



## Columbia FDI Perspectives

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Editor-in-Chief: Karl P. Sauvart (Karl.Sauvant@law.columbia.edu)

Editor: Ken Davies (kendavies@yahoo.com)

Managing Editor: Alma Zadic (az2242@columbia.edu)

### Shaping global business conduct:

### The 2011 update of the OECD Guidelines for Multinational Enterprises

by

Manfred Schekulin\*

On May 25, 2011, US Secretary of State Hillary Clinton joined ministers from members of the Organisation of Economic Co-operation and Development (OECD) and developing economies to celebrate the Organisation's 50th anniversary and agree on an update of the *OECD Guidelines for Multinational Enterprises*, the fifth revision since their adoption in 1976.<sup>1</sup> This marked the culmination of an intense one-year negotiating process involving a large number of stakeholders, international organizations and emerging economies.

The fact that the business community shares responsibility for sustainable development is no longer disputed. But enterprises need to know how best to respond to societal expectations. As stated by the OECD Secretary-General Angel Gurría, the updated *Guidelines* "will help the private sector grow their businesses responsibly by promoting human rights and boosting social development around the world."<sup>2</sup>

The *Guidelines* are founded on the premise that non-discriminatory treatment of foreign affiliates by host country governments, as provided for by the OECD National Treatment Instrument, should be reciprocated by socially responsible corporate behavior. They constitute the most comprehensive government-backed code of conduct that enterprises are invited to observe wherever they operate.<sup>3</sup> The principles and standards they promote are consistent with applicable laws, internationally recognized standards and OECD instruments on good

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\*Manfred Schekulin (Manfred.Schekulin@bmwfj.gv.at) is Director of Export and Investment Policy at the Austrian Federal Ministry of Economy, Family and Youth and chair of the OECD Investment Committee. This *Perspective* represents his personal assessment. The author wishes to thank Marie-France Houde, coordinator for the 2011 update, for her input, and Paul Hohnen, Vernon MacKay and Ursula Wynhoven for their helpful comments on this text. **The views expressed by the author of this *Perspective* do not necessarily reflect the opinions of Columbia University or its partners and supporters. *Columbia FDI Perspectives* (ISSN 2158-3579) is a peer-reviewed series.**

<sup>1</sup> The Guidelines form part of the "OECD Declaration on International Investment and Multinational Enterprises," available at:

[http://www.oecd.org/document/28/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html).

<sup>2</sup> "New OECD guidelines to protect human rights and social development," *OECD Newsroom*, May 25, 2011, available at: [http://www.oecd.org/document/19/0,3746,en\\_21571361\\_44315115\\_48029523\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html).

<sup>3</sup> The Guidelines' eleven chapters cover employment and industrial relations, human rights, environment, information disclosure, anticorruption, consumer interests, science and technology, competition, and taxation.

governance and business. They are known for their implementation procedures that include "National Contact Points" (NCPs) in all adhering countries and a mediation mechanism for addressing complaints involving alleged misconduct by multinational enterprises (MNEs). Thirty-four OECD members and eight non-OECD countries currently subscribe to them, and several more are in various stages of their application process.

The 2011 update concentrated on three issues:

- The incorporation of a new chapter on human rights, based on the concept “protect, respect and remedy” – the Framework and the respective Guiding Principles developed by the UN Special Representative for Business and Human Rights, John Ruggie.<sup>4</sup> The *Guidelines* are – together with the revised International Finance Corporation (IFC) standards – among the first international instruments to operationalize the UN Framework, and the only one offering a ready-to-use governmental remedy mechanism for cross-border violations of human rights.
- The introduction of the general operational principle of due diligence, i.e. a process through which enterprises can identify, prevent, mitigate, and account for how they address actual and potential adverse impacts as an integral part of their internal decision-making and risk management systems. Due diligence applies not only to harm caused or contributed to by an enterprise itself, but also by business partners with a direct link to its operations, products or services.
- The reinforcement of implementation procedures through clearer and more predictable rules for the handling of complaints by NCPs and a stronger emphasis on problem solving through mediation. Together with a new focus on helping enterprises and other stakeholders cope with difficult situations or circumstances, this constitutes a major shift from merely expressing adhering governments’ expectations to actively contributing to the prevention and resolution of conflicts arising out of MNE operations.

Other important improvements include expanded provisions on workers’ rights, bribe solicitation and extortion, climate-related issues, sustainable consumption, tax governance, and tax compliance.

The update achieved its objective of redefining the “gold standard” for responsible business conduct in a global context. But while a successful update was a necessary condition for a further increase in the impact of the *Guidelines*, it is not a sufficient one. Exploiting the updated *Guidelines’* potential will require sustained efforts by all involved: Adhering countries will have to review the organization and work methods of NCPs and make available the necessary resources. The OECD will have to reconsider how best to assist NCPs in their tasks as well as how to deepen its relationships and cooperation with non-adhering countries, in particular emerging markets, and with international partners. Recently signed working arrangements, for example with the International Labour Organization, the United Nations Global Compact, the International Organization for Standardization and the Global Reporting Initiative, are important steps toward a coherent global approach to corporate responsibility. Many more will have to follow.

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<sup>4</sup> UN, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” A/HRC/17/31, (March 21, 2011).

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For further information please contact: Vale Columbia Center on Sustainable International Investment, Ken Davies, [kendavies@yahoo.com](mailto:kendavies@yahoo.com).

The Vale Columbia Center on Sustainable International Investment (VCC), led by Dr. Karl P. Sauvant, is a joint center of Columbia Law School and The Earth Institute at Columbia University. It seeks to be a leader on issues related to foreign direct investment (FDI) in the global economy. VCC focuses on the analysis and teaching of the implications of FDI for public policy and international investment law.

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