

Where is the Limit to Corporate Responsibility?

Trade Relations and Supply Chain
Responsibility of Multinational
Enterprises

Conference Documentation



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Introduction

Increasingly stronger supplier relations and longer value chains are characteristics of our globalised economy. Global production networks emerge, and relocation and outsourcing are the order of the day. In some branches of business, such as the textile industry, these practices can be observed since long and to a greater extent, but they become more and more relevant for other sectors, too. Especially civil society groups have demanded since years that multinational enterprises take on responsibility for their suppliers. The issue in discussion is: To what extent can enterprises be held responsible for social and ecological concerns, where can and must they exert influence on actions of their suppliers, subcontractors and contract partners and where does their influence end? The answers to these questions differ depending on branch of business and also depending on the viewpoint of the stakeholders from government, business and civil society who answer them. Different interpretations and assessments opened up in the debate about implementation of the OECD Guidelines and their scope of application in the case of complaints. The decision whether a complaint will be accepted is made on a case-by-case basis. Which criteria can be applied to define the potential control of companies? How can scientific discussions and practical experiences from other spheres contribute to this question? These questions were discussed at a meeting organised by the Development Department of the Protestant Church (EED), Germanwatch, OECD and TUAC in December 2003. The agenda can be found in this documentation.

This publication contains most of the lectures held during this meeting. The conclusions contain the most important results, including those from the final panel discussion. The issues supplier relations and corporate responsibility are still fervently discussed. We hope this publication will give special impetus based on science and practical experience to this discussion. In particular, this publication

contributes to clarify the term 'investment nexus' in the discussion about the OECD Guidelines. This publication was translated into English to introduce the discussions held in Germany to the international community.

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Outsourcing & Co. – Restructuring of Supplier Relations within the Automotive Industry

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1. Introduction

Since the early 1990s, a worldwide restructuring process of industrial production systems has taken place. The globalisation drive of the '90s was a motivating force of these changes and, at the same time, its direction was significantly influenced by these changes. Often it is the automotive industry that leads the way for this restructuring. Although the automotive industry has its specific characteristics, the trends described in this article can also be observed in other industries and business sectors. So the automotive industry is taken as an example in this study.

Outsourcing is only one part of the restructuring process. In general, it's about restructuring the division of labour – division of labour within and between organisations, sectors, and countries. This includes processes of separation, fragmentation of present relation models in the industrial sector and creation of new forms of linkage and coordination, and, as a result, of 'governance' of transformed structures of the division of labour. 'Elimination of boundaries' is the term that is often used to describe this development. In fact, dividing lines between enterprises and clearly defined competences become blurred within the new division of labour and cooperation structures. Within the new forms of governance, the hierarchic coordination structures, until now 'controlled' by original equipment manufacturers (OEMs), seem to dissolve into relations based on networks.

This study concentrates in particular on these changes of governance. To what extent can single enterprises, in particular multinational original equipment manufacturers, be held responsible for labour conditions and socially responsible conduct at all levels of the resulting

process chains under the given conditions?

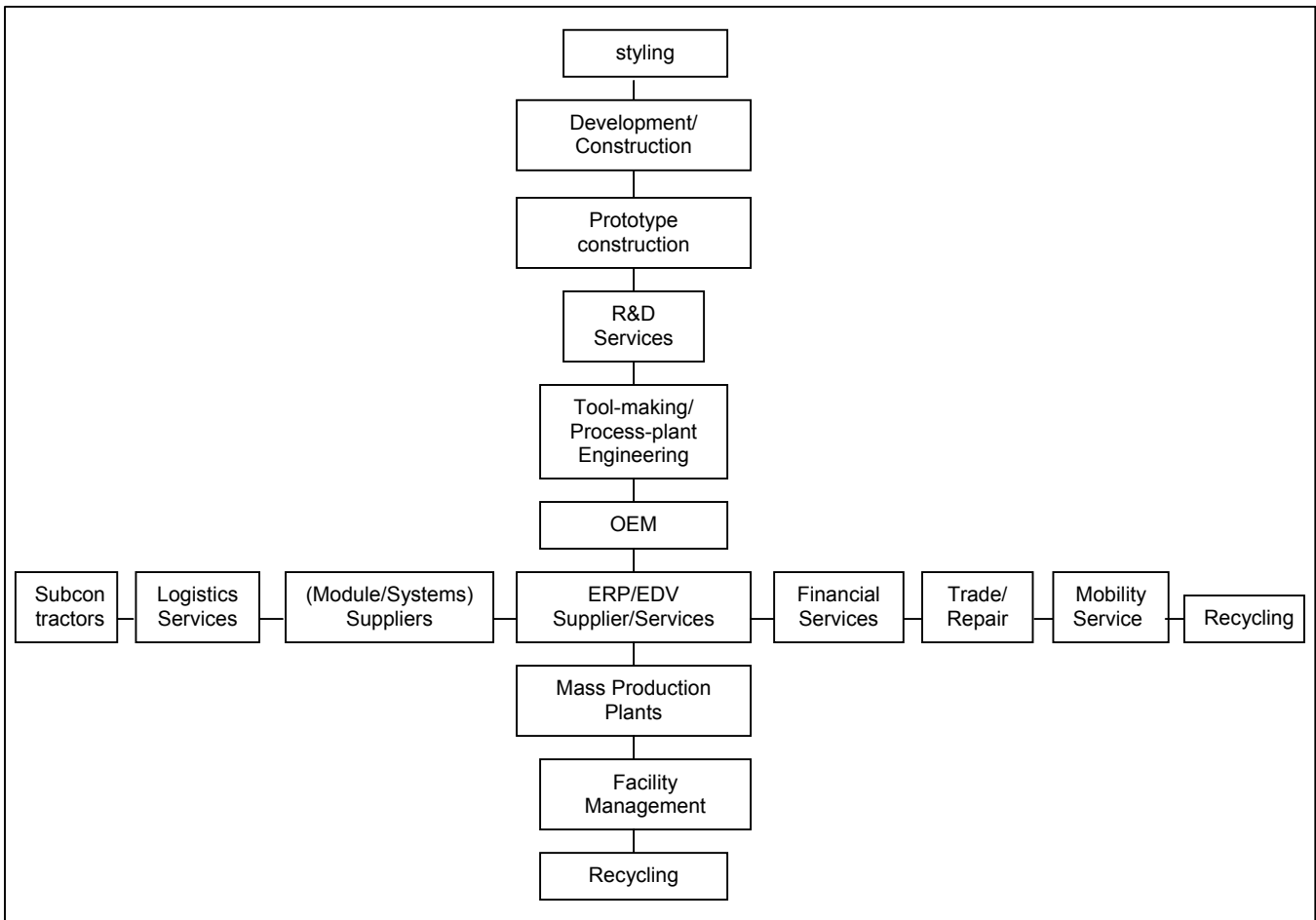
The following study concentrates on the restructuring of supplier relations in the automotive industry and development of new cooperation models. It starts with a brief description of the automotive industry and its central value chains. After that, it addresses the trend towards restructuring, its motivating forces and concepts, such as outsourcing, modularisation etc. This provides the starting point for depicting the new structures and actor constellations emerging in production and product development. The next part describes new coordination forms that emerge as a result of these conditions. The last paragraph deals with new models of industry governance and transformed relations between industrial actors.

2. Structures and Input Linkages within the Automotive Industry

Let us take the German automotive industry as our example and have a look at its situation: According to the Automotive Industry Association (VDA), 720,000 workers were directly employed by the German automotive industry in 2001, plus 960,000 employees at the industrial manufacturing level and 3.35 million employees in the trade and service sector (VDA 2002). From this data results (should perhaps think of a better word) the fact that the automotive industry, with regard to statistic differentiation, forms only a small part of a much broader-based automotive sector that includes a variety of business models and spheres of activity in its value chains.

The automotive sector consists of two central process chains. The first covers the stages in the process that starts with suppliers of raw materials, followed by different processing stages of components, assembling of modules and systems, goes on to original equipment manufacturers and from them via trade to consumers, and ends with recycling of used cars. The second process chain covers different stations of the product development process, from design to development, to construction of

Illustration 1. The Automotive Industry System and Its Process Chains



manufacturing plants and their use for mass production, and ends also with shutdown and recycling. Both process chains include a variety of service functions from logistics to services for development, planning, investments and mobility. Table 1 shows both process chains and how they overlap at the original equipment manufacturer (OEM) level.

A characteristic of the restructuring in recent years is the increasing differentiation and specialisation of enterprises along both process chains that is accompanied by a shift of importance from the centre, the OEMs, to upstream and downstream tiers. These trends can be observed at all major automotive industry locations all over the world, although there are differences regarding scale and speed of this differentiation. Let us go back to the structure of the German automotive industry and analyse the German automotive industry's input linkages (i.e. the downstream processes

above and left of the OEMs in Table 1). For that purpose, the contributions of business sectors and imports to the total production value are taken into account. The OEMs generate only less than one quarter of the total production value, 20 % are contributed by the suppliers of the automotive industry with regard to statistical differentiation (Input-Output Table 2000, German Federal Department of Statistics 2002, own calculations). Thus, the automotive industry and its above mentioned 720,000 employees contribute together only less than 45 % to the total production value, the rest is generated by manufacturers from other service sectors and by imports from abroad. Compared to the input-output calculations of 1980, significant changes can be observed. At that time, the gross output value of OEMs amounted to 40 % and the production value of their suppliers to 15 %. Thus, contributions of manufacturers operating in other sectors, of the service sector and especially those of imports,

increased. That their percentage increased from 7 % in 1980 to 20 % in 2000 is evidence that international connections in this business sector increased significantly.

And another fact became evident: Since the 1990s, the automotive industry has grown increasingly *beyond* the original sphere of original equipment manufacturers and also *beyond* the actual sphere of the automotive industry, statistically spoken.

This growth beyond traditional industry boundaries is accompanied by a strong growth of the industry across national borders. In fact, production abroad increased between 1993 and 2001 by 72 % in the private car sector and by 123 % in the commercial vehicle sector. A similar development can be noticed about Japanese manufacturers.

Large manufacturers are already located abroad with half of their production, and consequently with their employees working in production. Due to national requirements (for example for local content), suppliers located in foreign countries usually had their own local (national / regional) supply sources. This situation changed because of the recent globalisation drive so that original equipment manufacturers are now seeking to be supplied by the same suppliers for their worldwide model programmes. For suppliers, this implied the necessity to settle around the existing production sites in foreign countries, either by building new production plants or by taking over, or cooperating with, local companies. One result of this development was that the group of direct suppliers was more affected by the globalisation drive than the original equipment manufacturers themselves. Present and future capacity enlargements of German suppliers show that this is still true (VDA 2002). Only less than 20 % of the related projects are realised in Germany, and in medium-term scenarios production site plans for East Europe and Asia play a much bigger role than related investments in Germany.

3. Restructuring of Supplier Relations

The serious competition superiority of Japanese enterprises, which was fairly pressing in the beginning, and the transfer

of Japanese organisation concepts played an important role for the restructuring that took place in the 1990s. Japanese

manufacturers had a significantly lower vertical range of manufacture (i.e. they got a higher share of value from suppliers) and at the same time a significantly smaller number of direct suppliers; consequently, the complexity of supplier relations was reduced for manufacturers of end products, whereas the responsibility of direct suppliers for the organisation of their subcontractors increased (pyramid model)¹.

The necessity to catch up with the Japanese competition advantage, to bring an increasing model variety in increasingly less time on the market, building of new production facilities abroad due to globalisation and achieving these objectives with scarce resources – a factor that has been effective since the '90s ever more – all that has resulted in a dramatic change within the industrial structures.

Its spectacular result is the decrease in independent original equipment manufacturers. A consolidation process took place resulting in only ten independent original equipment manufacturer groups in 2001 and a further reduction to five or six is predicted for the future.

But many supplier companies were also not prepared for the heavy burden of requirements – such as increased requirements for development and production competence, capital realisation, and competence as systems and module suppliers. Mergers and acquisitions transformed the supplier sector, which consisted mostly of small and medium-sized companies in Germany, into a playing field for multinational supplier companies within one decade. Mega-suppliers that operate 'at eye level' with large manufacturers concerning financial power, employment and multinational activities emerged. This resulted in a 'decentralization' of the sector in which the manufacturer of the end product had a quasi-hierarchic top position before.

¹ The following text contains passages from Juergens 2003, p.19ff.

Three aspects of this development shall be analysed closer in this article: (1) development of a pyramid structure, (2) importance of the concept of production based on of modules and (3) the value chain's trend towards specialisation.

(1) The pyramid structure

Outsourcing activities by OEMs in order to reduce vertical integration in product development and production was the main motivating force for restructuring in this sector. Management consultants predict that this trend will continue in the future and as a result the suppliers' share in a car's total value will increase from 60 to 70 % in 2002 and from 70 to 80 % by 2010. The suppliers' share in new product developments is expected to increase from 33 % in 2002 up to 51 % by 2010 (VDA 2000:52).

The shift towards suppliers in production is accompanied by the OEMs' policy to reduce the number of direct suppliers and to establish a ranking order within the supplier structure. This trend follows obviously the Japanese model of a 'pyramid' with the OEM at its top, followed by a group of first-tier suppliers that is supplied by a group of second-tier suppliers that receives components from third-tier suppliers etc. right down to the suppliers of raw materials. Such a pyramid model reduces the complexity of the supplier chain for OEMs. At the same time, a significant cost saving factor was realised by systematic gradation of wage levels and working conditions at the different tiers.

Obviously, the pyramid model served OEMs as model for their restructuring measures. In the meantime, they drastically reduced the number of their direct suppliers and developed a tier structure where a small number of first-tier companies supply OEMs directly. Furthermore, the Table shows that the number of suppliers in all other categories has decreased significantly within the last decade. Additionally, a further drastic reduction of all types of suppliers, including the new group of global suppliers, is expected. The tier of suppliers providing simpler components (such as instrument clusters etc.) is predicted to be eliminated. Thus, the pyramid model, a pyramid with OEMs at the top, seems to

Table 1: Development of the Worldwide Supplier Basis for Original Equipment Manufacturers
Source: International Business Development Corp. (2002, p.8)

	1988	1998	2002	2008
Global Suppliers	0	50	25	16
Subsystems Integrators/ Direct Suppliers (First Tier)	3,900	250	100	75
Modules/ Indirect Suppliers (Second Tier)	7,500	1,000	80	0
Material, Hardware, Tools, Appliances	6,000	600	450	250
Services	3,600	960	600	350
Total	21,900	4,060	2,055	941

be confirmed. This represents the OEM's position as standard-setting enterprise, as enterprise that 'controls' the product architecture, i.e. defines the specifications of product components and transfers them to the internal and external actors for mass development and production. In fact, the OEM owns and maintains comprehensive meta-competence for the entire vehicle.

(2) Module-based production

Due to module-based production, structuring of the supplier industry in different tiers took a special direction. Europe has the highest concentrations of (module and systems) suppliers and consequently the most substantial structural change within the automotive industry took place in Europe. According to Roth (2001), suppliers of modules and systems amounted to 22.2 % of the European automotive industry's total suppliers in 1993, those of components to 56.7 %, suppliers of standardised components and commodities to 12.8 %, and those supplying raw materials to 8.3 %. In 2000, the share of modules and systems raised to 42.8 %, while the share of components fell to 42.2 %, the share of standardised components and commodities to 8 %, and the share of raw materials to 7 % (ibid.).

