

TUAC trade union advisory committee to the
OECD organisation for economic cooperation and development
■ CSC commission syndicale consultative auprès de
OCDE l'organisation de coopération et de développement économiques

**TUAC SUBMISSION
TO THE OECD ANNUAL MEETING OF NATIONAL CONTACT POINTS (NCPS)**

Paris, 15-16 June 2005

Introduction

TUAC estimates that more than 60 cases have been raised by trade unions during the five years since the revision of the OECD Guidelines for Multinational Enterprises. More than half of these still have to be resolved and the seriousness with which National Contact Points (NCPs) deal with cases varies greatly. In view of this, TUAC regards the improvement of NCP functioning and their treatment of cases as the priority for governments at the 2005 Annual Meeting of NCPs.

In order to assess the performance of NCPs, TUAC has surveyed our OECD affiliates and trade union organisations in other adhering countries on the functioning of NCPs. The questionnaire is attached in Annex 1. This paper is based on replies and comments made by trade union organisations in Argentina (CGT), Belgium (CSC and FGTB), Brazil (CUT), Denmark (LO), Germany (DGB), Ireland (ICTU), Italy (CGIL and UIL), Netherlands (FNV), New Zealand (NZCTU), Norway (LO), Spain (CC.OO), Sweden (LO and SACO), Switzerland (USS), the UK (TUC) and the US (AFL-CIO).

Information on and promotion of the Guidelines

A significant number of those replying reported that they had a satisfactory relationship with the NCP in their home country, eg Belgium, Denmark, Germany, Sweden and Switzerland. Nevertheless, many trade unions described the relationship as non-existent or purely superficial. The Italian NCP was first established in July 2004 and without any previous consultation with the trade unions despite such requests. It did however set up an advisory body although this group has yet to meet. In Ireland, Spain and the US, trade unions felt that the NCPs were almost invisible. They were not aware of any activities organised to raise awareness of the Guidelines. The Spanish NCP normally held one meeting every year with stakeholders, but it was perceived as a way for the NCP to meet its requirements under the Guidelines and not as a real engagement to their promotion and implementation. In Ireland and the US, trade unions have not even been invited to a yearly meeting.

Equally worrying is the fact that only one trade union reported any improvements in the functioning of the NCP during 2004/05. The Argentinian NCP had participated in a workshop organised by NGOs in December 2004 and was investigating a case raised by an affiliate of the CGT and was therefore described as slightly more active. But in principle, NCPs that are considered inactive or non-operating have not made any significant progress.

Despite efforts to raise awareness of the Guidelines, trade unions remained concerned that they were not sufficiently well known. Although the DGB in Germany was continuing to organise seminars and had just finalised the German version of TUAC's User's Guide, it concluded that the Guidelines were not widely known in Germany.

The User's Guide is now available in 22 languages: Bahasa Indonesian, Bulgarian, Chinese, Croatian, Czech, English, Estonian, French, Georgian, German, Hungarian, Italian, Japanese, Korean, Latvian, Lithuanian, Macedonian, Portuguese, Romanian, Russian, Spanish and Turkish.

TUAC is currently engaged in a project with the support of the European Commission to develop the use of the Guidelines by European Works Councils (EWCs) principally through a series of four training workshops. Two workshops have so far been held for European Works Councilors in co-operation with affiliates – one in Stockholm for the Nordic countries in January 2005 and one in the UK mainly for British and Dutch participants in May 2005. The other two will be held in Germany and France later this year. The project has also led to presentations of the Guidelines for members of EWCs in the textile sector, the public sector and the building- and woodworker sector. Affiliates in Belgium, Denmark and Switzerland are also promoting the Guidelines among EWCs.

In partnership with affiliates, other trade union organisations and the Friedrich Ebert Foundation (FES), TUAC continues to disseminate the Guidelines in adhering as well as non-adhering countries. FES and TUAC jointly held a regional seminar in Montevideo at the end of 2004 targeting the countries in Latin America that have adopted the Guidelines. Trade unions and the NCPs of Argentina, Brazil, Chile and Mexico were represented. The seminar focused on how to improve promotion and implementation of the Guidelines in Latin America, to share experiences and to learn from the best functioning NCPs. The Brazilian NCP announced that it would organise an international conference on the Guidelines during 2005, which would be needed considering that the NCP did not carry out any promotional activities in 2004.

