

Trade Union
Advisory Committee
to the OECD
*Commission
syndicale consultative
auprès de l'OCDE*

Implementing the OECD Guidelines for Constructive Industrial Relations

Paris, 22 September 2021

Briefing #1

Businesses and Trade Unions have a common interest in promoting harmonious industrial relations, which can be achieved when they collaborate to implement the OECD Guidelines for Multinational Enterprises (“MNEs”) and respect the good offices of National Contact Points (“NCP”).

When enterprises and trade unions collaborate to implement the Guidelines, they can create best practices for inclusive workplaces, resilient business operations, and individual well-being.

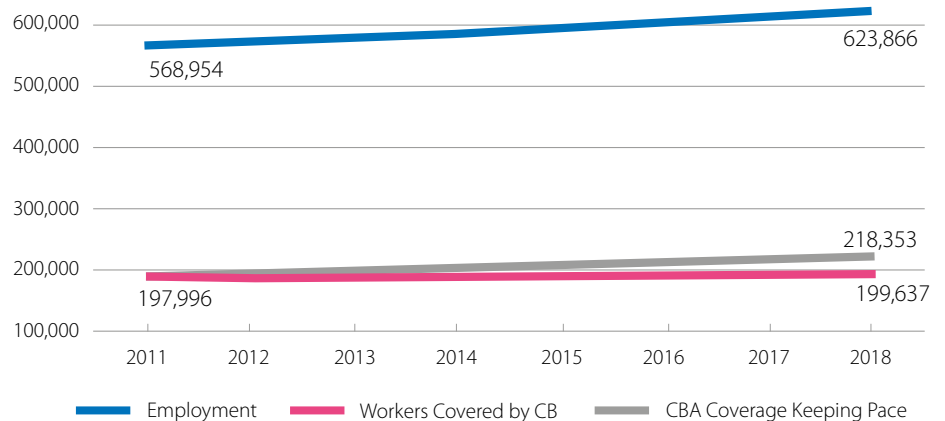
Briefing #1: Implementing the Guidelines for Positive Industrial Relations takes stock of workers’ experiences with the OECD Guidelines and NCP Procedures and explores what needs to change to ensure they deliver positive impacts.¹



Collective bargaining coverage measures implementation

The OECD Guidelines promote the positive impacts of freedom of association and collective bargaining. However, during the forty-year history of the Guidelines, workers have experienced lower bargaining coverage and fewer successes at the NCP. The collective bargaining coverage ratio declined from 35% to 32%, equating to 19 million fewer workers covered by bargaining agreements in 2018 than 2011. (Figure 1)

Figure 1:



OECD Stats

NCP Dialogue measures Business' respect for the RBC Authority

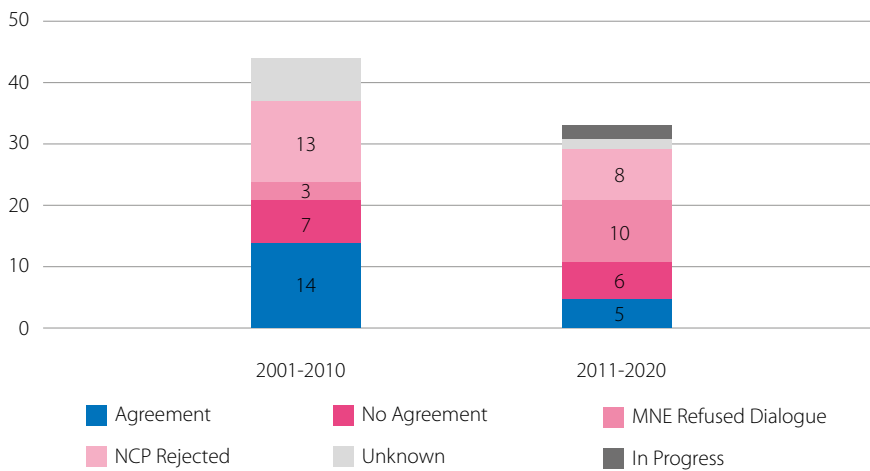
NCPs cannot assist parties reach agreement with Industrial Relations issues without good faith participation and respect for their authority on responsible business conduct ("RBC"). Only five freedom of association cases since 2011 resulted in an agreement with the trade union, representing a more than

50% drop in productivity by the NCP on on freedom of association compared with the previous decade. (Figure 2)

Businesses accepted the government's offer to assist with industrial relations Guidelines issues in 24 out of 41 specific instances filed by trade unions from 2011 - 2019.