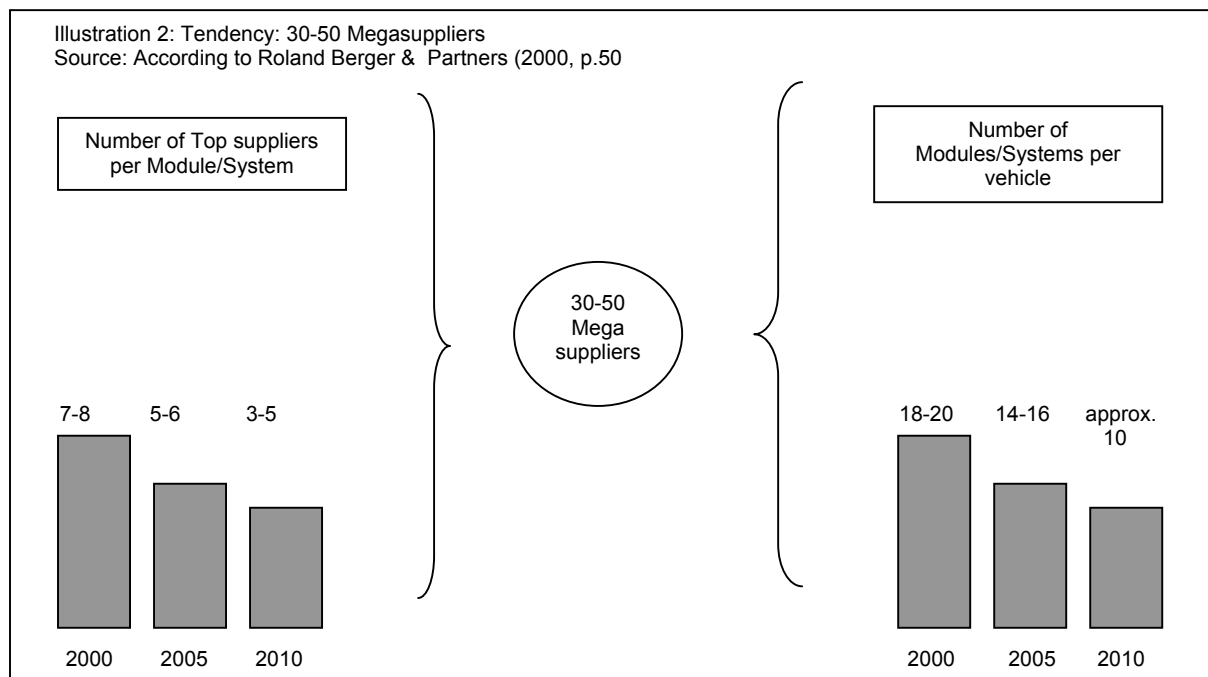
Apart from the requirements for capital realisation and management capacity, this

trend towards modules and systems encourages, especially in regard to globalisation, the trend towards 'mega-suppliers'. According to the German Management Consultancy Roland Berger

& Partners, consolidation in this branch of industry led to an oligopoly of seven or eight top suppliers per module and system in 2000 (see also Table 4). Until 2005, the consultants expect a reduction of the suppliers per module and system to five or six, and until 2010 to three or five. At the

same time, the quantity of modules and systems per vehicle is reduced by integrating parts and functions into larger modules and systems. While a vehicle consisted of 18 to 20 modules in 2002, Roland Berger expects a reduction to 14 to 16 by 2005, and to approximately 10 by 2010.

Thus, the most outstanding fact of the trend towards a pyramid model is the trend to reduce actors – at the OEM level as well as at the level of first-tier suppliers of modules and systems.



(3) Segmentation and Specialisation within the Value Chain

The changes described above led to an altered role of the OEMs and to new roles and specialisation models of the value chain itself for the actors. The changes of the core competences of the OEMs are shown in Table 3.

While the typical OEMs in Europe and North America had shown a vertical

integration of approximately 50-60 % and regarded production, research and development as well as final assembly as their core competences in the mid-1980s, the vertical integration had already fallen to 30-40 % until 1995. The OEMs had already grown into their new role of car assemblers with core competences in regard to design, development of core technologies and final assembly. In the

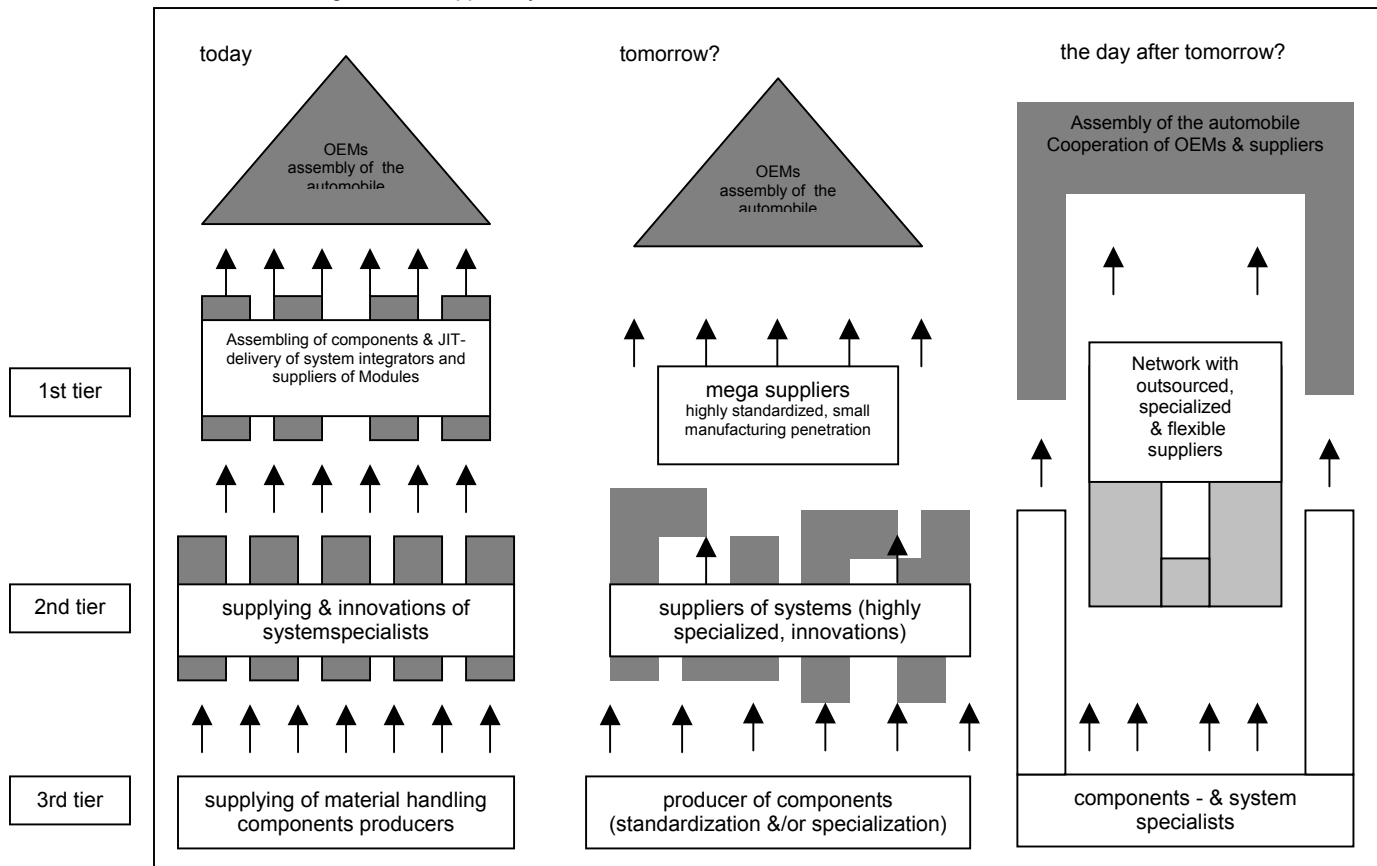
Illustration 3: Change of OEM Competence

	1985	1995	20??
	Original Equipment Manufacturers	Car Assembler	Integrators
Vertical Integration	50-60 %	30-40 %	< 20 %
Core Competences	Production	Design	Design
	R & D	Core Technologies	Marketing
	Assembly	Assembly	Sales

future, the OEMs of the past will play the role of brand integrators with a vertical design, marketing and sales. Parallel to this development, a segmentation of the value chain has taken place leading to specialisation in specific functions of companies. While the OEMs directly and indirectly dominated the 'pyramid' from basic elements and technologies over components, systems and modules to overall integration and assembly in the past, we have now made out a group of companies that specialised in special parts and technologies. A second group specialised in systems and modules and a third group in overall integration with the qualification to manufacture and assemble cars more or less in the same way as OEMs. By capacity-building among their engineers, these companies are (more or less) also competent to develop and manufacture

complete cars; thus, they provide the potential opportunity for OEMs to outsource their own production completely – according to the model applied in the electronics industry. The process of specialisation is still running and alters the importance of the different actors depending on the potential value they can generate. Due to these specialisation trends, the 'pyramid' model seems to be ever less adequate to describe the new constellation of actors. Cost advantages due to systematic gradation of wages and working conditions are replaced by advantages due to specialisation and consequently high innovation intensity. The OEMs will ever less be able to dominate their relations in a (quasi-)hierarchic way, because they lack the necessary competence to specify and control their suppliers' operations, which they used to have in the old system.

Illustration 4: Changes in the Supplier Pyramid



According to VDA annual report/ 2000, p.56

In its 'Future Supply Structure Scenario for the Automotive Industry' the VDA (Annual VDA Report 2000) showed the pyramid as interim model that precedes the establishment of a network structure (Table 4).

4. Cooperation beyond Enterprise Boundaries

The new structures of division of work require new forms of cooperation. The problem is to ensure cooperation of the actors in the value chain while taking the growing fragmentation and specialisation of these actors into account. Related approaches will be analysed for three different constellations.

(1) Final Assembly Cooperation

In the 1990s, new concepts of integrated production facilities were developed – motivated by 'module-based production' and lack of capital. Most of them were developed by European companies but were realised as part of globalisation strategies in the context of new factories planned outside of Europe.

There are different approaches to modular production facilities that integrate suppliers:

- supplier Parks - Fiat Melfi, Ford Saarlouis, Nissan Sunderland and many others;
- OEM Supplier Condominia (OEM and suppliers under the same roof) – Skoda etc.
- consortium Approach - Volkswagen Resende; Smart Hambach.

The supplier park model is the most prevalent model – even though it doesn't show the highest degree of supplier integration. In order to take up the maximum of advantages of just-in-time delivery for component supply, many OEMs made arrangements with local authorities to establish supplier parks that border directly on or are at least situated right next to their production facilities. Often, these infrastructure investments are directly provided in the form of 'public-private partnerships' between OEMs, suppliers and local authorities.

This allows optimisation of just-in-time and sequential supply as well as delivery and material processing and minimises investments in production assets at the same time. And last but not least it

enables to avoid lock-in effects. In the following, the key elements of the industry park concept as it is mostly realised at German production sites are listed:

- A foreign investor provides investments and planning;
- building structures are designed for the needs of suppliers;
- suppliers lease buildings; the leasing contract term matches the supplier contract term;
- supplier and OEM factory are connected by a joint assembling line
- pay-on-production procedure: OEMs pay suppliers on a piece-by-piece basis when parts arrive at the assembly station.

The 'Condominium' approach goes a little bit further. In this case, suppliers operate under the same factory roof as the OEMs. As a result of outsourcing and vertical disintegration, OEMs don't need the huge areas of their former factories and offer parts of their factory buildings to suppliers. But against the background of the difficulty concerning relations between employers and employees, the approach to keep employees with different wages and representation structures under the same roof remained an exception.

The Consortium approach goes another step further. This approach was chosen in some cases where new factories had been built with investments of suppliers and where suppliers were partly responsible for their own operations, while they were at the same time fully integrated into other 'system partners' at the operational level. The Achilles' heel of such an approach is the suppliers' production systems and their control over quality and supply provided by their own suppliers and the actual situation of industrial relations.

The smallest strike or conflict in one supplier's factory will immediately affect the entire system.

In summary, the concepts of integrated production facilities can be regarded as a response to Japanese supplier concepts whose principles had already been taken on earlier. Using these new concepts, most of the elements of logical and operational management originating from Japan (just-in-time, sequential etc.) can be implemented and, at the same time, economic risks resulting from lock-in effects can be avoided. Together with new

models of risk sharing, the necessary closer cooperation in final assembly processes leads to new cooperation forms that go beyond enterprise boundaries.

(2) Cooperation in Product Development

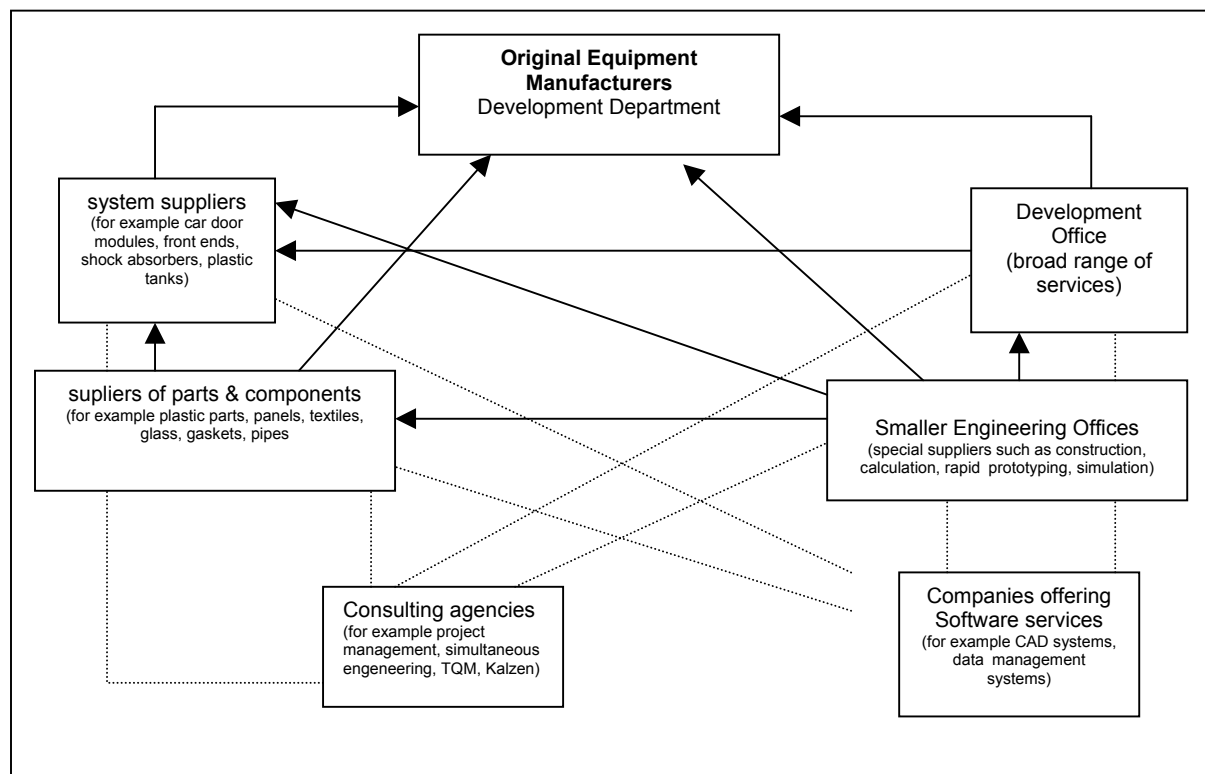
The 'model offensive' of the European OEMs in the '90s – with a multiplication of niche vehicles predominantly in the high-price segment – had not been overcome by the OEMs alone. Parallel to outsourcing of components / modules, and also outsourcing of associated development activities to suppliers, development activities were more and more transferred to specialised companies offering engineering services.

Enterprises like Daimler-Benz, BMW and Audi that claim technological leadership within the automotive industry put constant pressure on these companies'

development capacities. As a result, companies like Edag, AVL, Bertrandt, Rücker, CADFORUM, MSX Engineering etc. grew rather fast, and some of them acquired the competence to develop complete cars from conception and styling to prototypes. At the same time, companies offering engineering services were of crucial importance for buffering competence deficits of the suppliers, which had to cope with more responsibility for development now. Companies offering engineering services also had a key function in module development (see also Rentmeister 1999).

For this reason, companies offering engineering services play a crucial role within the car development network, as shown in Table 5.

