

PROF. DR. R. BLANPAIN

**THE OECD
GUIDELINES FOR
MULTINATIONAL
ENTERPRISES
AND LABOUR
RELATIONS**

**EXPERIENCE
AND MID-TERM REPORT
1979-1982**

KLUWER

**The OECD Guidelines for Multinational Enterprises
and Labour Relations 1979–1982**

The OECD Guidelines for Multinational Enterprises and Labour Relations 1979–1982

Experience and Mid-Term Report¹

by **PROF. DR. R. BLANPAIN**

University of Leuven, Belgium

Foreword by **M. Eyskens**

Minister for Economic Affairs

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1. The original English text has been rewritten by **MICHAEL JONES, B. ED., Hons (Wales)**
Department Head of the Bishop of Llandaff High School, Cardiff, Wales, UK.

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Foreword

by Professor Dr. Mark EYSKENS
*Minister for Economic Affairs*¹

The deep recession in which our economies are involved and the readjustment problems enterprises and international investment face, call for an even greater collaboration between Governments, business and labour, than was the case in 1976, when the Guidelines for Multinational Enterprises were first promulgated, together with measures concerning National Treatment and International Investment Incentives and Disincentives.

The 1976 Declaration's aim to promote the strengthening of co-operation between Member Countries in order to improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic and social progress, and minimise and resolve difficulties which may arise from their various operations are indeed as valid now as when they were first issued.

Since 1976 much has been accomplished. Important clarifications have been given, a major review carried out in 1979, national contact points set up, and now a significant mid-term report, as a step towards another review in 1984, has been presented to the Council.

The important task is to watch over the relevance of the instruments and see to it that they follow closely the rule of life and reality. We specifically refer here to the adjustment process, including problems relating to the introduction of new technologies and the decision making process in the enterprises. This together with the ongoing objective of making the instruments better known, so that they continue to have a growing impact on reality.

Again, I can testify that the Guidelines, and the action recently undertaken by the Belgian contact point have been instrumental in a number of cases in resolving difficulties involving international investment to the satisfaction of all parties involved.

The IME Committee during the 1979–1982 period again discussed quite a number of labour relations issues and Professor Blanpain's new book may help

1. M. Eyskens (born 29 April 1933) is Dr. Juris, Dr. in Economy and Baccalauris in Philosophy, all of the University of Leuven. He also holds an M.A. degree in economics of the Columbia University (USA) and is Professor at the Business School of the University of Leuven. He has been the Representative of the Leuven area in the Belgian Parliament since 1977, and was in 1976 and 1977 respectively appointed as Secretary of State for Flemish Regional Economy and for the Budget. In 1979 he was Minister for Development and Co-operation and he has since then been Belgium's Minister of Finance, Prime Minister and is now Minister for Economic Affairs.

Foreword

to foster a better knowledge and understanding of the Guidelines and their impact on labour relations. As our representative in the IME Committee he has the opportunity to get a firsthand insight of what is going on. We are grateful for his contribution, which – as in his earlier book on the 1976–79 period – constitutes a balanced report containing basic documents, as well as the points of view of the parties concerned, personal comments on the importance of the Guidelines and their impact on national and international labour relations. This new book confirms Professor R. Blanpain's reputation as one of world's leading experts on industrial relations and labour law.

June 20, 1982

List of Abbreviations

AFL-CIO	American Federation of Labor – Congress of Industrial Organizations
ATLAS	Alitalia, Lufthansa, Air France and Sabena
BACTO	British American Tobacco Company
BDA	Confederation of German Employers Associations
BDI	Federation of German Industries
BIAC	Business and Industry Advisory Committee to OECD
CNPF	Conseil National du Patronat Français
EEC	European Economic Communities
ETUC	European Trade Union Confederation
FFCC	Forward-Facing Crew Concept
FIET	International Federation of Commercial, Clerical and Technical Employees
FNV	Federatie van Nederlandse Vakbewegingen. Federation of Dutch Trade Unions
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organization
IME	Committee on International Investment and Multinational Enterprises
IMF	International Metalworkers Federation
ITF	International Transport Workers' Federation
ITS	International Trade Secretariats
KSSU	KLM, Swissair, SAS, UTA
LO	Confederation of Trade Unions (Denmark, Norway, Sweden)
MNE	Multinational Enterprise
NCP	National Contact Point
OECD	Organization for Economic Co-operation and Development
SAF	Swedish Employers' Confederation
TCO	Central Organization of Salaried Employees – Sweden
TUAC	Trade Union Advisory Committee to OECD
TUC	Trade Union Congress (Great-Britain)
VOEI	Vereinigung Oesterreichischer Industrieller
WCL	World Confederation of Labour
WFTU	World Federation of Trade Unions

Introduction

1. This book is a follow up on *The Badger Case*¹ and my book on the OECD Guidelines for Multinational Enterprises (Labour Relations, Experience and Review) 1976–1979², published in 1979. My goal remains the same, I try to make a further evaluation of the impact of the OECD Guidelines on labour relations. It seems to me, that the time to make another such evaluation is necessary.

A second phase has indeed been concluded. In conformity with the 1979 accepted review, the IME Committee presented its 1982 Mid-Term Report in which a brief account of the salient developments and events since 1979 was presented. The Report also contains a number of important clarifications, thus responding to the Committee's mandate for an answer to the questions of interpretation put to the Committee by Governments, as well as by business and labour. An ideal time thus to reflect upon what has happened and the way it came about.