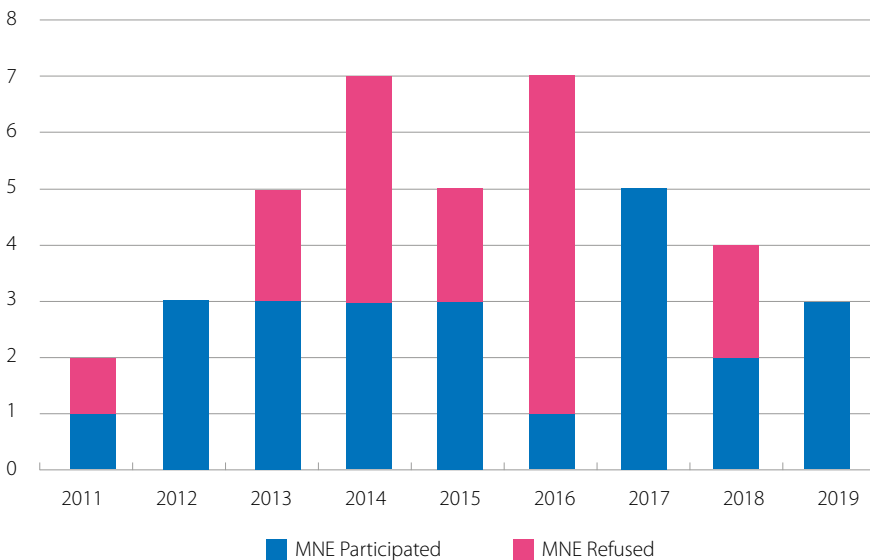
Between 2011 - 2019, there were only three years having participation by all MNEs named in specific instances submitted by trade unions. In 2016, businesses refused to participate in all but one of the specific instances filed by trade unions. (Figure 3)

Figure 2:
NCP Productivity on Freedom of Association Issues



Source: OECD Database of specific instances

Figure 3:
Business participation rate in NCP offered mediation 2011 - 2020



Source: OECD Database of specific instances

A joint statement by Business and Labour to the 2021 G7

Representative business and workers organisations have informed and co-steered economic responses to COVID-19 across G7 nations. Their membership insight, networks and communications, as well as policy agreements on occupational health and safety, job retention scheme coverage, active labour market and training policies, have been a lifeline to workers and business leaders at a time of unprecedented uncertainty. The G7 member states must support strong representative workers and business organisations to the benefit of policy-making, recognising that workers and employers enjoy freedom of association and collective bargaining.



Setting a new course for positive Guidelines impacts

Reversing decades of negative trends requires more commitment to implementation. The parties to collective agreements have already implemented the industrial relations Guidelines.² Yet for every worker at an enterprise implementing these practices, there are two more workers at an enterprise that does not.

“Inclusive Enterprise(s)” are those that take steps to implement these industrial relations practices, minimally making a public commitment to uphold ILO core conventions throughout their own operations and the operations of those with which they have business relationships.

“Trade Union” and “Workers’ Representatives” refer to credible and bona fide labour organisations that are chosen freely by workers for the purpose of representation and bargaining.

Inclusive Enterprises and Workers’ Representatives/Trade Unions seek ways to implement these Practices in accordance with domestic law³ and refrain from seeking exemptions to domestic laws that enable these practices.⁴

Inclusive Enterprises implement meaningful employment and industrial relations due diligence in collaboration with Workers’ Representatives/Trade Unions.⁵

Enabling positive impacts from the OECD Guidelines and ILO MNE Declaration

A fair process for recognition of Workers’ Representatives/Trade Unions for developing collective agreements is essential to achieve positive industrial relations.⁶ The process of recognition varies by national law and practices. In countries without statutory representation, an enterprise must first recognise a trade union before collective bargaining can commence. As the example of Amazon’s Bessemer (USA) showed, the process can be highly contentious and costly for everyone involved.