Illustration 5: Car Development Network (Actors and their Relations)



Source: Rentmeister (2001)

Empirical studies of new product development processes draw a complex picture of interactions between the different actors in these networks. In own studies, three different situations of network development activities were observed:

- joint development activities in the OEM's own development department located in

- its facilities together with engineering teams whose functions interrelate;

- joint development of modules and components by two or more OEM suppliers in one of the supplier companies' facilities, including – at least in some cases – participation of process equipment manufacturers and companies offering engineering services.

One common problem of communication and cooperation within new product development networks concerns protection of know-how and development of own best competences by the actors. With respect to this, protecting own know-how by patents became a new trend. This might point toward increasing problems, i.e. that know-how flows that are in fact necessary for future efficient communication and cooperation among all partners could be impeded by lawsuits.

(3) Networking between Small and Medium-sized Enterprises (SME)

As described above, the new requirements regarding technical competence and financial effectiveness resulted in a surge of mergers and acquisitions. It seemed that small and medium-sized enterprises had only little chances to survive. This, however, is not necessarily inevitable. OEMs are aware of the disadvantages of dealing with mega-suppliers only, as they have by far more bargaining power than traditional supplier companies could ever have mobilised. And regional decision-makers are certainly interested in protecting their basis of SME and benefiting from new possibilities created by vertical disintegration and outsourcing at the same time. And developments in information and communication technologies opened up new ways to communicate and cooperate across national borders.

The concept of the network approach that some European regions pursue at present is based on Michael Porters 'Theory of Clusters' (see also Porter 1998). The European Union supports such cluster activities with several funds (Structure Funds, InnoRegio Programme etc.). Austria is especially active in developing car clusters.

The company Automobilcluster (AC) of Upper Austria (in the region of Linz) is one example for such a car cluster: AC calls itself the biggest inter-industrial car network in Austria. It aims at building international competition, innovation, and cooperation capacities in its associated companies, particularly in small and medium-sized enterprises. It is supported by funds provided by the EU and Austria (see also www.automobil-cluster.at).

In its corporate presentation, Automobilcluster claim to have all-round competence to manufacture a complete car ('the virtual cluster car'). The majority of supplier companies within the network are small and medium-sized enterprises: 71 % of the AC partners have less than 250 employees. The biggest OEM customers (based on their sales volume) are Volkswagen, DC, BMW, GM, MAN, and Ford, the biggest supplier customers are MagnaGroup, Siemens, and Bosch etc. In addition to their customers from the automotive sector, the AC cluster has also customers from other branches of industry.

AC Upper Austria may be an especially well managed and successful cluster, but it can still be regarded as an example of different cluster activities in European regions. Target of these activities is to develop competences and system solutions and to maintain structures based on small and medium-sized enterprises in order to develop their competence in manufacturing the 'virtual cluster car'.

5. Outlines of the New Industry Governance – Conclusions and Outlook

This presentation showed the fundamental changes of structures and organisation forms within the automotive industry. It must be emphasised that these are emerging processes, searching processes of the actors that have not yet been completed and that can still change their direction. However, this article couldn't analyse differences related to specific companies and countries in detail.

Nevertheless – the changes are fundamental. The changed role of the OEMs themselves makes that fact absolutely clear. OEMs seem to lose their former position as the 'controlling top' of industrial process chains. Under the given circumstances, to what extent can powerful multinational OEMs be held responsible for actions and processes at process chain levels that lay far beyond their scope of direct influence?

But visions of eliminating the OEMs' dominance and building a network of relations between equal network partners are (still) far away from reality. The OEMs are still the spider in the web of industrial car manufacturing process chains; they

still hold the central concepts, guidelines, and the power to define structures and processes with a firm hand. But this could change – the biggest threat to their position will be if new forms of large sales companies appear upstream at the connection point to the customer, put cars of different manufacturers ‘on their shelves’ and commence to gain the power to define product and process structures. In the industry sector, such business models have been discussed more frequently for several years.

Although OEMs will keep their definition power, the form of enforcing their power will change against the background of the change taking place in the centre of their business activity. As shown above, this focus is increasingly shifted to development and marketing tasks due to outsourcing and redefinition of responsibilities. Relationship with customers and brand management (resell value, brand loyalty) become more and more important for OEMs – and thus also tasks concerning advertisement and public relations. These changes are intensified and overlapped by capital-market-related requirements in the field of investor relations. As a result, sensitivity to demands for socially responsible action increases and – facing the accountability of the OEMs for the end product – processes and activities taking place somewhere along the process chains, and thus outside their scope of direct influence, cannot be excluded from that accountability.

As shown above, OEMs transfer large parts of their responsibilities to modules and systems suppliers by outsourcing and, as a result, reduce the number of direct suppliers supplying their own factories extremely – from several thousand to several hundred companies. By doing so, they keep some control over their direct suppliers’ supplier relations – the scope of control varies depending on company. Some OEMs still select their suppliers and negotiate terms of delivery themselves; others put these tasks on to their first-tier suppliers. At the same time, requirements for suppliers concerning their process qualification were more and more standardised. This standardisation surge, accompanied by audits and certifications,

is one of the most important concomitants and a result as well as a precondition of the above described changes within supplier structures. While certification of quality systems was in the foreground in the beginning, certification refers now to entire production systems (cf. also Juergens 2003) and also to aspects of ecological and social responsibility (cf. other contributions in this book).

By now, the basic structures of reorganisation within supplier relations that resulted from the relation between OEM and first-tier suppliers have more and more been taken over and have been applied to their own supplier structure management by the latter. In this case, a reduction of direct suppliers is also taking place. At the same time, requirements concerning process qualification and certification are transferred. As a result, transparency and the scope of control over processes increase also at the upper end of the process chains, i.e. at small and medium-sized enterprises.

The situation of the commodities suppliers, however, may be different; this question must be clarified by further investigation. This is also the field where e-business and bidder competitions on purchasing platforms like Covisint, Supply-on etc. play an important role. And for purchase decisions of commodities, price aspects are of great importance. How far questions of internal process design and associated certifications are important for purchase decisions of end product manufacturers or key suppliers, respectively – and to what extent this access includes also subcontractors of these companies – is unknown. In view that the – estimated! – ad valorem percentage of these commodities amounts to 15 to 20 % (accumulated through the value chain) the associated employment percentage in this sector should still be significant, in particular under third world conditions. In any case, these suppliers of commodities can easily be replaced, if something negative concerning their working conditions and their social conduct becomes public.

Despite of the described trends of fragmentation of the group of actors and also because of a shorter length of time to maturity for models, a rather stable

constellation of actors will result from associated vehicle projects in the long run. Although they change their combination from the phases of concept development for the new vehicle and its development through the phase of mass production and, after completion of this phase, to spare part and service functions, fluctuation remains limited over a period of six to eight years from decision to supplier structure and termination of mass production. Due to requirements concerning time-to-market reductions, quality assurance and other factors, the coherence of this group of actors has rather increased. This applies especially to the need of enlarged cooperation in respect of innovation processes.² Consequently, questions concerning coordination of inter-organisational processes and cooperation by means of exchange gain importance. At the same time, there are more uncertainties and risks within these action constellations that are characterised by a balancing act between cooperation requirements at the one hand and competition conditions at the other hand – by action constellations of *co-opetition*

Illustration 6:

Competitive Relation	Cooperative relation
Price pressure (annual price reduction rounds; drastic reduction requirements for rescue operation by OEMs; see also Ghosn at Nissan)	Joint concept development Innovation transfer
Competitive tendering	Simultaneous engineering; Co-design
Protection of company-related know-how	Improvement of communication and cooperation beyond company limits

There is a variety of such action constellations in the relation between OEM and suppliers. One results from the main contradiction to involve suppliers into concept development of new products and processes early in order to benefit from their expertise on the one hand, and to search for the most competitive supplier for mass production and competitive tendering on the other hand. *Co-opetition* is triggered by the fact that suppliers and OEM, as well as suppliers themselves, often compete directly with each other for competence areas where 'core competences' seem to be clearly defined. This competition is increased by technological development of function integration. At the operating level, this always means also to secure the future of the own company and sphere of activity with allowing as much simultaneous engineering as possible at the same time. In most cases, *co-opetition* is still significantly characterised by the dominance of OEMs today. Suppliers are still the first and most vulnerable victims

for reductions by the OEMs. OEMs can ad hoc save money by renegotiation of prices and terms of delivery and demonstrate a quick and plausible improvement of results to the capital market. One example for that are the measures recently introduced at Chrysler – but they are also an example that such measures are only enforceable to a certain extent. The tools to involve suppliers more in the risk associated with the development of new vehicles and expansion strategies, however, have increasingly been expanded in the course of the recent development:

- advance financing of development efforts in the run-up to the supplier selection;
- takeover of just-in-time risks by building of satellite factories at production sites worldwide;
- takeover of financing and operating risks associated with new factory concepts, as described above.

The regulation of the strained relations between OEMs and spare part manufacturers is still an unsolved problem. For the German VDA, this problem is one

² The following text contains passages from Juergens 2003a, p.38ff.

of the most important concerns. Several times, the VDA developed guidelines for future cooperation. In 2001, the Association formulated 'Principles for Partnerships between OEMs and Their Suppliers'. However, the problems have not been solved by these principles.

The OECD Guidelines for Multinational Enterprises

*Heino von Meyer,
(OECD Berlin Centre)*

The OECD

Character and Membership

The Organisation for Economic Co-operation and Development (OECD), bringing together 30 leading market economies from Europe, North-America and the Pacific region, is a key institution for multilateral intergovernmental co-operation. It is a standing government conference where annually more than 30 000 delegates meet in 150 thematic committees and working groups to discuss common concerns, and to agree on policy conclusions and recommendation. Their work builds on the analytical foundations and findings provided by the OECD Secretariate based in Paris. Stakeholders from the business sector (BIAC), trade unions (TUAC) and NGOs are involved in the work of the OECD.

Importance and Outreach

OECD Member countries represent two thirds of the global GDP, three quarters of global trade and four fifths of official development aid. The OECD is neither universal as the UN, nor supranational as the EU, nor does it have important funds at its disposal. But it reaches a global scope by its working relations and co-operation with more than 70 non-member countries. Acting as a 'soft helper' the OECD also supports and complements the work of other international organisations like WTO, IMF, ILO, WHO and FAO.

Aims and Topics

The OECD promotes policies designed:

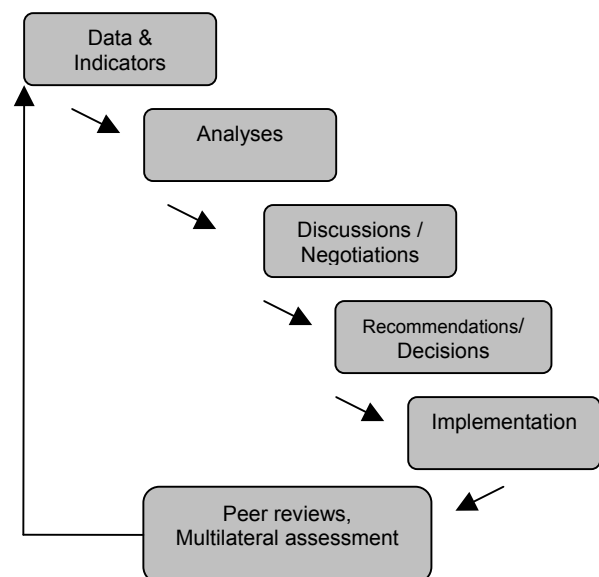
- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and

– to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

(OECD Convention adopted in 1960)

The OECD Secretariate with its 2 000 staff members is divided into 15 directorates, dealing with economics, employment and social affairs, environment, trade, public governance and territorial development, statistics, education, development, agriculture, financial, fiscal and enterprise affairs, science and technology, etc. Furthermore, it has semi-autonomous bodies such as the International Energy Agency (IEA) or the Centre for Education and Research Innovation (CERI).

The OECD Mode of Operation



Indicators and Recommendations

OECD data and indicators provide a solid, internationally comparable base for benchmarking and policy formulation. Examples are: The Programme of International Student Assessment (PISA) or the DAC Report on Official Development Assistance (ODA).

OECD Outlooks with analyses and forecasts on economic, social and environmental conditions and trends reveal challenges and opportunities.

OECD Conventions, Guidelines, and Principles are essential tools for getting to grips with globalisation. Examples are:

The OECD Model Tax Convention (transfer prices, e-business); the list of non-cooperative tax havens; development policy guidelines (e.g. on combating poverty, public health care, prevention of conflicts), access to environment-related information; corporate governance; combating bribery and corruption; multinational enterprises.

Peer Reviews

Peer reviews are systematic examinations and assessments of a country's performance by other countries ('peers') aiming at helping the country

- to comply with established standards and principles;
- to adopt best practice; and
- to improve the efficiency of its policy.

The reviews are based on a relationship characterised by partnership, not opposition. They rely on mutual trust among countries and in the process they are involved in. The reciprocity of the examination process creates an international system of mutual accountability.

The OECD Guidelines for Multinational Enterprises

Context and Development

The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. They represent a detailed international code of conduct – adopted in 1976 and fundamentally revised and significantly amended in 2000.

Presently, the Guidelines have been adopted by all 30 OECD Member countries and 7 Non-member countries. The Guidelines have no legally binding force, but they establish bodies and procedures for implementation and monitoring. Disputes are reported to National Contact Points and shall be solved by standardised procedures.

The language of the Guidelines is based on important international reference systems, such as:

- Universal Declaration of Human Rights;
- ILO Declaration on Fundamental Principles and Rights at Work;

- Rio Declaration on Environment and Development and Agenda 21;
- Copenhagen Declaration for Social Development.

The language of the OECD Guidelines is compatible and complementary with, but, at the same time, more comprehensive and more detailed than the UN Global Compact.

Nature and Approach

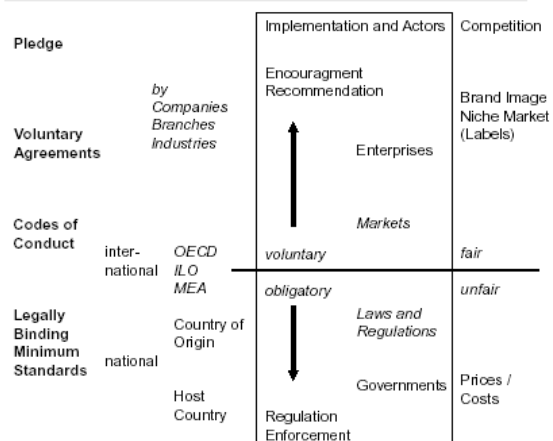
The Guidelines are recommendations on corporate social responsibility addressed by co-operating governments to multinational enterprises. They complement and strengthen initiatives of the countries to define and implement standards for responsible business conduct, concerning i.a.

- corporate governance;
- combating corruption;
- environmental management.

Their logic is not based on defensive protection (i.e. not only oriented towards compliance with legally binding minimum requirements), but on pro-active encouragement of best practice. They are an invitation to voluntarily go beyond minimum standards and define new standards of what can be regarded as best practice (e.g. including labelling).

Social and Environmental Standards

Commitment and Achievement



Goals and Subjects of the Guidelines

The general goal of the Guidelines is to encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and consequently to sustainable development.

They are divided into ten sections:

Section 1 Concepts and Principles describes the basic principles of the Guidelines, such as:

- voluntary participation;
- global application;
- no special treatment for MNE;
- good practice for all enterprises;
- international dispute settlement mechanism;
- National Contact Points;
- review and consultation procedures.

Section 2 General Policies provides first specific recommendations on

- promotion of sustainable development;
- respect for human rights;
- encouragement of local capacity-building;
- encouragement of human capital formation;
- development of effective management systems;
- promotion of employee awareness of company policies;
- protection of employees who make *bona fide* reports;
- responsibility for the supply chain;
- abstinence from political involvement.

Section 3 Disclosure recommends disclosure of all crucial company-related information concerning operation and finances, especially on:

- structure and objectives of the company;
- major share ownership and employment;
- governance structures and policies.

Additionally, it recommends disclosure of information on the social, ethical and environmental policies for which no similarly detailed reporting procedures have been developed until now.

