

Paris, 15 June 2007

BIAC Submission

2007 OECD Roundtable on Corporate Responsibility “The OECD Guidelines for Multinational Enterprises and the Financial Sector”

Introduction

BIAC welcomes the opportunity to contribute the views of the OECD business community to the Annual Corporate Responsibility Roundtable. The OECD Guidelines for Multinational Enterprises (Guidelines) are a set of voluntary recommendations from governments to foreign investors which aim at encouraging corporate responsibility and through this enhancing the positive contribution of foreign investment to sustainable development. It is probably fair to say that when the Guidelines were developed and revised, the financial sector was not meant to be the main focus for the recommendations. Multinational companies from the manufacturing sector were arguably the key group for the governments that negotiated the Guidelines text. However, companies from the financial sector have increasingly become important foreign investors. Moreover, through the services it provides to other industries the sector plays a crucial role in making foreign investment possible. Hence, a discussion about the relationship between the Guidelines and the financial sector appears to be topical.

Concept of corporate responsibility

For OECD business, corporate responsibility (CR) is voluntary, reaches over and above applicable legal requirements and is business driven as opposed to government driven. The raison d'être for any company, be it from the financial or any other sector, is to provide goods and services to its customers efficiently and through this, yield adequate returns for its capital providers. While doing this, companies must comply with laws and regulations. When firms engage in additional CR activities they do this on a voluntary basis and because they believe it is good for their long-term competitiveness. Business has always recognised that it has an important role alongside other actors in contributing to the development of the communities in which it operates. In recent years, the debate on CR has expanded internationally, fuelled by both an increasing interest by business itself in CR as a business tool, and by the growing debate on the role of business in globalisation and sustainable development.

Financial sector and corporate responsibility

The financial sector is comprised of a number of diverse industries with different business models including retail banking, commercial and corporate banking, insurance/re-insurance, and wealth management. Services provided by financial sector actors include deposit-taking; loan and investment services; insurance and re-insurance; estate, trust and agency services; securities; and all forms of financial or market intermediation including the distribution of a wide range of financial products.

Financial service providers tend to be highly regulated and strive to achieve high standards through a range of methods from internal codes of conduct to external stakeholder dialogue. However, there is - as always - room to do even more and the trends appear to show that shareholders, customers and other stakeholders are driving the market in this direction.

The CR potential of the financial sector can be attributed to both its role as major investor and employer in many countries and to its function as intermediary that helps allocating capital to efficient uses and assists in the management of risks. In their role as financial intermediaries, financial sector companies may have various ways and means available to encourage companies from the non-financial sector to pursue CR objectives. Financial sector companies may for instance encourage CR activities of companies of which they are a shareholder, conduct screenings for social and environmental issues, develop management tools (e.g. for risk management, evaluation) and pursue certain types of investment strategies (i.e. ethical or socially responsible investment).

The increase in importance of funds that focus particularly on social and environmental aspects of investment as well as the dynamic development of company and sector specific codes of conduct, guidelines and principles show that CR as a business tool has gained importance in the financial sector.¹ Insurers and re-insurers for example were among the first who focused on climate change and the impact this phenomenon may have on their business models. Financial institutions have subscribed to the Equator Principles that require projects to develop stringent environmental and social conditions. Institutional investors have signed the United Nations Principles for Responsible Investment (PRI). The Enhanced Analytics Initiative (EAI), which comprises a group of asset owners and fund managers, puts the brokers' focus on incorporating non-financial issues into their research. The Voluntary Quality Standard (VQS) is an initiative of independent research houses aimed at setting standards for quality research. Rating agencies have incorporated social and environmental criteria in their evaluation of credit risks and institutional shareholders, such as pension and mutual funds, are also increasingly tying their decisions to corporate responsibility criteria. Major international banks have developed their own standards that go above legal and regulatory requirements.

All this activity clearly points to the financial sector's positive response to the challenges they face in doing business internationally.

How can the OECD MNE Guidelines be useful for the financial sector?

The financial sector is a highly regulated industry. In BIAC's view the most important question regarding the relation between the financial sector, its complex regulation and the Guidelines is whether and how the Guidelines can help financial service companies in responding to societal expectations that go above and beyond law as well as regulations.

