



## CONTRIBUTION ON THE EMPLOYMENT & INDUSTRIAL RELATIONS CHAPTER OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

*This paper presents views of international businesses compiled by the BIAC ELSA Committee based on discussions on 9-10 March 1999*

### INTRODUCTION

As a necessary part of competing in a global economy, OECD-based international corporations bring high standards and best practices with them in their world-wide operations. These global corporations compete with one another to train, retain, and motivate employees throughout the world. Their productivity and growth depends on developing and applying good practices in all fields of operations, including employee relations and working conditions.

This paper presents views of international businesses compiled by the BIAC ELSA Committee regarding the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises ("Guidelines"). The specific points were developed in co-operation with representatives of business in OECD member countries, based on discussions held on 9-10 March 1999. They are intended to help the OECD governments to see the realities and needs of businesses who are the addressees of the Guidelines. In general, we believe that changes to the Guidelines must be carefully evaluated to determine their enduring relevance; they must be justified and negotiated. Further contributions by BIAC will address these same issues, because the Review of the Guidelines is an ongoing process of study and discussion.

The BIAC ELSA Committee is pleased to have the opportunity to provide the views of OECD-based international businesses on the review of Employment and Industrial Relations chapter of the Guidelines. We consider this review exercise important not only in its own right, but also in light of its original context – as part of the Declaration on International Investment and Multinational Enterprises, including principles of National Treatment and Conflicting Requirements and others – as well as in the context of increasing international investment.

We believe that the Employment and Industrial Relations chapter has played an important role in establishing a baseline for the evolution of human resource practices in global corporations. This may be as equally attributable to its content as to the fact that a consensus among governments, labour, and business has been maintained since 1976. As BIAC stated in its September 1998 paper "BIAC Statement on the Preparation of the Review of the OECD Guidelines for Multinational Enterprises"<sup>1</sup>, it is critical to the continued success and relevance of the Guidelines that consensus on this voluntary instrument be maintained.

The BIAC ELSA Committee was invited to submit this room document, which includes conclusions of an LMP held on March 10 (please refer to the summary record).<sup>2</sup> That event saw a

<sup>1</sup> Available on OLIS as DAFPE/IME/RD(99)2.

<sup>2</sup> The summary record of the March 10 meeting will be available in a separate document.

wide variety of business representatives and association representatives present a series of case studies of best practices in various aspects of the employment relationship (the participants list is attached). The common themes from these presentations are described below. The group also addressed specific questions that were raised regarding both the contents of the Guidelines and the procedures used to promote and clarify them.

## **THE CONTEXT**

### The High Standards of Global Corporations

International corporations operate in a global environment. While they may reflect the values and culture of the country in which they originated, they make business decisions based on the global needs and opportunities that they identify. Investment decisions are based on global market demands; employment and staffing decisions are based on global resources. Importantly, each company operation must also meet local expectations--expressed in legislation, culture and tradition--in order to survive. This is particularly true in the industrial relations area. Flexibility is necessary for companies to balance these needs.

The examples described below come from a representative sample of global corporations. They demonstrate that global companies are engaged in a “race to the top”, not a “race to the bottom” regarding labour and employment practices. To the contrary, their competition drives innovations that have led to measurable improvements in those practices.

### Employment Growth and Working Conditions

The company good practices discussed on March 10 covered such issues as occupational safety and health (OSH); training and education; employee involvement; and skills and technology transfer. More broadly, however, the overall employment impact of FDI was analysed. One presentation demonstrated that given the flexibility to restructure according to company core strengths, substantial net employment growth resulted in both the core industry and the businesses that were spun off. Core employment increased from 29,000 to 50,000 in one example over a nine-year period. The businesses that were spun off or contracted out also demonstrated robust performance.

Another presentation demonstrated a strong positive correlation between the creation of high-paying jobs in the home country and the level of overall FDI that that home country's corporations control. Claims that international companies seek to “export jobs” clearly fall short.

A study of the employment multiplier effect of one company's investment in Eastern Europe showed that for every direct job created, some 10 additional jobs were created throughout the supply and distribution/retail chain. This particular investment also brought global supply standards, skills, and technology to Eastern Europe and was instrumental in reviving moribund or inefficient sectors.

The presentations on OSH and training and education demonstrated that, based on sound management principles, most global companies treat all employees equally, regardless of location. Thus one company decided that it was in its best interest to implement a set of global principles for all employees concerning OSH policy. This same presentation showed that work-days lost to injury in an Eastern European operation was one-tenth the rate of Western European operations. Another company has chosen, in order to develop, motivate, and retain a highly skilled global workforce, to offer extensive education and training to all its employees, regardless of occupation.

This particular presentation also focused on the in-depth employee evaluation of and involvement in his or her own career development.

