate processes NCP membership in governments should be “interagency”. NCPs should not remain simply a letterbox. Annual meetings with reports and surveys were advocated, with a CIME experts group to periodically review NCP mechanisms. *Guidelines* procedures should not only be “case driven” (i.e. not limited to dealing with problems in compliance by individual companies).

35. A BIAC representative stated that clarifications should remain anonymous. This served to safeguard a neutral process. Furthermore, the clarifications process depends on the free transfer of information and on businesses having the confidence to communicate freely. If this was jeopardised, it would be necessary to consider the legal ramifications of doing so. If the *Guidelines* moved to being a judicial process involving legal censure, this would change the character of the *Guidelines* unacceptably. Furthermore, it was doubtful that the OECD was equipped to hear cases in a judicial way which could end in public censure.

36. An NGO participant replied to this intervention by stating that on the contrary the OECD should be empowered to “name names”.

37. BIAC replied that this line of procedure was not productive; business would have difficulty agreeing to a process that would involve individual businesses being named or slandered. Neither was it up to the OECD to pronounce on, say, other instruments such as the 1998 ILO Declaration. This Declaration’s follow-up procedures were not yet finalised, and nothing should be done that would jeopardise them.

38. TUAC noted that with respect to National Contact Points (NCPs), very few work well. The current complaint based approach is a minimum. There have been 25 *Guidelines* cases since 1978; though few of these have taken place since 1986. In the 1978-1986 period, individual businesses were always identified in the course of confidential CIME deliberations though never publicly. It was clear, however, that the current process should be improved. Appointed experts should be considered for issues that cannot be resolved at either the NCP or CIME level.

39. A BIAC representative made a plea for a positive approach, and emphasised that it would be important to emphasise advantages for business in accepting the *Guidelines* as an improvement for business. A positive approach would also assist NCPs as being a point of reference for new MNEs.

40. Some country delegations intervened during this session to expand on their conceptions on how to improve implementation procedures. One delegation argued that there were two possible approaches to take in the Review as a whole: one that simply developed a “model code for business”, and one that sought to make the *Guidelines* an international minimum standard that fostered compliance through improved implementation procedures and indeed greater enforcement. The *Guidelines* needed to be slightly more binding. Because of the implications of so doing, the *Guidelines* will need safeguards, but the process should not include a juridical process. Outside experts would be necessary to support the CIME. Other delegations intervened to say that it should be up to governments themselves to pronounce on the conduct of their own MNEs, and that there was a link between implementation procedures (on global applicability, for example) and the standards set in the text of the *Guidelines*.

(vi) Next Steps and Follow-up

41. BIAC reiterated its support for the *Guidelines* as part of a *positive* process for business. It noted business participation at a BIAC/Labour Management Programme meeting in March entitled “Labour and Employment Practices in Today’s Global Economy: Implications for the OECD Guidelines for MNEs. A similar meeting in May was planned on environmental issues.

42. A TUAC representative underlined the importance of establishing the CIME Working Party on the *Guidelines* so that the detailed work on the text and implementing procedures could begin.

43. An NGO representative stated that many NGOs remained sceptical about the *Guidelines*. Clarity was necessary with respect to the purpose of the Review of the *Guidelines*. In consulting with civil society on global applicability in particular, contacts with businesses and other civil society representatives from developing countries was very important. Direct representation from small and medium-sized enterprises (SMEs) was also recommended. NGO representatives plan to submit an agreed statement on the *Guidelines* Review later this spring.

44. In concluding the meeting, the Chair thanked all participants for their contributions and assured them that their comments would be considered as the *Guidelines* Review proceeded. The Working Party on the *Guidelines* would be established soon and the CIME would continue to benefit from input from other OECD committees. It would also seek further opportunities to consult with representatives of civil society and non-Member governments. The goal was to complete the review by the time of the OECD Council at Ministerial level in Spring 2000.

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