

The 2023 OECD Guidelines for Multinational Enterprises

Summary

The OECD began a review process of the OECD Guidelines for Multinational Enterprises in 2021, the first revision since the last update of 2011. The [final outcome](#) of the review process was announced in May.

There have been some important improvements. The new Guidelines include:

- A significant expansion of due diligence obligations, both in connection with supply chain obligations and the topics of coverage.
- New language to expand the coverage of Chapter V of the Guidelines on Employment and Industrial Relations to all “workers” rather than a limit to “those employed by a multinational.”
- Clearer obligation for non-interference with a workers’ right to join a union of their choice.
- A new focus on enterprises’ responsibility to address their adverse impacts on climate change.

However, the review delivered very few improvements in the procedures of the implementation of the Guidelines. There are small advances regarding confidentiality and a very small step on the ability of National Contact Points (NCPs) to make final determinations as to whether the company violated the guidelines. There are no additional incentives for companies to participate in the mediation process, nor any changes with respect to arbitration.

The update

In November 2020 the OECD Working Party on Responsible Business Conduct began a “stocktaking” exercise to examine key developments and challenges related to both the Guidelines and the National Contact Points and to evaluate whether they remained “fit for purpose”. Following a public consultation and the publication of the stocktaking report in March 2022, the OECD indicated that it would not conduct a comprehensive revision of the Guidelines, as in 2011, and that the ability of trade unions and civil society to actively influence the outcome would be much more limited.

UNI continues to be one of the most active labour users of the Guidelines, and we have often brought cases to address widespread corporate misconduct. Our cases typically involve incidents in multiple countries and are brought to the “home country” of the MNC, which usually have an institutional connection to trade unions.

UNI’s submission to the OECD’s “Stocktaking Process” focused on the procedures for implementing the Guidelines, rather than the content of the Guidelines themselves. We

stressed that *“our experience has led us to conclude that, absent significant operational improvement, the Guidelines will become a symbolic statement of intent rather than a mechanism through which to achieve remedy and drive change.... (T)he most urgent need is for better implementation of the Guidelines through a strengthened NCP process”*.

Both TUAC and the OECD Watch agreed with UNI's assessment, and in addition, they made several other proposals for important changes, stressing the fact that so many workers are no longer in any employment relationship. They also both recommended to strengthen and broaden the due diligence requirements of the Guidelines, and OECD Watch urged the OECD to address climate change and just transition.

The changes to the Guidelines

The new Guidelines include changes both to the content and the procedures. The following are some of the more significant changes:

- Chapter II – General Policies

The update expands support for labour rights due diligence by extending beyond suppliers and subcontractors to entities with which an enterprise has a business relationship (i.e., institutional investors, digital intermediaries, and others), and due diligence obligations in Chapter II and IV are incorporated through a reference to them in Chapter V. This makes explicit that due diligence expectations as set out in the Guidelines apply to employment and industrial relations practices.

The update also reinforces meaningful stakeholder engagement as a key component of the due diligence process. The updated text of the commentary to this chapter goes further than in 2011 by explaining what meaningful stakeholder engagement should entail. It includes that this should be a two-way process, conducted in good faith, responsive to stakeholders' views, timely, accessible etc.

- Chapter V – Employment and Industrial Relations

New language has expanded the coverage of Chapter V of the Guidelines. In the 2011 Guidelines coverage was restricted to those workers *“employed by the multinational company”*, this has been deleted so that the Guidelines now simply refer to *“workers”*. The revised text specifically calls on enterprises, regardless of employment relationship, to avoid *“interfering with workers' choice to establish or join a trade union or representative organization of their own choosing”*.

Enterprises are expected to “provide” not just “promote” safe and healthy workplaces. The concept of Just Transition appears in this chapter in relation to the obligations for training and reskilling.

- Chapter VI – Environment

The 2011 Guidelines failed to mention climate change at all. Therefore, there have been significant changes to this chapter through the review process. Climate change is now identified as a leading environmental impact that should be addressed in due diligence. The Paris Agreement is referenced and there are expectations that enterprises ensure greenhouse gas emissions are consistent with internationally agreed goals and that they implement transition plans.