BIAC considers that the Guidelines and the various CR initiatives in the financial sector are complementary to each other. The Guidelines are a comprehensive set of recommendations addressed to foreign investors that cover all basic elements of CR which are relevant to modern business and societies. As they were drafted in partnership with business, labour unions and NGOs and endorsed by 39 governments, the Guidelines have a particularly high credibility. Thus, the Guidelines are an important benchmark and an umbrella to be used for the development of sector-related and more specific CR tools and initiatives in individual industries including in the financial sector.

¹ According to Financial Times, 1'246 private equity funds are targeting environmental projects and more than £780 billions have been invested in socially responsible investments and funds (source: "Fund management: Ethics gain weight with clients and managers special report", Financial Times, June 7, 2007).

Moreover, the Guidelines draw on a structure of National Contact Points (NCPs) that foreign investors from financial sector companies may find useful. The NCPs task is it to promote the Guidelines, handle inquiries about their content and contribute to the bona fide resolution of issues that arise relating to implementation of the Guidelines in practical cases (“specific instances”). In particular, NCPs are expected to offer a forum for confidential discussion and to assist the business community, employee organisations and other parties concerned in dealing with issues raised by interested parties. About 110 specific instances have been handled by NCPs since the Guidelines’ revision in 2000. The experience gained from the specific instances indicates that the Guidelines and the NCPs have often served as effective instruments for resolving issues with companies. Financial sector providers may also seek advice from NCP about, for example, whether any projects they finance conform to the Guidelines.

The 2007 Roundtable is a useful opportunity to explore the interaction between the Guidelines and the initiatives that the sector already undertakes. We believe the complementarity that this will demonstrate could provide a positive contribution to the understanding of how then Guidelines and other tools interact to positive effect.

Is the financial sector covered by the OECD MNE Guidelines?

BIAC notes that some have raised the question whether and to what extent the financial sector is “covered” by the scope of the Guidelines. The notion behind this question appears to be that guidance for NCPs was necessarily regarding NCP decisions about whether to embark on a specific instance procedure in cases where stakeholders raise questions related to the conduct of financial sector companies.

For BIAC the main question in this context is whether for the purpose of the individual specific instance the financial services company has to be seen as a multinational company (i.e. foreign investor) since the Guidelines are addressed to multinational companies only. A financial sector company that invests abroad in order to establish a majority owned subsidiary or branch will in any case be regarded as a multinational company and therefore, as far as the activities and operations related to these investments are concerned, the company will be expected to act in accordance with the OECD Guidelines.

In specific instances where the financial sector firm’s investment represents only a minority share of a foreign company or where the financial sector company does not itself invest abroad but only indirectly supports the foreign investment of a client or business partner through the products and services that it provides, the question whether the financial sector firm has to be regarded as a multinational company that is expected to follow the Guidelines, may be more difficult to answer. BIAC is of the view that in any case, specific instance procedures should only be initiated by NCPs if the financial sector company has been involved in a substantial way in the cross-border investment at question. BIAC would suggest that NCPs need to consider the issue carefully and take a decision based on the details of the individual specific instance, the text of the Guidelines, previous OECD Investment Committee clarifications (e.g. on the “investment nexus”) and their own judgement.

Outreach to emerging markets countries

Questions about whether the financial sector sufficiently incorporates relevant corporate responsibility principles into its operations usually arise in relation to investment projects in emerging and developing countries. In this context it is important to note that financial sector companies from major emerging markets are becoming increasingly important players in the international financing of such projects. Moreover, some emerging countries have also developed local financial markets with competitive domestic service providers. Both the internationally oriented financial service providers from emerging countries as well as local firms do not always

have the same notion of corporate responsibility considerations as the financial sector in OECD countries. This is even more relevant against the background of the often less stringent and comprehensive financial sector regulation in outside the OECD. Thus, in order to make sure that important corporate responsibility aspects, such as the principles embedded in the Guidelines, are sufficiently taken into account in investment projects in non-OECD countries, the OECD as well as the OECD based financial sector need to engage the financial sector in emerging countries in a constructive dialogue about the usefulness of the Guidelines and relevant sector specific CR tools.

Addressing CR issues in emerging countries is not only important in the financial sector but across a broad range of industries. While the OECD Guidelines for Multinational Enterprises were originally developed to address concerns about foreign investors in the OECD member countries, it must be recognized that today, globally integrated companies are the main source of leadership and action related to CR. Indeed, current problems with CR stem mainly from domestic actors in emerging economies rather than from global investors from the OECD area. OECD member governments thus need to consider how the Guidelines and the NCP process, which were developed to solve past problems, can be useful in addressing the current problems that result from domestic issues in emerging economies.