### Conclusion

In conclusion, all OECD-based international companies compete against one another in products and practices. What results is in effect a “race to the top” to motivate and retain the best employees. The innovative practices described above are representative of the good practices of other global corporations. What are required from the Guidelines are sound principles that exhort and encourage companies to innovate and to develop best practices. Prescriptive, bureaucratic mechanisms and text are counterproductive and will not serve the purpose intended.

## **GUIDELINES CONTENT**

As a starting point, BIAC believes, for reasons explained in the September 1998 paper, that maintaining the text of the Guidelines is valuable for promoting the widest understanding and application of the underlying principles. The March 10 program addressed specific textual changes that have been proposed. Some of the issues raised are described below.

### Disclosure and Changes in Operations: Company Practices

Regarding changes to the disclosure and information and consultation paragraphs, discussion focused on the question of timing of disclosure of changes in operations. The presenters strongly agreed that the decisions must remain within the authority of management, while noting the need for reasonable disclosure. Local laws apply to indicate the specific timing for necessary disclosure, and companies follow these laws.

The company presentations made it clear that, in the current practice of global companies, employees are informed at the earliest possible opportunity of major changes to operations. Moreover, the majority of redundant employees are offered generous separation packages to facilitate voluntary separation. Because of this reliance on voluntary separation, it is in the business interest of the company to provide information early, and allow sufficient time for employees to appreciate the economic situation of the company and decide whether to accept the voluntary package. This priority was shared by all the companies presenting, regardless of the location of their operations (and regardless of whether local law required less).

In certain cases, however, it is damaging to employee interests to prematurely announce changes in advance. Announcing changes in advance may adversely affect the company’s stock price, damaging both the company and the employees, particularly if they themselves own stock. Early disclosure may also be strictly regulated under national law, as is the case in the United States, for example.

It is inappropriate to impose very precise practices that are developed for reasons specific to one cultural context on companies elsewhere; it is important to retain an appropriate level of generality and flexibility in the Guidelines for their application across the entire OECD business community.

Other disclosure issues will be explored in later statements by BIAC.

### Child Labour and Forced Labour: The Global Business Response

Child labour and forced labour are moral and political issues that OECD-based international businesses take seriously, as was evidenced in discussion at the March 10 meeting. The international business community's commitment to this issue is unequivocal.

Repeated studies by the ILO and others demonstrate that child labour exists overwhelmingly in local and national industries in the world's poorest countries. The vast majority of global companies have no direct business involvement with child labour and forced labour practices. Therefore, the Guidelines—by governments and addressed to the Multinational Enterprises—may not be the most appropriate place for statements aimed at eliminating these practices.

Moreover, business believes that the expertise and appropriate audience for these issues resides at the ILO. Significantly, it was a business initiative that placed the Convention on the Worst Forms of Child Labour on the ILO's agenda.

Further study of these important issues is warranted.

### ILO Principles and Standards

Referencing or incorporating ILO Conventions or the 1998 *Declaration on Fundamental Principles and Rights at Work* ("1998 Declaration") could present problems.

References to other international organisations or instruments may result in the appearance of an inappropriate shift of governmental responsibility and accountability to companies, thereby creating unclear priorities and potentially conflicting responsibilities. For example, the ILO Conventions and the 1998 Declaration apply to governments and the relevant supervisory or follow-up mechanisms cannot be extended to companies.<sup>3</sup> The 1998 Declaration is intended to lead to governments creating and/or enforcing appropriate legislation, which may differ from country to country; companies are required to adhere to that legislation.

A reference should not imply that *only* the one instrument mentioned is important. The Guidelines should be cautious about privileging one international instrument over others that cover similar subject matter. Also, references should not allow for any confusion, which would make the Guidelines less "operational."

### Training, Discrimination, and Safety

In a tight labour market, companies train scarce employees in order to survive and compete. OECD member states may wish to consider fully implementing the recommendations of the OECD Jobs Study before imposing training requirements on corporations. Implementing these recommendations has been demonstrated to reduce structural unemployment, increase the demand for labour, and create the conditions under which companies voluntarily improve the labour supply. The current Guidelines language on training sufficiently covers that issue. "Employability," while a goal that many employees strive for and employers support, is a concept too difficult to define and quantify to be usefully incorporated into the Guidelines.

The company presentations demonstrated that global corporations adhere to the highest standards in this regard. The ILO Tripartite Declaration of 1977 not only addresses these issues, but also deals extensively with health and safety.

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<sup>3</sup> The 1998 ILO Declaration is intended to allow the world community to address serious gaps in governmental policies and practices. It was developed and spearheaded by the ILO's Employers' Group, without whose active support the Declaration would not have succeeded.

The OECD should not duplicate ILO efforts and expertise in these areas.