Updates to this chapter retain several references to meaningful trade union engagement as part of effective due diligence to address worker impacts of environmental policies, linked to the principle of Just Transition, although previous drafts had stronger language.

- Alignment with OECD due diligence guidance.

This update ensured that these Guidelines now align with the framework on responsible business conduct due diligence that the OECD has developed since 2011. This includes the six-step due diligence process outlined in OECD guidance, underscores the importance of responsible disengagement, and the expectations that enterprises should build leverage to proactively encourage improvement in business partners' conduct.

- Downstream application of due diligence

While due diligence has always been applicable downstream under the expectations in the Guidelines, this update has made that point explicit. For example, the guidelines clarify that due diligence also applies to the correct or improper use of an enterprise's products or services, which could give rise to adverse impacts.

- Requirement to carry out due diligence over impacts related to science and technology.

The 2011 Guidelines included, within the commentary to Chapter II on General Policies, an exemption which meant that the recommendation for enterprises to carry out risk based due diligence did not apply to the Chapter on Science and Technology (or indeed those on Competition and Taxation). The 2023 update has removed that exemption so that it is clear that due diligence should be undertaken over adverse impacts linked to technology and digitalization. The updated Science, Technology and Innovation Chapter in Article 1 says that enterprises should *"Carry out risk-based due diligence, as described in Chapter II, with respect to actual and potential adverse impacts related to science, technology and innovation."*

- Procedural Chapter

There is added an objective for NCPs to have the confidence of stakeholders, but still no requirement that the NCPs have an institutional relationship with unions.

The specific instance procedures now include the possibility for the NCP of "publicly" issuing a final statement but there is no requirement to do so.

There is a small step towards enabling the NP to issue a determination on the merits of the submission. *"The NCP can set out its views in the final statement on whether the enterprise observed the guidelines "if allowed by applicable law and the NCP's case handling procedures"*

The update narrows confidentiality requirements to the proceedings (which TUAC interpret to mean the period beginning when the parties have agreed to participate in good faith). This would clarify that the initial submission by the union is not covered by a confidentiality requirement and can be made public.

Confidentiality is clarified to be limited to information exchanged in the good offices not already in the public domain or possessed by the union.

There is a new procedure for follow up to encourage NCPs to remain involved after a specific instance has been concluded.

Conclusion

Both TUAC and the OECD Watch have assessed the changes and determined that the result is a net positive.

TUAC said that: *“The revised OECD Guidelines for Multinationals are a step forward and give workers and unions a renewed opportunity to insist on the right to join a trade union and to collectively bargain”*. However, *“TUAC expected more from the revision to ensure that NCPs are fully staffed, funded and work with trade unions. It is disappointing that little has changed in the complaints procedure and that responsibility for dealing properly with complaints still relies on the goodwill of governments”*.

From the perspective of the OECD Watch: *“the net result is positive. The majority of updates strengthen this authoritative global standard on RBC. In many areas, the revisions reinforce and therefore bolster other leading international norms on RBC, and on some topics the 2023 Guidelines advance normative standards”*.

However, they also acknowledge that *“the update largely did not raise requirements for governments to improve their implementation of the guidelines through the NCP mechanisms”*.

Indeed, there have been important improvements. UNI are pleased to see the requirement for due diligence in connection with Technology, something which becomes more important in this new era. Expanding the scope of the Guidelines to cover all workers, not just those employed by the multinational enterprise, is also a significant change. And clear language on interference with the right to organize is welcomed.

However, we are disappointed that our recommendations on the procedures were largely ignored or addressed only in very small steps.

We remain concerned that, increasingly, the Guidelines have become a toothless tiger and, in many respects, less relevant to companies. Without the obligation to issue a finding on the merits of a “Specific Instance” the NCPs have little power to hold companies to account or to even to ensure a meaningful mediation process.

Next steps

The OECD’s insistence upon “flexibility” with respect to the procedures of the NCPs presents an opportunity for unions and civil society to demand changes at the national level. Rather than abandon the Guidelines, we now have the responsibility to make the “best” even better. National governments should be pushed to implement procedural changes at the national level, to enable final decisions on the merits with a more streamlined mediation and decision-making process, and consequences for failure to comply. If enough NCPs are working to a higher standard, there will be pressure in the next “revision” to lift the bar for everyone.