



OECD Guidelines for Multinational Enterprises

Annual Report 2009/2010 on Activities of the Swiss National Contact Point to the OECD Invest- ment Committee

A. Institutional Arrangements

The Swiss National Contact Point (NCP) has a single-department structure and is part of the International Investment and Multinational Enterprises Unit of the State Secretariat for Economic Affairs SECO (Federal Department of Economic Affairs DEA). In the view of SECO, international investments and Corporate Social Responsibility (CSR) go hand in hand. For that reason, the NCP and the task to protect Swiss businesses investing abroad have been assigned to the same governmental unit. In such a way, the support to businesses operating internationally can be combined with fostering responsible corporate behaviour in an effective and flexible way.

Whenever a specific instance is submitted to the NCP, an "ad hoc" committee is constituted in order to deliberate on the issues raised and to support the NCP during the whole proceeding. The committee includes representatives from relevant other government agencies, taking into account the specific expertise needed (e.g. labour relations, environment) as well as the specific context of the country concerned. In fact, in such situations the NCP is working as a multi-department structured NCP.

Relations to other government agencies

The NCP is maintaining regular contact with different other government agencies, which cover aspects of the OECD Guidelines and collaborates closely with them in the case of specific instances as mentioned above.

Specifically during the period under review, the NCP cooperated closely with other relevant government agencies in order to develop the Swiss position regarding the update of the Guidelines currently under way.

Relations to social partners and other interested parties, including non-governmental organisations (NGOs)

The cooperation with stakeholders is associated by means of an open and comprehensive consultative group, which keeps up regular contact and meets at least once a year. The group includes several representatives of social partners, employer organizations, multinational enterprises, NGOs as well as government units.

Due to the ongoing preparations of the update of the Guidelines, contacts have increased during the period under review and the consultative group met twice (January and June 2010). It will continue to meet on a regular basis.

Relations with other major CSR initiatives

The NCP keeps close contact to the Swiss UN Global Compact Network¹, which is managed by the International Chamber of Commerce Switzerland, as well as to the UN Global Compact "Learning Platform" for small and medium-sized enterprises², which is supported financially by the Swiss Government. At times, the NCP is elaborating on specific subjects (e.g. update of the Guidelines, prevention of corruption) during events organized by the UN Global Compact Network.

The NCP is in contact with the International Labour Organisation (ILO) and follows its activities in the fields of CSR in order to allow responding to the variety of issues in relation to labour conflicts submitted to the NCP.

The NCP is following closely the activities of the UN Special Representative of the Secretary-General, John Ruggie, regarding the issue of human rights and transnational corporations and other business enterprises. In this context, the NCP participated during the period of review in several meetings with Swiss stakeholders in order to discuss the interim-report and a possible future approach.

Furthermore, the development of the ISO 26000 initiative is closely followed. For the NCP it will be interesting to look at the acceptance as well as the implementation of this new standard.

In addition, the NCP follows in its function as focal point for general questions in relation to responsible business conduct different other CSR initiatives linking them with the OECD Guidelines in order to benefit from synergies. Moreover, new developments are followed carefully since they allow the NCP to keep up with the broader debate on CSR and to be consistent when treating specific instances.

B. Information and Promotion

The NCP has its own comprehensive internet page published providing all necessary information related to the Guidelines³ and the functioning of the NCP⁴. It is regularly updated. The Guidelines are available in the three official languages of Switzerland (French, German and Italian) as well as in English.

¹ <http://www.unglobalcompact.ch/Seiten/default.aspx>, 20.04.2010

² <http://www.sustainability-zurich.org/en/p67000106.html>, 20.04.2010

³ <http://www.seco.admin.ch/themen/00513/00527/01213/index.html?lang=en>, 20.04.2010

⁴ <http://www.seco.admin.ch/themen/00513/00527/02584/index.html?lang=en>, 20.04.2010

In April 2010, the NCP has published a flyer for multinational companies summarising the Guidelines as well as the functioning of the NCP⁵. It has been disseminated through different internet pages of the Swiss Government, Swiss embassies as well as different business associations. The flyer is available in the three official languages of Switzerland as well as in English.

In its function as focal point for general questions in relation to responsible business conduct, the NCP published an internet page on CSR⁶, which is also linked with the Guidelines.

Cooperation with the business community, trade unions, NGOs and the interested public carried out

During 2009/2010, contacts and exchange between the NCP and its stakeholders have increased. Furthermore, there have been two meetings with the consultative group (January and June 2010) with a growing number of participants. The meetings were mainly dedicated to the information as well as exchange concerning the work on the update of the Guidelines currently under way. Furthermore, the annual report of the Swiss NCP at hand as well as other developments were presented and discussed.

The NCP made use of its good contacts to its different stakeholders in order to disseminate the new flyer on the Guidelines.

Other information and promotion activities

The Guidelines and the functioning of the NCP were presented at several public events. The Guidelines and the role of the NCP were given attention to at different opportunities. High level representatives of the Swiss Government referred to the Guidelines at several occasions in Switzerland as well as during missions abroad such as economic missions to developing countries. In addition, different government agencies as well as Swiss embassies abroad continued to be involved in the promotion of the Guidelines as well as responsible business conduct in general.

On different occasions, the NCP had the occasion to present the frame of the update of the Guidelines currently under way and invited different stakeholders to participate actively in the process.

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

The NCP has its own internet page providing all necessary information related to the Guidelines and the functioning of the NCP. It also contains information on the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Furthermore, the NCP took different opportunities during discussions with Swiss multinational enterprises to refer to the mentioned tool.