Section 4 Employment and Industrial Relations covers all four core labour standards of the ILO:

- respecting the right of employees to be represented by trade unions and to negotiate collective agreements;
- elimination of all forms of forced or compulsory labour;
- abolition of child labour;
- non-discrimination against employees (race, sex, religion);

and additionally

- consultation and co-operation between employers and employees;
- employment of local personnel;
- meaningful negotiations.

Section 5 Environment addresses especially:

- respect of national objectives and international standards;
- establishment of environmental management systems (ISO, EMAS);
- life cycle analysis;
- precautionary principle;
- environmental research and development;
- environmental education and training;
- consumer information;
- partnership and initiatives in regard to environmental policy.

Section 6 Combating Bribery demands to refrain from directly or indirectly bribing public officials and other business partners and requires in particular increased transparency, training programmes and disciplinary procedures for employees, management control systems and to refrain from making illegal contributions to political parties.

Section 7 Consumer Interests demands that enterprises should act in accordance with fair marketing and advertising practices when dealing with consumers, respect consumer privacy and provide protection for personal data, and ensure that their goods or services meet required safety and quality standards.

Section 8 Science and Technology addresses promotion of the dissemination of research and development results of multinational enterprises in the countries they operate in order to support host countries in improving their innovation capacity.

Section 9 Competition emphasises the importance of an open and competition-oriented corporate environment.

Section 10 Taxation demands from companies to act in accordance with both the letter and the spirit of taxation laws and regulations and to co-operate with tax authorities.

Implementation

The Guidelines are implemented by the establishment of National Contact Points that act as government agencies or as

bodies under the joint supervision of all social partners.

Their task is to

- promote implementation and disseminate information;
- promote co-operation and offer a discussion platform to the business community, employee organisations, and other non-governmental organisations;
- discuss and settle disputes;
- provide annual reports;
- participate in review and consultation procedures; and
- co-operate with the OECD Committee on International Investment and Multinational Enterprises (CIME).

CIME Commentaries

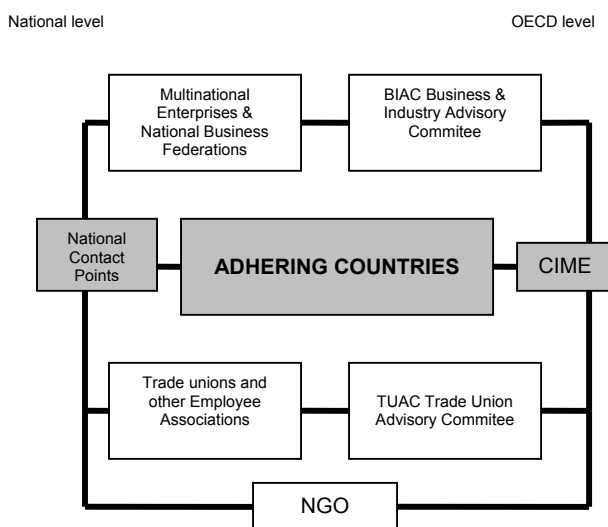
In regard to this section of the Guidelines, the commentaries worked out by the OECD Committee on International Investment and Multinational Enterprises (CIME) state that this section does not only affirm the standards and policies embodied in the Guidelines, but simultaneously also their importance for

- suppliers, contractors,
- subcontractors, licensees,
- and other entities.

The added language ‘where practicable’ implies that the ability of companies to influence the behaviour of their business partners is limited in practice. Where these limits are set in reality depends on specific conditions and characteristics of the associated sectors, industries and companies, as well as on production processes and products, such as

- number of suppliers / business partners;
- structure and complexity of the supply chain;
- market position of the companies.

Implementing the Guidelines



Complexity and ‘Complicity’

Supplier relations reach from mere purchasing relations at ‘anonymous’ markets or punctual procurement to relations based on highly complex contractual relations. Only from a narrowly legalistic / technical view can the latter be regarded as unconnected autonomous enterprises.

Depending on branch of industry and company type, they are very differently structured and thus often characterised by high complexity. But: Complexity must not become the excuse for ‘complicity’.

Supply Chain Responsibility

General Policies

The **General Policies** section (Section 2) of the OECD Guidelines for Multinational Enterprises states: *‘Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should [...] 10. Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines. [...]’*

Investment and Trade

In the practice of National Contact Points, the “investment nexus” is emphasised as an important criterion for the interpretation of the Guidelines, in particular in order to determine the scope of supplier relations. This nexus results from the context in which the Guidelines were established: The Declaration on International Investment and Multinational Enterprises. Often, however, it is difficult to differentiate clearly between trade and investment relations, especially in the case of long-lasting contractual relations established

between enterprises and profoundly depending business partners.

Scope and Interpretation

The Chair of the OECD Ministerial, Australian Finance Minister Costello, emphasised in his preliminary statement held in June 2000:

'The Guidelines express the shared values of the governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They apply to business operations all over the world.'

There are some indications that the Guidelines will be interpreted asymmetrically according to the chosen perspective: With a defensive perspective (i.e. when assessing a violation of the Guidelines) the restrictive interpretation with a limitation to investment relations will prevail; with a pro-active perspective (i.e. when assessing best practice examples), the scope will be defined and interpreted more widely, not least by the enterprises themselves.

Supply Chain Responsibility and the OECD Guidelines

Expectations and Experiences from an NGO perspective

*By Cornelia Heydenreich,
Germanwatch*

Consideration of supplier relations was one of the main discussion points during the year 2000 revision of the OECD Guidelines for Multinational Enterprises, which were initially adopted in 1976. While NGOs that were involved in this revision for the first time after the failure of the Multilateral Agreement on Investments (MAI) supported the establishment of corporate responsibility for supplier chains, business representatives and some of their advocates from government fractions are opposed to that approach. For NGOs, the finally achieved establishment of responsibility for supplier chains is one of the most important results of the OECD Guidelines Revision.

The Compromise of 2000

The result of the extremely different positions is a compromise that NGOs regard as very fragile: Paragraph 10 in Chapter II, General Principles, states: 'Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.'³ NGOs proposed to use the term 'enable' instead of 'encourage' and to delete 'where practicable'.⁴ As their reason, NGOs stated that from their experience, mere encouragements or requirements are often not sufficient to achieve true compliance. Often enough, contracts between a multinational enterprise and its suppliers are set at such a low price level that the contract partner

cannot implement stronger requirements such as environmental and social standards that are required of him additionally to quality and supply requirements. 'Enable' would entail that companies negotiate contract prices at a level that enable suppliers to comply fully with the OECD Guidelines.

For a more thorough interpretation of the Guidelines, explanations were developed when the OECD Guidelines had been adopted.⁵ They highlight that multinational enterprises must acknowledge that these standards and principles of the Guidelines are also important for their suppliers, contract partners, subcontractors, licensing partners and other business units with which they have business relations. The explanatory notes highlight that the enterprises' scope of influence has limits that differ in terms of characteristics related to sector, enterprise and product. Such characteristics could be the number of suppliers or other business partners, structure and complexity of the supplier chain or the market position of the enterprise in relation to its suppliers. The explanatory notes explain further that the scope of influence is not always the same for all business partners within the supplier chain. Especially for established or direct business relations, the Guidelines recommend compliance with the principles listed. But not all individual or punctual contracts or transactions that are formed in the market or are based on client-to-client relations can make compliance with OECD Guidelines a condition.

Often, however, social and environmental standards are not met within those direct and long-term business relations and must be addressed within the context of the Guidelines. Especially the question of market position seems to be an interesting aspect and is also addressed in the argumentation of NGOs.

³ *Federal Ministry of Economic Affairs*, OECD Guidelines for Multinational Enterprises, Revision 2000, p.19

⁴ *ANPED and FoE EWNI*, NGO commentary to Implementation document and draft integrated text of the OECD Guidelines for Multinational Enterprises, unpublished.

⁵ *Federal Ministry of Economic Affairs*, OECD Guidelines for Multinational Enterprises, Revision 2000, Explanatory notes p. 39ff, explicitly p. 40.

Developments after the OECD Guidelines Revision in 2000

While the reference to supplier relation in the Guidelines is very vague and regarded as inefficiently formulated by NGOs, the explanatory notes show an interpretation approach that seems to come closer to the NGO approach. Since the establishment of this subject within the context of the Guidelines stirred intense discussions, the first legal actions with reference to suppliers showed how differently the Guidelines had been interpreted. These legal actions triggered an intense debate about the scope of the OECD Guidelines. Supplier relations were discussed in detail during the OECD Roundtable in June 2002⁶ that is held every year in the framework of the Annual Meeting of National Contact Points and focuses on a key issue. A Working Party of the OECD Committee on Investment (CIME) dealt with this issue and supplemented its considerations by conducting a survey into the interpretation of the supplier aspect and the scope of the OECD Guidelines among National Contact Points. At CIME level, the discussions resulted in the adoption of a declaration made in June 2003 that introduced the term 'investment nexus'. Not only NGOs but also the trade union representative TUAC regards this as a restriction of the scope of the Guidelines that does not correspond with interpretations and demands of all National Contact Points.

Legal Actions Concerning Suppliers

Several legal actions that refer to this part of the Guidelines have been filed since the revision of the Guidelines and the integration of supplier relations.

The first case was filed against Adidas and Kubbinga, a Dutch trade company, by the India Committee of the Netherlands in 2001 because of industrial law violations concerning soccer ball production in India. While the action against Adidas was

accepted, the Dutch Contact Point objected to involve Kubbinga in this case since only business relations exist. Though Adidas does not hold shares in the company and has not invested money in India, a certain 'intellectual investment' was assumed. Furthermore, Adidas set also definite preconditions, such as delivery times, prices, and work standards, and required its supplier to take measures concerning health care and workplace safety. Furthermore, Adidas was one of this supplier's biggest buyers.

In Germany, Greenpeace filed legal action against TotalFinaElf Germany for environmental pollution due to oil extraction in West Siberia. While the National Contact Point in Germany emphasised, even after consultations with CIME, that no more than trade relations exist, Greenpeace used particularly the explanatory notes to the Guidelines as its argument for the existence of direct and established business relations resulting from purchase contracts that run for ten years. Furthermore, these contracts are more or less investment measures as local investments and oil extraction take place only as a consequence of guaranteed purchases. Moreover, TotalFinaElf is a main buyer and holds a dominant market position that is not weakened in any way by existing intermediate trading companies, as the BMWA has claimed. After the term 'investment nexus' was established, it was applied as reason for dismissing the legal action in the annual report of the National Contact Point to the CIME. Until now, however, Greenpeace didn't receive a final dismissal of the action in written form. The Campaign for Clean Clothes filed another action against Adidas concerning industrial law violations in supplier companies in Indonesia. In this case, there were no discussions at the German Contact Point concerning supplier relations and the case was accepted as legal action. Especially in the clothing and sports articles industries it seems to be undisputed that enterprises take on responsibility for their suppliers, last but

⁶ OECD, OECD Guidelines for Multinational Enterprises: Annual Report 2002. Focus on Responsible Supply Chain Management.

not least because of the fact that these industries are strongly influenced by supplier relations and have already come under public scrutiny as a consequence of investigations of NGOs in the past.

In one case, filed by the Swedish Contact Point against operations of Sandvik and Atlas Copco, a missing investment relation was criticized, despite the fact that the case was being dealt with (is this what you mean.. the sentence I crossed out was unclear) After examination, the National Contact Point found that the corresponding enterprises do not have enough local influence since they only provide services.

Several other cases resulted from the UN Panel Report on Illegal Resource Exploitation in Congo⁷ that accused enterprises of OECD Guidelines violations. On the basis of this report, Dutch NGOs filed legal action against Chemie Pharmacie Holland (CPH), which again raised discussions and resulted in the dismissal of the case by the Dutch Contact Point due to the fact that no investment nexus exists.

Another legal action was also dismissed due to the missing investment nexus. The action filed by Greenpeace against the West LB involves loans for an oil pipeline in Ecuador where human rights and environmental standards have been violated during the construction work. In this case, banks, too, should ask themselves to what extent they are responsible for ecological and social impacts of their investments and loans. The majority of cases submitted by NGOs include such supplier-related issues (unlike the cases submitted by trade unions that hardly address supplier-related issues), which is surely not without cause, as many major problems of standard violations occur in this sector. Therefore, the question of the Guidelines scope will

definitely accompany us in future cases as well.

Survey into the Scope of the Guidelines among National Contact Points

A survey into the scope of the Guidelines commissioned by the CIME Working Party on the Declaration from National Contact Points⁸ shows a range of different opinions.

Several National Contact Points refer to the fact that the OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. According to their interpretation, it clearly follows that the Guidelines aim to investment in contrast to the trade relations of the enterprises. This opinion is not only shared by some National Contact Points but also by BIAC, the economic agency at the OECD, and has already been expressed during the negotiations concerning the revision 2000.

The Guidelines are regarded as part of a developing framework for corporate responsibility. Thus, we can assume that importance and scope of such frameworks will change if economic realities (such as increasing supplier linkages) change.

Moreover, it has been pointed out that explanatory notes to the OECD Guidelines refer to several other instruments of corporate responsibility. But the majority of these instruments do not differentiate between investments and other corporate activities.

Examples are the rules regarding combat of corruption set by the International Chamber of Commerce ICC that apply to investment and trade.

Some National Contact Points emphasise, especially Chapter 10 of the explanatory notes to the Guidelines, which directly concerns supplier relations. The representatives emphasise potential realisation of 'direct influence' rather than of investments. Though direct investments

⁷ UN, Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo. October 2002.

⁸ OECD, OECD Guidelines for Multinational Enterprises: 2003 Annual Meeting of the National Contact Points, Report by the Chair, Background Paper on the Scope of the Guidelines, p. 25ff.

may result in increased control and may imply direct influence, direct influence can also result from other circumstances: from market power or other corporate practices such as certification or systems that allow detailed tracking of a product following the supplier chain. As stated in the explanatory notes to the Guidelines, market power over suppliers enable enterprises to influence their suppliers' behaviour, even if there is no direct investment and therefore no formal corporate control exists. There are also other corporate practices to exert control over companies: This is the case, if the supplier is made responsible for specific performances such as compliance with quality standards. For example, the aviation industry uses purchasing practices that enable producers to control the product quality of their suppliers. Often, this is achieved by quality standards and certification systems. Investment is made in these certification systems, but the supplier-buyer-relation does not contain any investment in the traditional sense of foreign direct investment. It is also pointed out that the OECD Declaration contains no precise definition of investment. The introduction of the Guidelines states: International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. [...] *Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.*⁹ So some National Contact Points make out the opportunity to define investment rather wide and some flexibility is created in order to evaluate the influence of multinational enterprises and the existence of an investment nexus.

⁹ Federal Ministry of Economic Affairs, OECD Guidelines for Multinational Enterprises, Revision 2000, p. 15.

From practical experiences, which were discussed during the roundtable meeting 2002, derives the statement that enterprises often have the possibility to influence their suppliers, but rarely use it. As a result, the recommendation on responsibility for suppliers will not only apply if influence exists but also if it seems to be possible to develop processes and structures in the relation with suppliers so that influence can be achieved.

Besides these questions that relate to companies, one National Contact Point was also concerned about the work load for the National Contact Points that might increase enormously, if 'mere trade relations' were to be included.

From the NGOs' point of view, however, this last point would rather indicate that the National Contact Points' resources must be increased. Apart from that, the National Contact Points' different points of view confirm the NGOs' experience that it matters at which National Contact Point a case is filed since the Guidelines are interpreted differently. In this case, even the often evoked so-called 'Peer Pressure', which NGOs regard as not yet clearly defined, is of no help. With a joint CIME declaration on the scope of the Guidelines in June 2003 the CIME sought to provide a general orientation for all National Contact Points.