2. Moreover, the need for appropriate information on this subject remains, especially the background information concerning cases and issues which initiated the clarification process. The latest clarifications by the Committee will help those who want to grasp the significance of its evolutionary role.

3. My three books on the experience with the OECD Guidelines have to be seen as a whole. Certain topics dealt with in my 1979 book, especially in the prologue, for which no important developments are reported, I obviously refer to the earlier publications.

4. This book contains three parts. Part I deals with the action under the Guidelines and the relevant decisions. I first examine the action by Member Governments (I), then the action by the IME Committee (II) and finally by the advisory bodies (BIAC and TUAC) (III). In part II, I try to evaluate the impact of the Guidelines, in the light of the cases and issues, which were brought to the attention of the IME Committee and the relevance of the clarifications given in the IME report. Some of the material still relates to the cases and issues, which were already raised before the 1979 review. For each of the issues raised, I first

1. *The Badger Case and the OECD Guidelines for Multinational Enterprises*, Kluwer, Deventer, 1977, 210 p.

2. Kluwer, Deventer, 1979, 309 p.

5 – Introduction

give the relevant text of the Guidelines, or of its introduction and then formulate ‘the issue’; for those problems already brought to the attention of the Committee before the 1979 Review Report, I shall give a short summary of the status quo, referring to the earlier work of the Committee. If available, additional documentation concerning the case will be given, as well as the relevant part of the Mid-Term Report of the IME Committee, which contains the clarification of the issue. I finally conclude the discussion of each case and (or) issue with some personal comments on the clarification given by the IME Committee and their significance from the industrial relations point of view.

The following issues are discussed:

- the co-responsibility of the parent company and subsidiaries;
- the rights of employees to be represented;
- the definition of a multinational enterprise;
- information and consultation of employees;
- access to real decision-makers.

5. In Part III the follow-up procedures are discussed. First the *reporting*, by business, Governments and the IME Committee is examined; secondly, attention is paid to *problem solving* at national and international level. It is important to discuss the role and the experience of the contactpoints and the also role of the IME Committee itself.

Finally, I present overall conclusions on the evolving importance of the transnational exercise as a whole.

June 15, 1982.

R.B.

Prologue: The Present Economic Situation

6. The present economic situation should obviously have an impact on the Guidelines if these are to remain relevant for the real world in which they have to be operative. The Mid-Term Report describes them as follows:

«In relation to its work on the OECD Declaration, the Committee has found it necessary to analyse recent international direct investment trends in the present economic situation¹. Several new features that have or could become increasingly significant have been identified. Especially worthy of mention are the introduction of new technologies, particularly in the computer and communications field; the multiplication of integrated networks of production plants in general; the emergence of new forms of investment such as, non-equity involvement or co-operative agreements between enterprises; a shift in many areas away from the creation of new capacity through restructuring; extension of existing capacity or towards the acquisition of existing firms. In relation to the latter trend, restructuring frequently involves the closure of certain plants, even if employment losses are compensated by increases elsewhere, while capital deepening or productivity orientated investment, takeovers, extension of capacity and capital widening investment, can carry with them implications for the workforce in certain countries.

The above-mentioned developments could raise new questions for the governments of home and host countries as well as for employer and worker organisations, for instance, in the area of employment and industrial relations. This is an area where long-established national procedures, sanctioned by the law or by practice exist, and the introduction to this chapter of the Guidelines underlines the importance of the framework of national law, but the Guidelines, where relevant, can serve as a valuable supplement. The present economic situation inevitably poses difficult problems when adaptation and restructuring of company activities are envisaged. However, such changes may be justified on the grounds of economic efficiency and may be necessary to promote the long-term security of employment. In instances where such changes involve the closure of an entity or other measures 'which would have major effects on the livelihood of employees²', management should give reasonable notice of such

1. See Recent International Direct Investment Trends, OECD, Paris, 1981, and chapter 4 of this report.

2. Paragraph 6 of the Guidelines on Employment and Industrial Relations, International Investment and Multinational Enterprises, Revised Edition, OECD, Paris, 1979.

6 – Prologue

changes to representatives of their employees and where appropriate to the relevant governmental authorities. They should act in co-operation with employee representatives and appropriate governmental authorities ‘so as to mitigate to the maximum extent practicable adverse effects’². The notice should allow sufficient time for mitigating action to be prepared and put into effect, and it would be appropriate, in the light of the specific circumstances of each case, if management were able to provide such notice prior to the final decision being taken.

Clearly, management is confronted with difficult decisions when restructuring of the firm’s activities is being contemplated and the Guidelines are relevant in this situation. Experiences by Member Governments lead the Committee to believe that as a general rule the will exists on the part of management to take the Guidelines fully into consideration in these circumstances.

The Committee takes the view that the Guidelines as clarified by the Committee in response to requests from Member Governments, BIAC and TUAC, and after consultation with them, should continue to provide a useful supplement to national laws and practices and a valid framework for seeking constructive solutions to the problems which arise in this connection. In this respect, it has decided to follow closely the evolution of the features of international investment described above in order to ensure that the Guidelines do not lose their relevance in the changing economic circumstances.» (paragraphs 7–10).