Enquiries of different stakeholders

During the period of review, the NCP has been in close contact with several other NCPs (e.g. Germany, Korea, Peru, UK) in order to coordinate activities regarding specific instances raised and to exchange information as well as experiences on the functioning of the NCP.

⁵ See attachment

⁶ <http://www.seco.admin.ch/themen/00645/04008/index.html?lang=de>, 20.04.2010

Since autumn 2009, the NCP has received and answered several requests from different stakeholders concerning the update of the Guidelines currently under way. In this regard, the NCP also had to respond to questions raised in the Parliament (National Council).

In addition, the NCP - in its function as focal point for general questions regarding responsible business conduct - continued to discuss and reply to requests in relation to CSR, which are regularly received by the business community, trade unions, NGOs and the public. This occasions are also taken to promote the expectation of the Swiss Government in relation to the OECD Guidelines.

C. Implementation in specific instances

In June 2010, the conciliation process regarding the specific instance concerning a labour conflict in a subsidiary of Nestlé in Indonesia, which was raised in November 2008, was closed and a final statement published.

In May 2009, an international trade union raised a specific instance concerning a labour conflict in a subsidiary of a Swiss multinational enterprises in India. However, after a short time the union asked the NCP to stop the initial assessment for the time being in order to await the outcome of a similar case concerning the same Swiss multinational enterprise, which was about to be treated by the NCP. In January 2010, the union withdrew its submission and the NCP closed the instance.

In June 2009, a NGO raised a specific instance with the Swiss NCP claiming in a general way that the business policy of a Swiss multinational enterprise was inconsistent with the Guidelines. The Swiss NCP advised the NGO on the specific instance procedure as well as on how submissions to the NCP should be drafted. In the end of November 2009, the NGO submitted an adapted version of its earlier communication specifying that the marketing policy of the company in question was inconsistent with the Guidelines. During the initial assessment, the Swiss NCP came to the conclusion that the specific instance did not merit further consideration and closed the case.

During June 2009, an international union raised a specific instance with the Swiss NCP concerning a subsidiary of a Swiss multinational enterprise in Korea. Previously, the same specific instance had already been submitted to the Korean NCP but was rejected. The Swiss NCP came to the conclusion that it was not the competent instance to question and review the decision of the Korean NCP and refused to further consider the submission.

Based on the decision and the final statement of the Australian NCP, the Swiss NCP closed the specific instance raised in 2007 by an Australian lawyer with the Australian NCP as well as by a Swiss NGO with the Swiss NCP concerning the coal mine "El Cerrejón" in Columbia partially owned by Anglo American, BHP Billiton and Xstrata. A final statement of the Swiss NCP was published in July 2009⁷.

The NCP accepted during February 2010 a specific instance raised in December 2009 by workers representatives concerning conflicts in relation with the closure of two production centres on the Philippines as well as the partial closure of a factory in Thailand of a Swiss multinational enterprise. The NCP has offered its good services to solve the issue. The proceeding is ongoing.

⁷ See attachment

In addition, the Swiss NCP has been collaborating at different occasions with other NCPs treating specific instances linked to Swiss multinational enterprises. The collaboration mainly consisted of exchanging information.

D. Other

In order to enhance the procedures and core criteria for the operations of the NCP, the NCP has started during the period under consideration to clarify as well as structure the different steps, which the NCP may take in case a specific instance is submitted. The result is mainly based on its own as well as on appropriate experiences of other NCPs. The NCP will summarize the outcome of its considerations in a procedural guidance paper and make it public on its internet site.

With respect to specific instances the NCP offers, upon agreement of the parties concerned, non-controversial procedures to assist them in resolving the issues at hand (conciliation, mediation). However, the NCP does not see it as its role to form or publish a judgement on the controversial issues or the question whether the Guidelines have been breached by one of the parties (adjudication). Based on this practice, the NCP rejected in April 2010 a specific instance where the submitting party clearly indicated that it was not interested in a dialogue but expected the NCP to convict the multinational company for having breached the Guidelines.

E. Looking back at the past ten years

With respect to the institutional arrangements, the NCP is convinced that the "ideal" NCP must be gradually developed based on its own as well as experiences of other NCPs and best practices. Therefore, the single department structure with the involvement of an "ad hoc" committee for each specific instance as well as the consultative group proved to be useful to gain first experiences and flexible enough to allow small but continuous adjustments as appropriate. However, the NCP is welcoming the corresponding discussion, which is planned to take place during the update of the Guidelines, and is open to take into account further findings.

In general, the NCP has made the experience, that the exchange of information and experiences between NCPs is extremely important and provides NCPs with input on how to adapt and enhance its own proceedings. Therefore, the Swiss NCP is of the opinion, that a more structured peer learning would provide an added value and finally contribute to further the effectiveness of NCPs.

The Guidelines foresee that the NCP may provide a platform for dialogue. Recent developments show that there are intentions to extend the competence of the NCP towards more formalised proceedings and adjudication. However, as mentioned in previous sections of this report, the NCP came to the conclusion that mediation and adjudication are very different methods and for different reasons it may not be adequate to have them both applied by the NCP. Therefore, the NCP is at the current state of discussion of the opinion that the value added of an NCP proceeding is the possibility to engage parties concerned in an informal dialogue. Based on the growing experience of the NCP, this approach has proved to be very useful and leading to the desired results.

The NCP has made the experience that ongoing and various efforts are needed to raise awareness of the Guidelines and, in particular, to reach SMEs. Therefore, promotional tools to reach a large number of enterprises, such as an extended internet page and a flyer, were developed. At the same time, the planned update of the Guidelines has led and will lead to additional publicity and visibility.