CIME Declaration from June 2003

After long discussions of the CIME Working Party, a statement about the scope of the Guidelines¹⁰ was adopted at the annual meeting of the National Contact Points in June 2003. It emphasises in the first line that the Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. This fact and the responsibility for the Guidelines carried by the Investment Committee lead to the interpretation that the Guidelines refer to investments. At the same time, the Guidelines represent one

¹⁰ OECD, OECD Guidelines for Multinational Enterprises: 2003 Annual Meeting of the National Contact Points, Report by the Chair, Scope of the Guidelines, p. 12.

of the most important instruments for corporate responsibility and have already been related (and will be related in the future) to other contexts. According to CIME, the application of the Guidelines is based on the existence of an 'investment nexus', although this 'investment nexus' hasn't been defined precisely yet. Flexibility as reflected in the Guidelines II.10 and the explanatory notes is demanded for the application of the Guidelines by connecting the scope of the Guidelines to the practical ability of enterprises to influence their business partners. Therefore, CIME recommends a so-called case-by-case approach that takes all factors into account that define the nature of the relation and the scope of influence.

While CIME intends to stay within the framework of the agreement achieved during the revision 2000, by doing so, NGOs and more and more trade unions interpret this commitment to an 'investment nexus' as restriction of the Guidelines' scope, in particular because more than several cases had been dismissed using this argument.

The NGOs' Point of View¹¹

Non-governmental Organisations regard the aspect of responsibility for suppliers as essential element of the OECD Guidelines. NGOs emphasised their point of view about this subject in a letter to the CIME¹² in the run-up to the consultations of the Working Party in April 2003.

NGOs regard the OECD Guidelines as recommendations for responsible business management. In regard to this, they don't differentiate between investments and trade relations or other business activities. Responsibility for suppliers is an important element of the

OECD Guidelines. NGOs realise also the practical limitations of the influence of enterprises and don't want to hold single enterprises responsible for all activities of all their suppliers. The influence of enterprises is determined by market power as well as by structure and complexity of the supplier chain and depends on sector-specific or product-specific factors, which is also stated in the explanatory notes to the Guidelines.

If an enterprise, however, can ensure that a certain product quality is met, it should be possible to use its influence to achieve compliance with specific ecological and social standards as well. It seems also very important that suppliers are enabled to act in a responsible manner. On the one hand, this includes appropriate price design so that necessary investments, for example in environmental measures or social standards, become possible. On the other hand, the buyer influences the supplier's ability to comply with specific standards by his delivery conditions, such as delivery times. If delivery times are set too short, overtime is pre-programmed.

Prospects of the Future

The present experiences with the OECD Guidelines showed to NGOs that the aspect of supplier relations and the scope of the Guidelines represents a key issue in regard to implementation. The present practice couldn't live up to NGOs expectations regarding many issues. Future experience must prove if the Guidelines and their interpretation and implementation by the National Contact Points are broad-based enough to fulfil the requirements related to the supply chain. If this poses a permanent problem, this point of the Guidelines must either be revised or stronger instruments must be created. The UN standards for enterprises could represent an approach since the supplier relation problems are more clearly included and trade is not artificially excluded.

¹¹ These are positions of NGOs working within the framework of the OECD Guidelines. Many of them joined forces by establishing the international NGO network OECD Watch, such as SOMO, RAID, Germanwatch, Member organisations of Friends of the Earth, Transparency International, Amnesty International, ATTAC and the Clean Clothes Campaign, detailed information is available at www.oecdwatch.org.

¹² *OECD Watch*, Letter to CIME, April 2003, unpublished.

How do Multinationals take Responsibility for their Suppliers?

Case Study: Adidas Salomon AG

By Dr. Frank Henke adidas-Salomon Inc.

The activities of multinational enterprises have increasingly come under public scrutiny, the result of which has been a parallel growth of concrete demands and expectations placed upon these companies by various social groups. In addition to contributing to economic growth, MNEs are also expected to take on greater responsibility to comply with human rights statutes and to establish high social and environmental standards in the poorer regions of our world.

The variety of implemented measures shows that companies all over the world acknowledge these demands and take on responsibility for their activities. Companies do this on a voluntary basis as they themselves are interested in a functional community and in good cooperation with local authorities. But the level of corporate commitment must always relate to the given economic context and take into account the cultures and traditions of the country. Thus, it is necessary to find innovative solutions to address the regional or local nature of particular problems. In this regard, good practice examples have proven to be the best solution. They function as models showing that responsible entrepreneurial activities result in competitive advantages and motivate other companies to attempt to match these standards.

Regrettably, these voluntary corporate measures can not compensate for weaknesses in governmental policy. As companies lack any semblance of control and legal authority or competency, they are unable to enforce social and ecological minimum standards beyond their sphere of

activity. In this case, a concrete allocation of responsibilities is needed: Governments must create a legal framework and carry the responsibility to ensure compliance with social statutes and environmental laws, not only in their own territory but also in their relations with partners. To this end, international organisations usually communicate their requests to governments and expect them to implement related measures. The execution of these measures by companies within their sphere of activity can only be the second step.

The development of company guidelines concerning social minimum standards, occupational safety, health care and environmental protection as well as the monitoring of compliance with these guidelines in all factories of the adidas-Salomon Inc. and its business partners is a firmly established constituent of our global company policy. In 1998, the adidas-Salomon Inc. committed itself to its own code of conduct, the so-called Standards of Engagement (SoE). A Global Director for Social and Environmental Affairs was specially appointed to coordinate and monitor compliance with these standards in all of our factories.

The SoE are based on the International Labour Organisation's (ILO) conventions and the model code of conduct of the World Federation of Sporting Goods Industries (WFSGI).

The SoE help us to choose business partners that comply with our workplace standards and business practices and to reject partners that have not committed themselves to our values. Furthermore, the SoE assist us in identifying potential problems and in solving them in cooperation with our business partners. Not satisfied to merely monitor and review compliance with our standards, we have undertaken efforts to pro-actively implement positive change in close cooperation with our suppliers.

Our code of conduct contains more than just a set of rules only valid on paper. It is an integral part of supplier contracts

between adidas-Salomon and its business partners. Implementation of and compliance with our SoE is monitored by a team consisting of 30 employees. As our suppliers are situated in many different countries, the Social and Environmental Affairs Team is organised into three regional units covering Asia (China, Hong Kong, Indonesia, Singapore, Taiwan, Thailand, and Vietnam), Europe (Germany and Turkey) and the Americas. These representatives are under the supervision of the Global Director of Social & Environmental Affairs who reports to the company's General Counsel.

In 2002, there were 1,148 monitoring visits by the SEA team at different levels of our supply chain, i.e. at direct suppliers as well as their subcontractors. To help our business partners understand how to manage our SoE we developed individual guidance manuals on standards of employment, occupational safety, health care and environmental protection. In cooperation with our suppliers, these guidance manuals are utilised to resolve problems occurring in the workplace.

In addition to the monitoring visits of our SEA team we put strong emphasis on independent audits by third parties. In 1999, we joined the Fair Labour Association (FLA) in the USA. The FLA assists members in the monitoring and interpretation of internal inspection results of companies so that we may effectively implement these independent audits in our business partners' factories. The FLA is a non-profit organisation working cooperatively with companies, NGOs and universities to promote a workplace code of conduct and guidelines for safety, health care and environmental protection conditions in the workplace. The Fair Labour Association appoints accredited supervisors in order to assess the level of compliance of associated companies with these standards. The organisation publishes an annual report that includes a transparent system analysis to facilitate the evaluation of the results of participating companies.

In 2002, 42 suppliers were audited without prior notification by independent FLA accredited supervisors. Consequently, the FLA determined that all of its requirements had been complied with in full.

Rather than intending to continually scrutinize our suppliers' every move, our strategy is based on the idea of motivating them to take the initiative to develop more long-term responsibility for their activities. It is our opinion that a sustainable system needs to build structures that involve our suppliers' employees and management as well as local labour organisations and NGOs. This is the only way to guarantee that adequate working conditions become a standard element of business activities. We believe training to be a much more effective tool than control, as it can enable us to play a long-term role that goes far beyond the scope of mere authoritative monitoring. Our SEA training programmes for factory management assist our suppliers in the general implementation of our standards while also addressing individual issues – such as fire safety, industrial law or the handling of chemicals and internal environmental protection. Last year, the SOE team organised 255 training sessions for suppliers and local factories. In addition to the activities mentioned above, we implement projects in cooperation with governmental and non-governmental organisations aimed at transferring and improving industrial-law-specific knowledge in regard to employment, occupational safety and health care protection. For instance, in Indonesia, Vietnam and Cambodia we cooperate with suppliers and local NGOs in implementing projects to improve health care protection for women working in factories.

Our potential to directly influence the results of our measures depends mainly on the intensity of cooperation with our business partners and their willingness to cooperate in these issues. In circumstances in which we represent the main purchaser, as in the case of sport shoes, we can use our market power to

promote change. In regard to sport clothing, however, our contracts with suppliers cover only 1% to 50% of their total supply capacity. Under these conditions our capability to bring about change is reduced. Thus, in order to promote improvements in the factories we purchase from, we have combined forces with our competitors to initiate joint actions. In all industry sectors, this cooperation within the sporting goods industries is exceptional. In regard to

Sustainability within the Supply Chain – Experiences and Perspectives

Case Study: Volkswagen AG

Dr. Michael Mesterharm, Julia Koplín

Introduction

As globalisation is progressing, large enterprises are facing growing international competition. This poses a challenge to the design of added value processes and supply chains of a company. In the wake of globalisation, the number of possible suppliers a company can rely on in regard to procurement of raw materials or primary products has enlarged considerably during the last few years and has also significantly increased the complexity of procurement processes (1). Within the car industry, the added value processes are also global. At Volkswagen, this globalisation process began already in the 1950s with the establishment of production sites in Brazil and South Africa. The globalisation of Volkswagen was continued by acquiring the brands Seat and Skoda and by opening new markets such as China. Suppliers of Volkswagen followed this development and built factories abroad – often close to production sites of Volkswagen. At the same time, Volks-

compliance with industrial law as well as occupational safety and health care standards, we pursue the same goal: to improve working and living conditions of the people manufacturing our products.

Further information on the Social and Environmental Programme of adidas-Salomon is available at www.adidas-Salomon.com/de/sustainability/.

wagen could win new local suppliers as partners. The development at Volkswagen in regard to the added value process shows the following characteristics:

- Globalisation of the Original Equipment Manufacturer, OEM
- Globalisation of suppliers with head office in developed countries
- Construction of a local supplier system in emerging countries
- Increasing amalgamation of suppliers while production remains decentralised

To extend procurement to new markets and regions, especially to emerging and developing countries, holds new environmental and social challenges and tasks at global and national level (2). Particularly consumers and NGOs expect ever more information on production conditions of products and services – also on factories of suppliers – and blame companies' offences against environmental protection and working conditions through the media as well as at the political level. Sustainability is the answer to this challenge and has developed into the model of a global company policy that is socially more responsible and pursues long-term goals.

Sustainable Development as a Challenge to Companies

The first commonly agreed definition of sustainability, which is still valid today, was

given by the Brundlandt Commission in the context of the World Commission for Environment and Development (WCED) in 1987. It became a principle for ensuring an acceptable long-term development of society and stipulates that needs of the present generation must be met without risking that future generations will not be deprived of the means to meet theirs (3). In addition to intergenerational justice the definition of sustainability contains the promise to tackle not only economic, but also ecological and social problems.

For Volkswagen, the principles of sustainable development must be taken into account from two angles: in the context of the ethical expectations society places in companies and in regard to secure and improve the global competitiveness of the company. In the view of Volkswagen, sustainable development contains three central elements (4): long-term balance of the economic, ecological and social system and reconciling of diverging interests, responsibility for business activities as well as transparent communication and fair cooperation.

Expectations placed in companies in the context of globalisation and sustainable development aim predominantly at contributing to reduce or to eliminate social and environmental shortcomings resulting from corporate business activities. The most criticised issues are: inadequate environmental protection and lack of occupational safety, child labour, wages below legal minimum wages, oppression of trade union activities, discrimination, unreasonable working hours, forced labour, etc. (5). Different environmental protection standards in developing countries are a result from different national environmental protection standards, existing infrastructure (such as wastewater treatment plants) as well as from natural regional conditions (such as climate and soil quality). Differences between the associated working

conditions within national states result from different legal frameworks or social standards. Very often, labour and social laws in emerging and developing countries do not meet the standards of industrialised countries in the West (6).

At international level, demands placed in companies to comply with worldwide agreed minimum standards have already been included into several guidelines, codices and initiatives. Although these are voluntary commitments they have in fact a quasi-binding character as they are indispensable to justify activities in front of public authorities and NGOs as well as to remain competitive. In related literature, Global Compact, ILO core labour standards, OECD Guidelines for Multinational Enterprises, ISO 14001, AccountAbility 1000 (AA 1000), Global Reporting Initiative (GRI), Global Sullivan Principles and Social Accountability 8000 (SA 8000) are called 'The Global Eight' and represent the most prevalent global standards (7). Until now, however, Volkswagen has only started to integrate the social standards AA 1000 and SA 8000 into company practice. Volkswagen supports the Global Compact (ILO core labour standards) and the 'Charta on Sustainable Development' of the International Chamber of Trade, certifies production plants according to the standards EMAS and ISO 14001 and uses the GRI Guidelines for its sustainability documentation. But sometimes generally agreed standards are not sufficient, for example if sector-related or company-related characteristics require specific regulations. Therefore, numerous companies have entered into commitments designed to guide their business activities. Since 1995, Volkswagen has applied a Group-wide environmental policy in order to continually improve sustainability in all areas. Additionally, together with the Group Global Works Council of Volkswagen AG and the International Metalworkers' Federation, Volkswagen AG agreed on the

'Declaration of Social Rights' of employees (8). It regulates freedom of association, free choice of employment, work hours and wages as well as the prohibition of discrimination and child labour.

Implementation of Sustainability within the Chain of Suppliers

As large corporations with globally well-known brands are especially exposed to the public they have come under thorough public scrutiny. They are expected to not only take on responsibility for their business activities, but also for the entire added value process along its chain of suppliers. This is a great challenge for companies with highly complex products and an associated diverse and multistage value chain, as related firms mostly only know their first-tier suppliers and to a degree also those suppliers' contractors. Succeeding links of the chain are often unknown for the most part. The first-tier suppliers of the series production of the Volkswagen Group consist of about 800 companies and approximately 3,600 locations worldwide. About 5,500 companies are business partners of Volkswagen. The automobile is one of the most complex products on the market and it needs an extremely complex supplier system. Therefore, in order to recognise potential risks as early as possible, cooperation with first-tier suppliers on a partnership basis is crucial. The OEM requires that environmentally and socially sound business activities are practiced within all stages of the value chain.

Volkswagen accepts the challenge of sustainable development within the chain of suppliers and we know that this is not a one-time, but a long-time and permanent task. For Volkswagen, this involves early detection of problems as well as finding effective and efficient solutions, which can be applied Group-wide and worldwide, but also developing competitive advantages by means of business relations with suppliers on a partnership basis. Together with the University of Oldenburg,

Volkswagen initiated a research project embracing all areas of responsibility, in which the actual situation of VW-specific requirements for suppliers are analysed, as well as a concept to integrate environmental and social standards into procurement.

In the sustainability model of Volkswagen, published on the occasion of the World Summit for Sustainable Development in South Africa in 2002, the joint responsibility of the Group and its suppliers for environmental and social standards within the chain of suppliers was pointed out. Furthermore, Volkswagen's environmental policy of 1995 has already emphasised cooperation with suppliers in the field of environmental protection. The Group's 'Declaration on Social Rights' contains explicit encouragement and support of all trading partners to embody the guidelines of social standards set up by Volkswagen. Additionally, studies showed that in regard to environmental protection broad-based requirements to Volkswagen's suppliers have already been in place focussing mainly on the environmental quality of supplied products. Suppliers have to meet both the high quality and environmental requirements that Volkswagen has specified for its products. Usually, this is only possible by means of state-of-the-art production technology. The different product-related environmental requirements are part of the terms of the procurement tender. Furthermore, all suppliers are supposed to regularly exchange information and experiences on environmental issues. Until now, no certificate enquiries in order to establish environmental management systems as ISO 14001 have been required. However, a first poll among first-tier suppliers showed that a great number of suppliers has already certified environmental management systems in place and has also specified explicit environmental requirements their suppliers must meet. Until now, requirements for workplace

conditions in suppliers' factories have been included in the framework of quality assurance that also refers to the design of the production process. Within the framework of the research project, it has been discussed to apply the rules of Volkswagen's 'Declaration on Social Rights' to the entire supplier network, as well as to introduce an obligation for suppliers to disclose information on their social standards.