### Human Rights

Traditionally understood, human rights are the responsibility of state-to-state relations. It is far from clear what role business could play, for example, in guaranteeing nationality or asylum, as called for by the UN Declaration on Human Rights. Again here, references to human rights texts may result in an inappropriate shift of governmental responsibility and accountability to companies, creating unclear priorities and potentially conflicting responsibilities (N.B. it is inappropriate for the Guidelines to cause conflicting requirements on companies<sup>4</sup>). Therefore, businesses advise a cautious approach to textual changes that might simplistically call for multinational companies to protect “human rights.”

### Privacy

Personal privacy is dealt with in vastly different ways throughout the OECD area. Reference to privacy in the Guidelines would therefore be open to widely differing interpretations in different OECD countries. BIAC’s ELSA Committee believes that the OECD Guidelines on Privacy (1981) adequately cover this issue and that they do not belong in the MNE Guidelines.

### Conclusion

The BIAC ELSA Committee has determined that the current chapter on Employment and Industrial Relations in the Guidelines provides the type of guidance that companies find useful.

We encourage the OECD Review to have as its goal that the Guidelines should remain an operational text that reflects and promotes good practice by companies, in a simple and easily accessible format.

## **GUIDELINES PROCEDURE**

### Jurisdiction and Extraterritoriality

The OECD is currently grappling with the issue of the Guidelines’ territorial scope.

In the case of the issues with extraterritorial effect in the chapter on Employment and Industrial Relations, business participants at the meeting of 10 March consistently referred to the ILO’s role. The ILO was described as institutionally better suited to resolve the issues raised through the means of negotiation with all relevant countries participating. Participants argued that the expertise and audience for developing global instruments resides at the ILO. The ILO Tripartite Declaration is recommended to multinational companies operating in 174 member states, as well as the governments and trade unions of those states. In contrast to the Guidelines, it has a well-defined interpretation procedure. Furthermore, the 1998 Declaration already requires that the ILO member states implement the four employment principles contained therein.

BIAC has previously raised the point (in its September 1998 paper) that if the scope of the application of the Guidelines is to be clarified, it may be useful to explore the Guidelines’ application to domestic companies, as “universal” principles, and to emphasise the National

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<sup>4</sup> The original package of instruments that included the Guidelines, also included the instrument on Conflicting Requirements that calls on Member countries “to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries.”

Treatment principle. To effectively extend the Guidelines' scope to operations outside the OECD-area, the associated instruments (e.g. on National Treatment and Conflicting Requirements) should apply, and implementation mechanisms (i.e. National Contact Points) should operate.

Issues regarding scope will be developed in future BIAC statements.

### NAFTA

Reference has also been made to the North American Agreement on Labour Co-operation, commonly called the NAFTA Labor Side Agreement. The primary goal of this unique agreement is to assure effective enforcement of each country's own labour laws and emphasises a co-operative approach towards achieving that goal. Only for 3 specific principles – child labour, minimum wage, and health and safety – does the agreement allow, after a series of consultations, fact-finding and arbitration, for monetary fines and tariff increases to WTO levels.

### National Contact Points

The efficacy of the National Contact Points (“NCPs”) presently varies from country to country. BIAC believes that the NCPs should act in accordance with the original intent of the Guidelines and the 1991 Decision of the Council . For example, they should be fully familiar with the entire content of the Guidelines and should serve as an information clearinghouse.

It may be important to allow each country to design the NCP to suit its national conditions.

### Anonymity

BIAC most strongly opposes the proposal that companies should be named in clarification proceedings—which are not judicial—because of the possibility of injustice and prejudice to a company named. The possibility of disclosure of the identity of a party would fetter the free and effective communication of information to the NCP because of the need to protect the ability to eventually defend legal rights.

### The Supply Chain

The Guidelines should not be used to impose from-above responsibility (potentially implying legal liability) for the actions of suppliers, contractors, and subcontractors. A global company is involved in a web of suppliers and contractors numbering in the thousands. In many cases, it remains unrealistic to demand that such a company monitor its various contractors and suppliers.

It is important to stress that international companies have effectively discouraged unethical practices by implementing exemplary ones. Therefore, while the Guidelines should name good practices as principles for all companies to meet, they must also allow for “best practices” to develop from the ground up—without naming them or requiring them. Especially if they are to be considered universal principles, the Guidelines must be capable of being applied to all companies, including some of smaller size.

## **CONCLUSION**

International businesses emphasise that the Guidelines must remain voluntary, simple, and easily put into practice. They should allow companies the flexibility to innovate and to create good and best practices. Not every company's practice will necessarily be identical throughout its global

operations. International companies do, however, maintain high standards throughout, even while they align their operations to local laws, customs, and culture. Their investment does bring a range of benefits, from employment growth to skills transfers.

The OECD Guidelines have played an important role in promoting and reflecting these practices and benefits. BIAC believes that they can continue to play that role into the next century, and that the consensus of support behind them is critical to their success. We appreciate that the OECD has requested the input of the business community at each stage of the present review. BIAC is prepared to offer its assistance to support the OECD's work, and will be happy to make further contributions to the discussion.