A fair process involves enterprises taking a neutral approach to workers establishing trade unions. Workers need to trust enterprises will refrain from taking actions or making statements in opposition to their choice as to establishing a trade union or selecting a representative.⁷

Establishing a fair process for recognition is part of mainstreaming the concept of “good faith bargaining” as it is practiced and understood within the context of industrial relations,⁸ which is a crucial part of effective NCP mediation when offered.⁹

The process starts with an arrangement for access to facilities as may be necessary for Workers’ Representatives/Trade Unions to talk with workers about establishing representation and for the purpose of developing and managing collective agreements.¹⁰

Support for the NCP to Assist with Implementing Industrial Relations Guidelines

The Guidelines cannot prevent enterprises, workers’ representatives and trade unions from pursuing judicial remedy. However, in an effort to support best Practices, Enterprises and Workers’ Representatives/Trade Unions have adopted progressive forms of alternative dispute resolution (“ADR”), including participating in mediation if requested by an NCP. Provisions for ADR frequently come with a step for arbitration in situations where mediation proves unsuccessful.¹¹





Implementing Science and Technology

Inclusive Enterprises are those providing workers and their Representative or Trade Union with reasonable notification and opportunity to consult in good faith whenever new technology is introduced, used or updated that impacts workers' economic activities for the enterprise.

¹ Build Back Better: Inclusive Recovery and Labour Markets Fit For 2030, Joint B7-L7 statement to the G7 on actions to promote job opportunities, decent work, *skills and entrepreneurship*. *Business at OECD, TUAC, IOE and ITUC, 2021*

² OECD Guidelines Chapters IV and V incorporate the UN Guiding Practices and ILO Declaration for Multinational Enterprises, which contain the core industrial relations conventions of the ILO.

³ Aligns with OECD Guidelines Chapter I

⁴ Aligns with OECD Guidelines Chapter II

⁵ See also OECD (2021), *Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment*

⁶ Aligns with OECD Guidelines Chapter V.1a – 1b

⁷ Aligns with OECD Guidelines Chapter V.1a, 1b, and 7; and related to Chapter II.A.4

⁸ ILO Freedom of Association. *Compilation of decisions of the Committee on Freedom of Association / International Labour Office – Geneva: ILO, 6th edition, 2018, Page 247 from para 1327.*

⁹ Aligns with OECD Guidelines Chapter V and Part II, *Commentary to the Procedural Guidance*

¹⁰ Aligns with OECD Guidelines Chapter V.2a and 3

¹¹ Aligns with OECD Guidelines Chapter I.10

¹² Aligns with OECD Guidelines Chapter II.A.1, A.13, and B.2

¹³ Aligns with OECD Guidelines Chapter II.4 and Chapter V

¹⁴ Aligns with OECD Guidelines Chapter III.3

¹⁵ Aligns with OECD Guidelines Chapter VI.2; VI.7, and VI.8

¹⁶ Aligns with OECD Guidelines Chapter VI.7 and VI.8

Extending best practices to business relations

All of these practices can lead to resilient supply chains. A growing number of businesses and trade unions have begun incorporating the Guidelines as provisions in contracts with business relationships, including subcontracts, joint venture partnerships and service agreements with labour hiring firms.¹²

Where not otherwise required by law, inclusive enterprises can use contractual provisions that pass-through the Guidelines industrial relations standards when businesses are sold or transferred. Successor(s) can be asked to provide a written acknowledgement they will retain workers in acquired operations and assume any existing collective bargaining agreement where one exists.