Conclusion

Volkswagen takes its responsibility for ecological and social issues seriously and strives to achieve a model function within the automotive industry. Even if the core of Volkswagen's business activities will always be the value process, it is important for Volkswagen to work in a sustainable manner within its own sphere of activities – this means also in regard to business relations with suppliers – in order to guarantee Volkswagen's long-term business success.

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From Raw Material to the Customer: Responsibility in the Supply Chain

Case Study: BASF AG

Dr. Carolin Kranz (BASF AG)

Responsible conduct within the supply chain has long been an important issue for us. As the world's foremost chemical company with customers around the globe, our activities are based upon the model of sustainable development that is embodied in our fundamental values and guidelines. Furthermore, sustainable development is one pillar of our strategy 2015.

We produce and sell more than 8,000 products worldwide. These include chemicals, plastics, refined products, products for plant protection and foods, as well as oil and gas. In order to reduce the effects on humans and the environment of production, storage, transportation, distribution, use and disposal of our products, we established globally valid standards in conjunction with our efficient environmental management system. Moreover, these standards are not limited to our company alone, but include the complete supply chain – from the raw material to the customer.

Our standards are based on the principles of Responsible Care®, a worldwide operating voluntary initiative of the global chemical industry. Its goal is progressive improvement in regard to environmental protection, product accountability, occupational safety, health care protection, factory safety and security against hazards, safety during transportation and dialogue. In cooperation with our business partners we involve the entire supply chain to achieve the goals of Responsible Care®.

Our Responsibility Starts with Raw Materials

BASF purchases more than 10,000 raw materials from about 5,000 different suppliers located everywhere in the world. The share of raw materials from non-OECD countries has increased, mostly due to strong economic growth in Asia. In these strategic growth markets it is particularly important to build efficient business relationships with local suppliers near our new industrial locations. One instrument that supports our endeavour is our so-called safety matrix. Specifically, this means that: products are rated prior to purchasing according to their chemical characteristics in the risk classes A, B and C and the suppliers are categorised in either class 1 (OECD countries), class 2 (upgraded or downgraded countries) or class 3 (until now all non-OECD countries). For products rated as risk class C3 there is a potentially higher risk that will be examined meticulously and comprehensibly. This means for example that an employee of the BASF raw materials purchasing department will visit the factory of a supplier and in the context of an environmental and safety assessment, he/she will examine whether this supplier operates a wastewater treatment plant in order to minimise pollutants as well as determining whether the plant complies with safety standards in accordance with Responsible Care® guidelines.

		Lieferantenrisiko		
		1	2	3
Produktisiko	A	Sicherer Bereich I		
	B		Sicherer Bereich II	Geringes Risiko
	C			Potenziell erhöhtes Risiko

Illustration 1: Safety matrix for purchases of raw materials

In regard to our cooperation with suppliers, we put emphasis on fairness and long-term business relationships. If a prospective supplier has not implemented such standards, he will at first be excluded from potential orders, but subsequently we will support his initiative to rectify the situation through co-development of an action plan with the supplier. In this context, adjustments in production processes from open to closed systems, purchasing of adequate safety equipment for employees or development and establishment of emergency plans are possible examples of measures that could be required. If the owner of the factory implements these measures, he/she will be accepted as new supplier.

Safe Delivery to our Customers

Compliance with our high product transportation safety standards is our utmost priority. Our target for 2012 is to reduce 2003's transport accident rate by 70%. Our globally valid standards and our efficient organisation will be instrumental in the reaching of this goal.

The 'BASF Transportation and Distribution Safety Guide' represents the core and the basis of our measures. It contains our standardised universal guidelines that must be met before, during and after transportation of our products. These guidelines cover for example questions concerning packaging, labelling of dangerous freights, training and documentation.

Additionally, we have a group-wide network of agents responsible for overseeing the handling of hazardous goods. Although it was not a statutory requirement outside of Europe, we have implemented this monitoring function within the entire BASF group. These agents ensure that national and international requirements are met during the entire transportation process. If an accident occurs despite these precautions, the agents in charge of hazardous goods collect all information, initiate measures for improvement and prepare reports for the

management.

In the most cases, our products are transported by independent carriers. When cooperating with our logistics partners, we use the Safety and Quality Assessment System, or SQAS. This system has been developed in a joint effort by chemical companies in order to let independent third parties assess service providers according to standardised criteria. By means of a SQAS report, we can obtain data concerning management systems, internal trainings, reaction times in cases of emergency, vehicle equipment and the existence of safety plans.

Furthermore, we have introduced these tried and tested instruments progressively in our growing markets in Asia: For example, we translated our Group-wide 'Transportation and Distribution Safety Guideline' into Chinese and Korean, defined regional control targets and appointed and trained agents in charge of hazardous goods. In China, safety audits and training sessions were held for carriers in accordance with SQAS standards.

Sustainable Value for BASF

What are our motives for such activities? First of all, we are motivated by our own company tradition and corporate culture. As one of our fundamental values we have committed ourselves to sustainable economic success in the sense of sustainable development. This also means that we act conscientiously in terms of Responsible Care® in that economic concerns do not have priority over safety, health and environmental protection. Responsible Care® is an example how successfully a sector-wide commitment can improve upon and effectively surpass governmental guidelines. Secondly, the instruments mentioned above are part of our extensive risk management policy. With an effective raw material supply and reliable delivery of our products to our customers, we create competitive advantages and therefore contribute to the profitable growth of the BASF group.

Responsibility of Multinational Enterprises within the Supply Chain

The Theory of Business Management's View of the 'Investment Nexus' Concept

*By Dr. Michael Stephan
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1. Introduction

Most industrial and consumer goods are produced on the basis of division of labour. Several – at least legally – independent companies are involved in the value chain. To what extent are companies in manufacturing chains based on division of labour socially and ecologically responsible for their supply and marketing chains? Companies can be forced to take on responsibility if inter-dependencies exist among actors involved in the production system. Within this context, legal independency is no meaningful criterion. Economic dependencies can exist as well between legally independent companies and result, for example, from financial investments. Enterprises operating at multinational level are by no means monolithic entities but part of a complex network based upon direct and indirect majority or minority interests. At least among the group of consolidated companies, i.e. among the group of financially dependent companies linked by financial investments, it is possible to force companies to take on responsibility. But by which minimum amount of financial investment is financial dependency determined? And can financial inter-dependencies of actors also be created without the presence of financial investments?

In its discussion on the scope of corporate responsibility within the supply chain, the Working Group on the subject 'supply chain' of the OECD 'Committee on International Investment and Multinational Enterprises (CIME)' defined the terms 'investment nexus' and 'investment-like relationship':

„...the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship...“¹³

The CIME Working Group, however, did not define these two terms more closely. The concepts of 'investment nexus' and 'investment like relationship' remain vague and not clearly defined. This study's key concern is to provide a stricter definition of both these terms using the theory of business management concept of financial dependency. The following paragraph explains different aspects of supply chain management from the theory of business management's viewpoint. The concept of financial dependency is introduced in paragraph 3 in order to define the scope of responsibility. Paragraph 4 provides conclusions.

2. Supply Chain Management from the Theory of Business Management's Viewpoint

2.1 Definitions of Supply Chain and Value Chain

In the theory of business management, design and management of supplier and business relations in companies, and thus responsibility within the supplier chain, are traditionally discussed within the context of 'supply chain management'. In Anglo-Saxon specialist literature, the terms 'commodity chain' and 'manufacturing chain' are synonyms used for the term 'supply chain'.¹⁴ Parallel to these English

¹³ OECD (2003), p.12.

¹⁴ The OECD (2000, p.2) defines 'Supply Chain' as "... network of facilities and distribution channels that encompasses the procurement of materials, production

concepts, the term (cross-company) 'value chain' became commonly accepted in the terminology of German theory of business management. A value chain describes a cross-actor chain of several functionally integrated entrepreneurial activities, i.e. value adding operations intended to manufacture a product.

Supply chains or value chains involve several business actors that are independent, at least legally. While the term 'supply chain' primarily explains the chain of suppliers from the viewpoint of an involved company, i.e. from the perspective of an actor and its supplier and business relations, the term 'value chain' suggests a point of view that does not refer to companies. The value chain extends from raw material suppliers to end-users. End-users can be private consumers as well as industrial users of a product. Basically, the term 'chain' suggests that the value chain or the supply chain is a line of actors in a sequential process based on division of labour. But this is an oversimplification. Value chains are complex networks based on division of labour that often involve many actors that are legally, and in part also financially, independent.

The theory of business management deals with value chains from two different angles: The strategic angle refers to design of value chains, while the operative angle refers to management of existing supply and business chains from the actor's point of view.

(1) *The strategic angle of the theory of business management refers to value chain design.* Economists analyse the value chain and investigate the question which roles the involved actors should play from the strategic perspective. Questions concerning outsourcing or make-or-buy, i.e. considerations about optimisation of

the vertical range of value added activities of the single companies involved, are the key elements of this view. During the last years, terms like 'concentration on core competences', 'optimisation of the vertical range of manufacture' and 'lean production' were used to illustrate this view. In recent years, fundamental approaches, referred to as 'deconstruction' and 'dynamic reconfiguration' of value chains, have been used.¹⁵ Companies focus on selected parts of one or more value chains and bring their 'core competences' into play. In recent years, network approaches to design value chain systems have also become popular.¹⁶

(2) *The operative angle refers to management of the existing supply chain.* From this viewpoint, supply chain management targets integrated planning, control and monitoring of company-wide and cross-company flows of products, materials, information and capital along the value chain.¹⁷ Its aim is the optimisation of contacts with business partners in order to guarantee a smooth flow of products and information.¹⁸ According to Scheer et al. (2003), the value added network consisting of manufacturing companies and service providers should be designed effectively to achieve the objectives, and the value added processes should be controlled and carried out as efficiently as possible.¹⁹ Supply chain management also includes globally oriented procurement and supplier management. This includes supplier evaluation, supplier selection, supplier improvement, and supplier relationship management. Supplier and procurement management also includes exertion of influence in order to achieve socially and ecologically responsible business operations of external suppliers and contract partners, as well.

and assembly, and delivery of product or service to the customer." On the term commodity chain cf. Gereffi (1994, 1999). Gereffi et al. (1994, p.2) defines global commodity chains as "sets of interorganisational networks clustered around one commodity or product, linking households, enterprises, and states to one another within the world economy."

¹⁵ Cf. Gerybadze (2000).

¹⁶ Cf. Fichter, Sydow (2002) and Sydow, Windeler (1999).

¹⁷ Cf. Scheer et al. (2003), p.375f.

¹⁸ Cf. Arnold, Essig (2003), p.667.

¹⁹ Scheer et al. (2001), p.47.

2.2 Supplier Evaluation and Supplier Improvement

As it is part of operative supply chain management, procurement or supplier management is an important foundation to exert influence on external suppliers and contract partners. How such influence, which can also include social and environment-related aspects, is exerted can be outlined using two elements of supplier relationship management – supplier evaluation and supplier improvement.

In most German companies', detailed supplier evaluation is a central pillar of supply chain management. Supplier evaluation is the basis of procurement policies and selection. Supplier evaluation includes a set of factors such as cost, technology, quality, logistics and others and aims at saving costs. These costs, however, do not only take into account the prices of materials and primary products to be procured, but the entire process chain. Apart from the criteria mentioned above, supplier evaluation in Germany also includes more and more ecological criteria.²⁰ Using the catchphrase 'ecology-oriented procurement management', companies start to control environmental compatibility of their products prior to planning and development processes instead of employing technical environment protection at high costs afterwards. In this process, the ecological competence of suppliers has become a crucial competition factor and valuation provision: In the evaluation process, it is controlled whether suppliers operate in an environmentally-friendly way and whether associated primary products or services are produced or delivered in an environmentally-friendly way. In ideal circumstances, suppliers are not only evaluated when they are selected for the first time, but established suppliers are also evaluated on a regular basis. Each supplier relationship must be linked to consequences. This concerns

improvement of supplier relations as well as consequently eliminating suppliers if their performance was repeatedly evaluated as not sufficient. Supplier relation improvement takes place within the framework of the so-called *supplier improvement* process. Supplier improvement programmes include supplier counselling, agreement and commitment of the suppliers to implement and comply with specific improvement measures, as well as training programmes for external partners. Aim of supplier improvement programmes is that suppliers commit themselves to act in accordance with and to improve their environmental protection efforts persistently.

2.3 Outsourcing of Responsibility within the Value Chain? The Contribution of the Theory of Business Management

Traditionally, German economists have a positive – operative and strategic – view of cross-company division of labour in (globally distributed) value chains. In discussions about division of labour with external partners along the value chain, beneficial consideration such as effectiveness criteria (concentration on core competences, improvement of innovation and learning capabilities etc.) and efficiency aspects (cost reductions through scale effects, increase in flexibility etc.) are always placed in the foreground. In theory and practice of business management, there are only critical studies on certain aspects, such as the threat to procurement security, if considered from the operative angle, and the danger of an undesired flow of know-how abroad as well as lock-in effects or dependencies by involvement of external suppliers, if considered from the strategic angle.²¹

In the theory of business management or global supply chain management, negative aspects of social and environment-related responsibility have only recently come into

²⁰ Cf. Hartmann (1996), p.54ff

²¹ Cf. Uzzi (1997).

view of scientific contemplations.²² In recent years, the danger of an undermining of the institutional co-determination got some attention in German-speaking countries, as well as ecological criteria for supplier evaluations.²³ Regarding the last mentioned aspects, it must be considered that taking account of ecological aspects within the supply chain management remained limited to the national or European level for the most part. There are no traditional economic reasons that could cause companies to take on more responsibility than required by national or European environmental protection provisions and the objectives determined by them, unless sectors are concerned that provide a definite potential for savings at global level.

Characteristically, the critical discussion about ecological and social responsibility within the supply chain management was not initiated within the theory of business management itself, but was introduced into this field of science by neighbouring sciences, such as theory of politics and theory of social sciences, economics (theory of foreign trade and investment, theory of development and others) and environment-related sciences. Thus, the knowledge about this subject in the theory of business management is rather scarce and can contribute hardly any constructive answers to clarify the question of how far corporate responsibility for social and ecological concerns should extend or where and how companies can or even exert influence on operations of their suppliers and business partners involved in the value chain.

Nevertheless, the theory of business management can make a crucial contribution to clarify this question: The strategic point of view of the theory of business management deals with design of value chains and in particular with questions concerning internal and external

sources of supply. The gist of this discussion about the design of value chain structures aims always at the (theoretical) question of a company's boundaries: Traditionally, a company's boundaries were defined by cross-shareholding. Facing intensified division of labour and financial dependencies among legally independent business partners involved in the supply chain, other factors can also be used for defining company boundaries. Especially the analysis of structures and relationships within the value chain shows dependencies existing independent of cross-shareholding and traditional hierarchies. From the strategic point of view, the theory of business management can provide valuable guidance in order to define the terms 'investment nexus' and 'investment like relationship' more closely. The following thesis is the basis of further discussions in the next paragraphs:

Financial Dependencies Create Possibilities to Exert Influence

If financial dependencies exist among legally independent companies involved in a value chain, the company holding the dominant position can exert influence on the dependent partners in this value chain.

In the next paragraph, central aspects of the strategic discussion on the subject 'supply chain' in the theory of business management are addressed and different forms of financial dependency within the value chain are classified. The analysis of financial dependency within the context of economic law, especially balance sheet law, complements the discussion on financial dependency within the framework of the theory of business management.

3. Financial Dependency within the Value Chain

3.1 Characteristics of Value Added Networks that Influence Management of Social and Ecological Responsibility

From the theory of business management's perspective there are two basic alternatives concerning the

²² Cf. Fichter, Sydow (2001) and Teubner (2000).