Other trade union activities reported in the survey, besides various seminars and training programmes, included the activities of the USS (Switzerland) to increase knowledge of the Guidelines in Eastern Europe. The most recent conference was held in Macedonia in May 2005. LO Norway has been promoting the Guidelines in Russia in particular.

The majority of NCPs referred to in the survey had not organised any activities to promote the Guidelines during 2004/05 at least not to the knowledge of the trade unions in the countries concerned. Considering that the Guidelines remain relatively unknown outside the CSR "community" and special interest groups, TUAC would encourage governments to increase efforts to inform all relevant parties including trade unions of the Guidelines.

Furthermore, there is a fundamental imbalance between NCPs and different regions in the OECD area. While some NCPs regularly carry out promotional activities, others have not even five years after the revision undertaken any activities for trade unions. It is therefore a matter for the OECD Investment Committee to ensure that even the most passive NCPs organise at least one conference or similar activity to inform trade unions and others of the Guidelines.

Regional NCP meetings, such as the annual meeting between the Nordic NCPs, should also be encouraged. Such meetings could help to improve relations between NCPs and to activate the more passive NCPs. They could learn from each other by exchanging experiences, and the most effective NCPs could serve as a benchmark for the others.

Treatment of cases by NCPs

Since the revision of the Guidelines in 2000, about 60 cases have been raised with NCPs by trade unions. More than half of those are still pending. The oldest cases date back to 2002. A considerable number of cases submitted during 2003 are still unresolved. The lack of timeliness in dealing with cases remains one of the major shortcomings of the Guidelines follow-up process.

We call on NCPs as a start to acknowledge receipt of cases. This would avoid unnecessary confusion and misunderstandings as have been the case in some specific instances. We would also expect such a receipt to be given within weeks not months of receiving a case. Nevertheless, it appears that the Canadian trade union that raised a case with the Canadian NCP in November 2004 concerning UMP Kymmene had still not received any response from the NCP by the end of May 2005.

Only one trade union in the survey was content with the NCP's handling of cases. Several trade unions reported serious problems in NCPs' management of cases. Some NCPs ignore the Procedural Guidance and do not offer the parties involved a forum for discussion to help deal with the issue in question. According to CUT in Brazil, the NCP had not once tried to facilitate a dialogue between the social partners to help resolution of issues. This makes it very difficult, if not impossible, to reach an agreement between the parties concerned. The US NCP was described as unresponsive and had not effectively intervened in one single case. In the Netherlands, the handling of cases has worsened. The FNV noted that the Dutch NCP had narrowed the applicability of the Guidelines by citing the "investment nexus" clarification of the CIME and the introduction of new requirements limiting the receivability of cases.

The attitude of NCPs to parallel legal proceedings was seen as an important obstacle to the resolution of cases since some NCPs refused to take any action while the proceedings were ongoing. This is particularly problematic for the cases in non-adhering countries as legal remedy is often sought before raising a case with an NCP. Thus no progress has been made on the case raised by the Malaysian Trades Union Congress (MTUC) in May 2003 concerning breaches of the Guidelines by the Korean company Kiswire. Nor have there been any developments on the case regarding Top Thermo Manufacturers' operations in Malaysia submitted to the NCP of Japan in March 2003 by the MTUC or the case of Toyota in the Philippines submitted in March 2004.

In view of the shortcomings in the legal systems in some non-adhering countries, for example regarding law enforcement, it is indispensable that NCPs try to resolve cases notwithstanding possible domestic legal proceedings. Some NCPs however argue that they do not want to interfere with host countries' legal systems. Yet this risk is virtually non-existent. NCPs are not making judgements over whether national law is being violated. Their task is merely to uphold the implementation of the Guidelines. The danger is not that NCPs may try to influence the outcome in domestic courts, but that they are so anxious not to point out

corporate conduct incompatible with the Guidelines that the implementation procedures risk losing their significance.

It has to be reiterated that the Guidelines go beyond national law and should not be confused with juridical procedures. On the contrary, the Guidelines implementation procedures offer a possibility to reach settlements out of court. Moreover, legal or other proceedings do not rule out NCP proceedings. This has already been confirmed in the handling of a number of cases. Deviations from this principle are also a deviation from the 2000 revision of the Guidelines.