Disclosure and Goal-setting for Impacts

Goal-setting is a major gap in the industrial relations Guidelines. Enterprises should devise a plan with goals and timeframes for implementing their commitments.¹³

Government officials and institutional investors would benefit from annually comparable data, showing the number of workers covered by collective bargaining, numbers of requests for recognition by a trade union or workers' representative, and level of participation in ADR.¹⁴

Industrial Relations to Support Environmental Objectives

As part of collective bargaining agreements, Enterprises and Workers' Representatives/Trade Unions collaborate to develop credible workplace structures with buy-in for environmental, health and safety processes, monitoring and systems.¹⁵

The parties to collective agreements minimally adopt operational processes that support climate goals in the Paris Agreement and adhere to the practices for a just transition. These were essential processes to address Covid-19 as an occupational health and safety issue.¹⁶

Supporting harmonious industrial relations

In consideration for agreements made between an Enterprise and a Workers' Representative or Trade Union to implement these Principles, Trade Unions have been willing to suspend campaign activities related to that Enterprise, consistent with good faith as it is practiced in the context of industrial relations.

Business and Trade Unions are well-acquainted with fundamental practices necessary to implement the Industrial Relations Guidelines contained in Chapter V and the ILO Declaration for Multinational Enterprises.

In 2016, a protocol between UNI Global Union, the International Transport Federation (ITF) and the German multinational, Deutsche Post DHL was reached with the assistance of the German NCP.

The protocol was renewed in 2019 and is recognised as an innovative step by the German NCP to both support dialogue and promote the OECD Guidelines. The protocol extends industrial relations dialogue across supply chains in both OECD and non-OECD countries.

17 Enterprises that *rejected* the Government (NCP) Assistance with Industrial Relations issues:

MNE	Filing Year	Global Employment
Deutsche Telekom	2011	216,000
BHP and Vale	2018	205,000
Renault/Nissan	2014	183,000
Prosegur	2013	167,000
Hyundai	2014	120,000
Maersk	2018	83,000
Mondelēz	2013	80,000
Suzuki*	2016	67,000
British American Tobacco	2016	53,000
VEON	2016	46,400
ASAHI Glass	2015	29,300
Tower Semiconductor	2014	5,500
Grupo Mexico	2016	2,700
E Ink**	2015	2,400
DNO ASA	2016	1,200
Viessmann	2014	
ETEX	2016	

* Suzuki participated in judicial proceedings.

** E Ink discontinued mediation after one meeting.

25 Enterprises that *accepted* Government (NCP) Assistance with Industrial Relations issues:

MNE	Filing Year	Global Employment
Deutsche Post (DHL)	2012	550,000
Starbucks	2014	349,000
Vinci	2017	221,000
Starwood	2015	170,000
AB Inbev	2019	170,000
Unilever	2019	155,000
Itaú*	2011	94,000
Coca Cola*	2017	86,200
Mondelēz	2013	80,000
Teleperformance*	2020	80,000
Lafarge Holcim	2012 /2019	72,000
Heidelberg	2013	54,000
Corning Inc.	2017	49,500
Chedraui*	2015	38,000
Bekaert S.A.*	2018	27,000
Crown Holdings	2014	24,000
Ball Beverage*	2018	21,000
Vattenfall	2012	19,000
Perfetti Van Melle	2019	17,900
Ansell*	2013	13,500
Teck-Quebrada	2017	10,000
Diam*	2017	2,000
Metro Habib	2014	
FIFA	2015	
Natixis	2016	

*Concluded without agreement.

The Trade Union Advisory Committee to the OECD

The TUAC is informed by real-time experiences by national and global trade unions with combined representation of 300 million workers taking steps to implement the Guidelines every day.

Under the OECD Guidelines, governments are expected to establish national contact points to promote and defend responsible business. Companies are expected to undertake due diligence in order to identify, prevent, mitigate and account for how they address actual and potential adverse impact in their own operations, as well as in their global supply chains and other business relationships.

The Guidelines implementation is not optional for businesses in order to:

- Support and not oppose core labour rights;
- Increase bargaining coverage;
- Extend responsible business practices through supply chains;
- Secure jobs with retention and reemployment.

What we ask



The TUAC recommends **OECD delegates support text improvements to implement the OECD Guidelines and NCP Procedures to achieve positive industrial relations**

The TUAC encourages **Governments to modernize trade, investment and procurement policies to promote positive industrial relations and respect for the NCP**



The TUAC calls on **business, government and institutional investors to acknowledge the National Contact Points as the authority for the Guidelines**



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