²³ Cf. Sydow (1999); Fichter, Sydow (2001).

coordination of adding value by manufacturing complex products: On the one hand, a single company can take over all production steps itself and can consequently coordinate all necessary transactions itself. In theory, this is called an internalisation solution (in-house solution) and coordination of transactions is ensured through formal, hierarchic structures by virtue of order. In the case of a complete internalisation solution, the problem of organisation of responsibility within the value chain does not occur, as responsibility can be enforced by virtue of order. On the other hand, the value added process of manufacturing a (complex) product can also be coordinated by a variety of independent business partners (external solution). The individual actors involved in the manufacturing chain take over only minor value added processes and buy their primary products and materials from external and independent suppliers. Actual prices provide incentives for an efficient and effective coordination of the transactions necessary in the value added process. Strictly speaking, if prices are totally disconnected from the market, actors cannot be forced to take on responsibility within the supply or value chain. None of the fully independent actors can exert influence on the other companies.

Now, the crucial point concerning considerations about organisation of value added processes is that in practice there are often coordination forms which range between the two extreme forms represented by market and hierarchy. A company will hardly carry out all necessary operations within the value added process itself, and there will be only rare cases where individual actors of the value chain have just market relations. The resulting structures of relationships and dependencies among the legally independent actors involved in the value chain show characteristics of both hierarchy and detachment from the market. So it is very likely that a relationship based upon trust will result

from a longstanding supplier relationship. In this case, the nature of the coordination form is cooperation. The discussion about cross-company cooperation or value added networks the theory of business management deals with such 'hybrid' organisation forms between market and hierarchy.²⁴

If such value added networks consisting of legally independent companies are analysed, several characteristics can be identified that influence organisation of responsibility within this network or this value chain. According to Fichter, Sydow (2001), three characteristics can be distinguished²⁵:

- *Number of actors*: Organisation of responsibility can especially be expected if the value chain does not involve too many actors and if a central company is in direct contact with the most important partners involved in the value chain. If a value chain involves many actors, however, it will be difficult to implement organisation of responsibility. Since the more 'remote' the position of the actors along the value chain is, the less the interaction intensity will be.
- *Quality of network relationship*: The closer the relationship among actors of the value chain, the easier it is to organise responsibility.
- *Structure of coordination forms*: Finally, the possibility to organise social and ecological responsibility within a value added network is influenced by the structure of coordination forms within the value added system based on division of labour. Depending of the rate of centralisation of the coordination form, value chains with polycentric and hierarchic patterns must be distinguished²⁶:

²⁴ German representatives are for example Sydow (1992) and Zentes et al. (2003).

²⁵ Cf. Fichter, Sydow (2001), p.22f.

²⁶ On the concept of centrality or centralisation in networks cf. Jansen (2003), p.127ff. Concepts based on centrality of actors in value chain networks assume that the actor who participates in many relationships within the network is the prominent actor of the network.

1) Polycentric value chains are entirely decentralised value added networks without dominant actors. In polycentric value chains, responsibility can mainly be enforced by means of close relationships based upon trust. Apart from the number of actors involved, in polycentric value added networks the possibility to organise responsibility is first and foremost defined by the quality of the relationships within the network.

2) Value chains based on hierarchic structures are highly centralised systems based on division of labour managed by one or more 'focal', i.e. central, company or companies. Jarillo (1988) and Sydow (1992) defined value added networks managed by one or more focal company or companies as 'strategic networks'.²⁷

The actor who holds the top position in the value added network is also called system leader.²⁸

Organisation of responsibility within the value chain is easier to realise in stronger centralised networks with one or a few dominating or prominent actors than in polycentric operation networks without top actors.

Mere presence of a focal structure in the value chain is not sufficient to force actors to take on responsibility. To the aspect of centralised coordination described by Fichter and Sydow (2001) the aspect of power or influence must be added. Additional to its focal position within the value added system, the focal company must also (be able to) exert influence on the other actors involved, i.e. it must have an unrestricted scope of authority. Firstly, within the hierarchy of a company or within the consolidation circle scopes of authority exist due to investments. Scopes of authority, however, can also emerge among independent companies that do not have investment relationships with each other. If companies involved in the value chain are in a position where they depend financially on one actor, this actor can as

well force the legally independent companies involved in the production process to take on social and ecological responsibility. In the following, this situation of financial dependency is referred to as quasi-hierarchy.²⁹

In this context, one important realisation is that controlling positions and quasi-hierarchies in the sense of financial dependencies within the production network can also emerge among legally independent and companies that are not connected by capital interlinking or cross-shareholding. This consideration is based upon the assumption that such focal actors with their scopes of authority have access to vital network resources, control possibilities, information or the like.

'Investment Nexus' (Hierarchy) and 'Investment like Relationship' (Quasi-Hierarchy)

Financial dependencies in value chains can result from financial investments (hierarchy) on the one hand and can also exist in the absence of financial investments (quasi-hierarchy) on the other hand. In any case, financial dependencies facilitate organisation of social and ecological responsibility: the focal actors have their scopes of authority and can exert influence on the other actors involved.

In order to clarify the question how far the scope of authority of prominent actors involved in the value chain extends, two aspects must be clarified: a) Where exactly are the boundaries of the (multinational) enterprise, i.e. where do dependencies qua capital interlinking or cross-shareholding (investment nexus) exist and b) where do quasi-hierarchies in the absence of capital interlinking or cross-shareholding (investment like relationship) exist. In the following, approaches based upon economic law (3.2) and the theory of

²⁷ Cf. Jarillo (1988), p.32; Sydow (1992), p.80f.

²⁸ Cf. Burr, Stephan (2004).

²⁹ Cf. also Humphrey, Schmitz (2000) on hierarchy and quasi-hierarchy in supply chains.

business management (3.3) will be used to answer both these questions.

3.2. Dependencies Based upon Investment Relations – Economic Law Approaches to Define the Term ‘Investment Nexus’

Where are the exact boundaries of a (multinational) enterprise, that is, where do financial dependencies by virtue of capital interlinking or cross-shareholding exist? Only at first glance, the answer to this question seems to be clear. Enterprises operating at multinational level are by no means homogeneous monolithic entities but build a complex network with subsidiary companies through (mutual) capital interlinking or cross-shareholding. disclosure requirements for foreign direct investments or capital investments within the context of foreign trade. The provisions of the foreign trade and payments act are supposed to ensure a reliable information basis for preparing the balance of payments and to guarantee the political foreign trade and payments interests of the Federal Republic of Germany. The exact definition of financial dependency and linkage in connection with FDI is provided by Paragraph 56a of the foreign trade and payments order³⁰ (assets of residents in foreign economic areas) deriving from the foreign trade and payments act or Paragraph 58a (assets of non-residents in the economic area). The concept of linkage through direct investment relationships in the foreign trade and payments order is to a large extent the same as the OECD benchmark definition of foreign direct investments following the guidelines of the IWF.³¹ According to that, German (foreign) companies must notify their direct capital investments in foreign (domestic)

Especially in the case of minority interests and indirect investments, company boundaries (investment nexus), and consequently the definition of the hierarchic scope of authority, are by no means clearly defined.

The German foreign trade and payments act and balance sheet law provide approaches to determine formal company boundaries and to define financial dependencies resulting from investment relationships. The German foreign trade and payments act provides a definition of financial dependencies or relationships among companies and dependencies based upon investments in the case of foreign direct investments (FDI). In Paragraph 26 Art. 2, the foreign trade and payments act provides provisions on companies if the resident (non-resident) holds at least ten percent of the capital invested in or the voting shares of the company.³² Indirect investments must be notified if a dependent investment object has at least ten per cent of the capital shares or voting shares in another company. A direct investment object is regarded as ‘dependent’ if the investor has more than 50 per cent of the capital shares or voting shares. If a ‘dependent’ company has 100 per cent of the capital shares in another company, this company as well as all other investment objects with 100 per cent of the capital shares are also regarded as ‘dependent’.³³ Table 1 illustrates the concept provided in the foreign trade and payments act.

³⁰ Regulation on the Execution of the Foreign Trade and Payments Act adopted on December 18, 1986 (Federal Law Gazette I S. 2671), last modified by the 60th Amending Provision adopted on August 21, 2003 (Federal Gazette No. 158, August 26, 2003).

³¹ Cf. Stephan, Pfaffmann (2001); Deutsche Bundesbank (2003), p.9.

³² The disclosure requirement applies to minority interests, i.e. investments of less than 50 per cent with a balance sheet total of 5 million Euros. Majority interests, subsidiaries and permanent production facilities abroad must be notified starting with a balance sheet total of 500,000 Euros.

³³ Cf. Deutsche Bundesbank (2003), p.7.

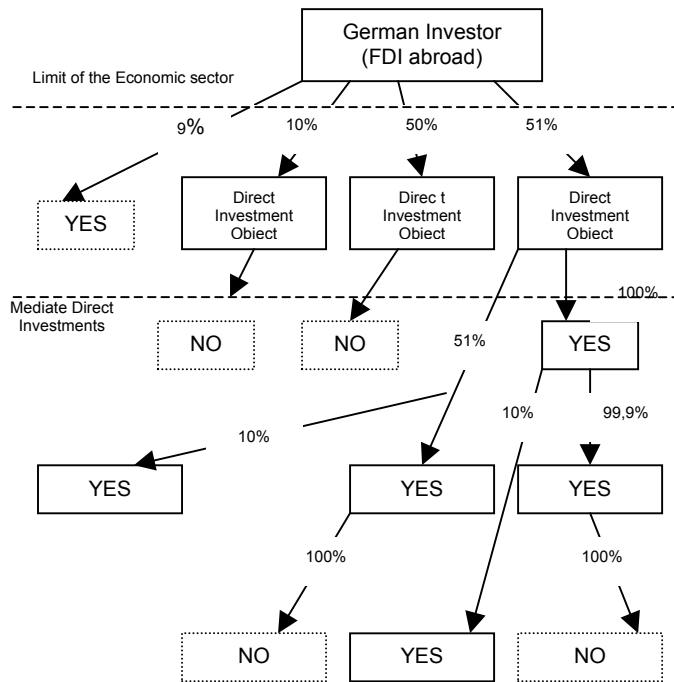


Table 1: Provisions concerning dependencies provided by the German Foreign Trade & Payments Act- Disclosure Requirement concerning cross-shareholding abroad

But the concept of linkages through direct investment relationships provided by the foreign trade and payments order is inappropriate in order to define the formal boundaries of a multinational enterprise, as economic dependency by virtue of capital interlocking can even then exist if the directly invested capital amounts to less than ten per cent. For example, if an investor has only nine per cent of the capital shares but is the biggest shareholder because all other shares are widely spread, he could have the possibility to exert dominant influence on the business and financial policy of the associate company. Furthermore, the regulations concerning indirect investment relationships provided by the foreign trade and payments order are absolutely insufficient. For example, indirect investments in companies at the third tier and below are only then taken into account, if 100 per cent of the dependent company are owned by the parent company.

Contrary to the foreign trade and payments act, the German balance sheet law (GCC) distinguishes different stages of economic dependency resulting from investment relationships. The different stages reflect a precise and subtle view on influence and economic dependency within investment relationships or corporate structures.³⁴ Based upon the increasing scope of influence exerted by the parent company, i.e. upon the increasing extent of economic dependency of the associate company the GCC differentiates between

- 'simple' associate companies (§271 GCC);
- associated companies (§311 GCC);

³⁴ The explanatory notes to the GCC address the 'central level idea of group accounts' on which the duty of group accounting is based. The concept postulates a gradual assets and earnings statement integration of associate companies in the group account. The GCC distinguishes associate companies included in the group account based on the method of full consolidation, joint ventures to which the quota consolidation or equity method applies, and associated companies validated in the group accounting using the equity method. Cf. Busse von Colbe, Ordelheide (2001), p.46; Ebeling (2002), p.3; Hachmeister (2002), p.3.

- joint ventures (§310 GCC); and
- subsidiary companies (§290 GCC).

According to §271 GCC, the German balance sheet law classifies 'simple shareholdings' in other companies as the weakest form of economic dependency due to investment relationships or capital interlocking. §271 GCC defines shareholdings as shares in a company meant for building a lasting relationship with the company in question.³⁵ According to the GCC, the intention to acquire shares is crucial. The intention to acquire shares includes two aspects that must be fulfilled cumulatively: a) the relationship must be intended to be 'lasting', i.e. to last long and b) the intended purpose of this relationship must be to assist the own business operation. Especially the second aspect of §271 GCC concerning 'beneficial' relationship needs further clarification. According to actual interpretation, in the case of 'shareholding' as defined by §271 GCC, the intention to acquire shares lays between the mere intention to make a long-term investment and the intention to exert influence on a company's business policy.³⁶ Thus, the intention effective in the case of an investment includes also weaker forms of relationships than those permitting to exert direct influence on a company's business policy. A weaker form of relationship between companies could for instance exist in form of linkages in regard to personnel or long-term supplier relations. These relationships between companies based upon such or similar characteristics in combination with the capital share can be useful for the company although it cannot intervene in the business operation of the other company. In which case a relationship is regarded as beneficial, however, remains unclear. In order to clarify the amount of shares, the GCC (§271 Art. 1.3) quantifies:

³⁵ With §271 Art.1 GCC, the legislative seeks to define the term of shareholding. In §271 Art.2, the term 'associated company' is specified. §271 GCC aims to use both terms in the same way in all annual and group accounts prepared according to the provisions of the German Commercial Code. Cf. von Keitz (2002).

³⁶ Cf. von Keitz (2002), p.9f.

If in doubt, shareholding is represented by shares of joint-stock companies that exceed one fifth, i.e. 20 per cent, of the nominal capital of the company in question.³⁷ The calculation of the amount of holding must not only take direct shares into account. Apart from the shares directly held by a company, shares held by another dependent company (subsidiary company) are also relevant.³⁸

The concept of an 'associated company' as provided by §311 Art.1 GCC goes further than the concept of 'shareholding' in balance sheet law. The definition of 'associated company' is linked to the presence of shareholding as defined by §271 GCC. But according to §311 Art.1 GCC, controlling influence on the business and financial policy of the associate company must also be exerted.³⁹ The term 'business and financial policy' refers to the crucial decisions made by a company. The vague law term 'significant influence' is supposed to express that the possibility exists to exert direct influence on management decisions of other companies. A significant influence needs not to be assessed with regard to single operative decisions, participation in fundamental decisions on business and financial policy alone is sufficient, for instance the establishment of a corporate strategy for sustainable ecological and social business operation. Economic autonomy of the shareholding is basically recognised although the authority is restricted.⁴⁰ According to actual interpretation, significant influence is indicated if

- the parent company is represented in an administration organ or a

³⁷ Of course, shares of less than 20 per cent can also result in 'shareholding', if these shares result in a lasting relationship that is to the shareholder's benefit. Cf. Hachmeister (2002), p.5.

³⁸ Cf. Hachmeister (2002), p.5.

³⁹ In §311 Art.1 GCC the legislative provides that shareholdings in associated companies must be separately disclosed in a company's group account and must be shown in the balance sheet.

⁴⁰ This is also a clear demarcation of shareholdings that are not based on limitation of the economic authority but require the shareholder's pro-active promotion of his own business operation. Cf. Hachmeister (2002), p.7.

similar executive committee of the associate company;

- managers are exchanged between associate company and parent company; or
- crucial technological know-how is provided.