Accountability of NCPs

Governments have now had five years to establish NCPs and to put in place procedures for the implementation of the Guidelines. In spite of that a number of NCPs are still not functioning properly. In addition, there are considerable discrepancies in the way NCPs are operating particularly concerning the treatment of cases.

The NCPs of Japan, Korea and the US in particular have constantly failed to “offer a forum for discussion” and “assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner”. In practice, the US NCP has not contributed to the resolution of one single case. In Italy, the NCP did not come into existence until July 2004. The Irish and Spanish NCPs are other examples of NCPs that lack engagement and commitment to the Guidelines. Even NCPs that have not had to handle specific instances can play an active role in their promotion. Lack of cases is not a reason to remain passive.

In order to get all the NCPs fully operating, they must be held accountable. But it is clear that the OECD Investment Committee has not succeeded in this respect. At present there is not enough peer pressure within the Committee.

The annual reports from NCPs were designed to increase accountability - to provide a means to share experience and encourage best practices and to assess the effectiveness of NCPs. Yet they provide at best a description of the promotional activities of NCPs and a summary note on cases, and at worst a half page covering little more than the location of the NCP and contact details.

The annual reports should rather provide a proper account of the activities of NCPs including efforts made to resolve cases. Furthermore, the Investment Committee should evaluate the performance of NCPs, identify problems and weaknesses and make recommendations so as to improve their effectiveness as stated in the Procedural Guidance.

It is urgent that the Guidelines realise their full potential as an effective instrument to influence corporate conduct. TUAC calls on the OECD to initiate peer reviews of the adhering governments' implementation of the Guidelines and more specifically the performance of NCPs.

Peer reviews are seen as one of the strengths of the OECD and are often cited as an effective method to learn from others and to improve performance in a specific area. The review creates pressure on the government to live up to a certain standard. Part of the work of the Investment Committee aims to introduce the model of peer reviews to Africa through NEPAD

(New Partnership for African Development). It would thus be appropriate for the Investment Committee to apply peer reviews to its own members' work on the Guidelines.

Such peer reviews should be conducted by the Investment Committee or its Working Party in co-operation with the BIAC, TUAC and OECD Watch. As is the practice in other areas of the OECD, for each review lead examiners should be appointed from the member countries. They have to be chosen carefully since they are supposed to be objective and free from any influence of special interests. The peer reviews should result in a report that evaluates the accomplishments of the government on the implementation of the Guidelines, but it should also analyse the shortcomings and make recommendations to the government concerned.

Peer reviews would create a more systematic exchange of information than is currently the case. It would increase transparency and open up a real policy dialogue. Today NCPs that do not wish to share information with their colleagues can easily avoid obligations. Peer reviews would also contribute to capacity building for resolving cases, which should not be underestimated given the character of the Guidelines and the limited resources that have been devoted to their implementation.

Conclusions

- Despite efforts by governments, trade unions, NGOs and business to raise awareness of the Guidelines, they remain relatively unknown. Government efforts are however unevenly dispersed and new promotional activities seem particularly needed in Argentina, Brazil, Ireland, Italy, Spain and the US according to the TUAC survey. Increased efforts at promotion are also needed elsewhere.
- The management of NCPs is the key to an effective implementation of the Guidelines. There are however many shortcomings in the treatment of cases: delays, lack of transparency, reluctance to offer a forum for discussion for the parties involved including offering conciliation or mediation, reluctance to handle cases in connection with parallel legal proceedings and general lack of openness towards issues being raised with NCPs.
- In order to improve the functioning of NCPs, governments must be held accountable. TUAC believes this warrants introducing peer reviews of adhering governments' implementation of the Guidelines.

**TUAC QUESTIONNAIRE
ON THE FUNCTIONING OF NATIONAL CONTACT POINTS (NCPs)**

April 2005

A General

1. How are your relations with the NCP in your country?
2. Have any particular activities been organised by the NCP during 2004/05?
3. Have there been any changes or improvements in the functioning of the NCP during 2004/05?

B Cases under the Guidelines

1. Please provide information on the case(s) raised by your organisation during 2004/05. What measures has the NCP taken to deal with the issue? What action has your organisation taken to get the case resolved?
2. Please provide information on other ongoing cases your organisation or NCP are involved in.
3. Are you satisfied with the handling of the case(s)? If yes, why? If no, why not?

C Other

1. What activities have your organisation undertaken in relation to the Guidelines?
2. Please provide any further comments relating to your experience with the Guidelines and/or NCPs.