According to the concept of stages provided by §310 GCC, the joint venture represents the next stage of influence exerted by the parent company. In order to qualify a company as joint venture, it is crucial that the company in question is managed in cooperation with another (independent) company. Joint management is given if the company is in fact managed in cooperation and important management decision can only be made unanimously. Thus, it is not enough to make a financial investment or exercise voting rights such as share voting rights in the general meeting of shareholders or associates only. In principle, it is possible to split the managing director competence among the associates of a joint venture (for instance technical and commercial business management).⁴¹

In the classical joint venture, each of the two partner companies holds 50 per cent of the capital share. In principal, joint management is also possible if the involved partners do not hold the same amounts of shares of the joint venture.⁴²

According to the concept of stages as provided by the GCC, the strongest form of influence is shareholding based on a parent-subsidiary-relation according to §290 Art.1 GCC. According to §290 Art.1 GCC, a parent- subsidiary-relation exists if a parent company holds shares in another company and the subsidiary company is under the joint management of the parent company. Joint management is given if the business policies of parent and subsidiary company and other fundamental

management decisions are coordinated. The parent company must take over original operation tasks of the subsidiary company, such as setting business objectives or determining the principles of the subsidiary company's financial, investment, production and personnel policies.⁴³ According to the concept of integrated management, §290 Art.2 GCC places shareholding at the same level as a parent-subsidiary-relationship if the parent company can exert controlling influence on the subsidiary company because it holds the majority of voting rights or the like.⁴⁴ Voting right majority coincides often with the majority of shares. But, in principal, voting right majority does not depend on majority of shares. So a company can hold the majority of shares without having the voting right majority, if it holds for instance only non-voting preference shares. On the other hand, it is possible that a company that does not hold the majority of shares can have the voting right majority, if it holds for instance multiple voting shares. Thus, the decisive factor is that a company has the voting right majority at the general meeting of shareholders or associates and consequently in all important decisions. These criteria combined under the concept of 'control' establish also a parent-subsidiary-relationship, alternatively to the concept of joint management.⁴⁵

In order to evaluate the usefulness of these approaches to define economic dependencies resulting from investment relationships, both of the described legal fields must be assessed differently: The approach to define economic dependency according to the foreign trade and

shareholding remains below this minimum limit. Cf. Ebeling (2002), p.8.

⁴³ According to Ebeling (2002), integrated management must relate to important sectors of the associate company in which the individual interests of the associate company are subordinated to the group interest.

⁴⁴ Alternative to a voting right majority, significant influence according to § 290 Art.2 GCC is also present if the parent company holds the majority to elect organs/ or has a control possibility based on a contract providing control or a provision of the articles of association.

⁴⁵ Contrary to the concept of integrated management, which aims at real control, the obligation to draw up a

⁴¹ Cf. Ebeling (2002), p. 6.

⁴² In the literature on this subject, shareholding of 20 per cent is regarded as minimum limit because according to §311 Art.1.2 GCC no significant influence is assumed if

payments act serves in principle different purposes, namely to define the disclosure limits within the context of economic interests in the first line and is, as already mentioned above, absolutely inadequate for the purpose in question. In order to get a differentiated view on exertion of influence and economic dependency in regard to investment relationships, the concept of stages as provided by the balance sheet law is principally adequate:

Economic Dependency by Virtue of Capital Interest: ‘Investment Nexus’

If the parent company exerts at least a significant influence on the business policy of the associate company according to the concept of stages as provided by the GCC, i.e. if the dependent company is at least an associated company, then the parent company is able to enforce socially and ecologically responsible business operation.

Although economic autonomy of the associated company is principally acknowledged in the case of shareholdings, their authority is restricted. Socially and ecologically responsible business operation can also be required from joint ventures and subsidiaries. In the case of simple associate companies it cannot principally be assumed that there exists so far-reaching influence on the business policy that social and ecological responsibility could be enforced. Regulations comparable to the German balance sheet law and its concept of stages can also be found in International Accounting Standards (IAS), for example in IAS 27 and IAS 28.

3.3 Dependencies without Capital Investments: Approaches to Define ‘Investment like Relationship’ from the Viewpoint of Law and Theory

Do economic dependencies also exist without capital investments? Economic theory and balance sheet law both provide answers to this question. Although the German balance sheet law does not distinguish concepts designed to regulate economic dependency outside the context of laws relating to associated companies and capital investment, §264 Art.2.1 GCC provides an approach that can be used to define economic dependency detached from investment relationships.⁴⁶ According to §264 Art.2.1, information on economic dependency detached from investment relationships must be included in the notes to the annual accounts statement if otherwise, due to specific circumstances, the assets and the financial and profit situation of the company would not be represented correctly.⁴⁷ According to actual interpretation and the explanatory notes to the balance sheet law, such circumstances are given in particular if joint-stock companies realise their turnovers with one or a small number of customers only.⁴⁸ As a result, economic dependencies emerge if turnovers are considerably concentrated on one or only a few customers. More concrete regulations on dependencies resulting from concentration of turnovers are provided by the International Rules on Accounting. Based on SFAS No. 131, the US-American accounting addresses relationships based on dependency detached from investment relationships and requires companies to include related information in their accounting statements if they earn at least ten per cent of their turnovers with a single customer.

⁴⁶ According to §264 GCC, the representatives of a stock company (public company, limited company, public limited partnership/KGaA) are obliged to draw up an extended annual accounts statement and a annual financial report – only small joint-stock companies are exempted from this obligation.

⁴⁷ According to §264 Art.2.1 GCC the annual accounts statement of a stock company must reflect the real situation of the stock company's assets, finances and profits and comply with the principles of correct accounting.

⁴⁸ The resulting influences on asset and profit situation assessment are not recognisable without verbal

balance sheet according to the control concept depends only from the legal possibility to exert control.

Strictly speaking, the concept of national and international accounting regulations on economic dependency and risks resulting from single dominant customers should also include relationships based on a company's dependency from its suppliers. Economic dependencies on the supplier side result if a company relies only on a few suppliers when acquiring materials and primary products. The scope of a supplier's dominance can be assessed by quantifying the input concentration, analogous to turnover or output concentration. For this purpose, the value of advance consumption concessions acquired by a supplier is related to the turnover of the company. From the viewpoint of the theory of economic transaction costs, the economy law's explanations that economic dependency results from customer dominance and similar arguments supporting supplier dominance are not sufficient. A customer's dominance based on turnover or a supplier's dominance does not necessarily force a company into economic dependency. In principal, the company could replace the dominant supplier or customer or at least threaten to do so in order to protect itself against excessive influence of external actors. Only if the dominant position of the customer or supplier is supported by shortcomings of the consumer or primary product market structure, the theory of economic transaction costs will assume economic dependency. In other words, there must be a restriction of alternative purchase or sales channels, i.e. the company has no possibility to replace its suppliers or its customers as it likes.⁴⁹ This is for example the case if the supplier or the customer of the company holds a monopoly position.

'Investment like Relationship': Dependencies Based on Customer or Supplier Dominance

Economic dependencies within the value chain not based on investment relationships result also from dominant positions of single suppliers or customers. If this dominant position is supported by limited alternative purchase or sales channels, the dominant actor can enforce socially and ecologically responsible business operations within the value chain.

According to the theory of transaction costs, economic dependencies within the value chain result also from the actors' investments in specific assets. Within the theory of business management context, specificity means in general that assets are tied to a specific operational use. Investments in specific assets are irreversible, i.e. the assets cannot or only with high losses be resold at the market. Co-specialised investments or assets are the terms used in the theory of transaction costs for assets that can most effectively be used in operational combination with assets of other actors. The use of these assets is linked to the existence of a specific transaction relationship. Co-specialised assets lose the greater part of their value if they are used independently from each other. The following forms of co-specificity can be distinguished:

- Site specificity – Investments by the transaction partners in stationary facilities (premises, buildings etc.): A supplier builds a production facility in direct neighbourhood of the factory owned by the original equipment manufacturer (OEM).
- Physical asset specificity – Investments of the actors in assets adapted to the requirements of all partners (specific machines, technologies etc.): The supplier buys blanking presses and punching machines adapted to car bodies of the OEM.
- Human asset specificity – Investments of the actors in qualifications of their

explanations and must be shown in the notes to the financial statements. Cf. Ballwieser (2002), p. 15.

⁴⁹ The power of customers was investigated using marketing chains as example. Cf. OECD (1999).

personnel according to requirements of the partner: Employees of the supplier are trained in operating these blanking presses and punching machines.

- Dedicated assets – Investments in non-specified equipment that was only bought for the planned transaction and that will result in over-capacities if not used afterwards: The supplier buys additional machines to offset his production bottlenecks due to the unexpectedly successful first sales figures of the new car.

Co-specialised assets in complementary assets create economic dependencies among the actors. An actor who made large co-specialised investments is in a weak position compared with the dominant actor within the value chain. Similar to the case of limited supplier and customer markets, the actor bound by investment cannot terminate his relationship with the supplier or customer just as he likes. Investments in co-specialised assets will create market exit barriers and cause 'sunk' or irreversible costs if the transaction relationship is terminated. Thus, sunk costs are costs caused by market exit. The amount of sunk costs relates to the expected liquidation loss when assets are sold before their remaining useful life has expired. Market exit barriers cause lock-in problems for established actors involved in the value chain. In these cases, the actors are called 'captive' actors:

*"A particular form of buyer power arises when sunk costs, switching costs, transactions costs and other friction's create a 'captive supplier'."*⁵⁰

Economic dependency enables the dominant actor to use opportunistic behaviour in order to benefit from the negotiating range provided by the contract ('hold-up').⁵¹ At the same time, the

dominant actors can also use these negotiating ranges to enforce socially and ecologically responsible business operation within the value chain.

'Investment like Relationship': Dependencies by Co-Specialised Investments

Economic dependencies within the value chain result also from investments in co-specialised assets that can be used most efficiently in operational combination with assets of other actors. Due to the lock-in situation of the partners involved in the value chain, the dominant actor can enforce socially und ecologically responsible business operation.

5. Summary and Outlook

If economic dependencies between the actors involved in the production system exist, it will always be possible to enforce ecological and social responsibility within the value chain. This article investigated the concept of economic dependencies in an intensive and differentiated way and specified in particular the unclear and vague terms 'investment nexus' and 'investment like relationship'.

The concept of economic dependency has been defined from the perspective of economy law or balance sheet law as well as from the perspective of the theory of business management. In the framework of balance sheet law, the concept of economic dependency aims primarily at economic dependencies based on financial investments. In this article, this was equated with the term 'investment nexus'. The analysis of legal provisions, in particular the concept of stages as provided by the GCC, came to the result that economic dependency based on financial investments is always present if the parent company exerts at least significant influence on the business policy of the associate company. Thus, the

⁵⁰ OECD (1999), p.20.

⁵¹ In this predicament, the dependent actors can be forced to sell their products at prices that are higher than average

variable costs but still below average total costs in the worst case.

associate must at least be an associated company.

Economic dependency not based on financial investments has been clarified from the perspective of the theory of business management. Economic dependency not based on financial investments has been equated with the term 'investment like relationship'. In this sense, on the one hand, economic dependencies within the value chain result from the dominant position of individual suppliers and customers, in particular if this dominant position is supported by limited alternative supply sources or markets. On the other hand, economic dependencies result from investments in co-specialised assets that can most effectively be used in operational combination with assets of other actors.

The concepts to define economic dependency by virtue of financial investment, as provided by the balance sheet law, have been worked out in detail and can be applied to existent cases. The amount of shares or the mentioned alternative evidences are always concrete indicators of limited authority. The same applies to economic dependency as a result of dominance of individual customers or suppliers. In these cases, the dominating influence of external actors can be easily defined by quantifying the turnover or input concentration. The concept of economic dependency by virtue of co-specialised investments, however, seems to be rather undefined. Regarding that, more concrete indicators to define positions based on economic dependencies must be found in the future.

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Corporate Responsibility from the Legal Viewpoint

By Dr. Eva Kocher
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I. Why a legal viewpoint?

Within the framework of international law, the OECD guidelines are a classical case of 'soft law', i.e. rules without direct legal force – because companies have not yet been addressees and subjects of international law and thus have not explicitly been 'responsible' under international law. Therefore, the OECD guidelines were explicitly formulated as self-commitments of governments. They commit themselves to advise multinational enterprises based on or operating from their territory to comply with these guidelines.

Why can the legal viewpoint provide information on which companies and institutions are 'responsible' for what kind of entrepreneurial conduct in regard to OECD guidelines? This is simply because of the fact that soft law is still a form of law. Soft law relies on normative standards and commitments, and to interpret the scope of these regulations, interpretation methods are needed, and legal methods are ideal for that purpose.

The actual question is whether and to what extent corporate enterprises can be held 'liable' if their suppliers or other business partners violate OECD standards or – in legal terms:

- whether companies have to '**assume liability**' at the OECD for violations of OECD standards of their business partners; or
- another legal term for responsibility – namely under which conditions multinational enterprises can have '**penal responsibility**' for their business partners' violations of standards. In order to better clarify common structures I will not always use legal terminology.

If one is asking what legal standards could be used in this case, the problem occurs that guidelines do not represent legal standards in a strict sense. In the following, I will explain several legal concepts that could provide orientation in regard to this issue.

II. Legal Background of Responsibility

Within the framework of law, responsibility differs depending on the actual situation. Depending on legal basis, different principles apply – sometimes responsibility means to be held liable for conduct of others, sometimes it is about assuming liability for complying with own obligations. Hopefully, the differences will be clear after the following explanations.

1. Responsibility under Penal Law

The basis of responsibility under penal law is individual recrimination. Therefore, it always depends on guilt. It deals with responsibility of specific individuals for specific actions, but not with responsibility of companies.

2. Corporate Accountability for Controlled Companies

However, the accountability of one company for another under corporate law is a totally different situation. In the first line, it shall prevent that a company can be exempted from assuming liability just on the basis of its legal business form (limited company – GmbH, or public company – AG, etc.). Central terms are **controlled** and **controlling** companies in the framework of corporate law. According to Paragraph 17 AktG (Companies Act), '**controlled** companies are legally independent companies that can be influenced indirectly or directly by another company (controlling company) in a dominating manner.' If a controlling company and one or more controlled companies are combined under the **single management** of the controlling company, they form a **group of companies**.' The

central issue are dependencies on the basis of corporate linkages through equity holding.

Within the OECD guidelines, a parallel can be drawn between the definition of group and the definition of '**company**'. There, the term company is defined by the degree of conduct coordination between different units.

But what responsibilities must a controlling company take on because of its existing or potential control? One subject matter is the **protection of the controlled company**. The controlling company must take account of the controlled company's interests. More interesting in our context is the second consequence resulting from control namely **protection of creditors**, i.e. protection of all those who are legally involved in the controlled company, but also want to take hold of the company's assets. This is called *piercing the corporate veil*. This assumes that due to the control the interests of the controlled company had been ignored, especially in financial regard.

As the subject is responsibility within a group of companies and – according to OECD Guidelines terminology – a company, these principles are not appropriate for external supplier relations of groups of companies.

3. Responsibility of Employers in Regard to Industrial Law

However, this form of creditors' protection will also play a role within multinational labour relations, if employees ask who is actually liable for fulfilment of employer obligations to them, i.e. who is liable to provide payments or compensation in the case of violations of occupational safety provisions. In this case, usually the already mentioned company-law rules are more or less applied.

Additionally, the German law contains the concept of indirect employment. In other legal systems this term is not necessary because there the concept of the employer

(*employeur/datore di lavoro/empleador*) is even less based on a legal entity representing the employing party of the employment contract than in the German law; thus, in other legal systems the 'employer' is rather the person really in charge for the company's operations and issuing directions.

As example for the questions this article is about, I will explain a case from the Anglo-American legal sphere about liability within the supplier chain in regard to industrial law. In Canada, home workers filed a class action against all related buyers that bought the products the workers manufactured for providing overdue payments. The liability obligation was based on the ground that the retailers, though they had not bought the products directly, were 'the controlling mind' of the production chain of clothing because of their power and their potential control over the production process.

4. General Liability for Caused Damages under Civil Law

The so-called tort liability or liability based on fault is based on the concept that other individuals must respect valuable rights, such as the right to life, health and property, and must behave according to this respect. Therefore, the subject matter is violation of heteronymous, but not of autonomous standards as in the case of liability under company or industrial law. Thus, liability based on fault is based on similar concepts as penal liability: Its subject matter aims at controlling conduct and therefore it is usually designed in the way that liability is based on fault. This shows that the fundamental question in this case deals also with the causality of concrete actions and failures.

However, these civil law principles – in contrast to penal law, but as under civil law in general – deal with market relations between 'persons' – and a person can also be a person under public law, i.e. a company. Unlike penal law, it is not only about individual faults, but also about

liability obligations of legal entities and companies. According to Paragraph 31 of the German Civil Code, corporate representatives act in behalf of companies.

Moreover, civil law principles deal only with liability for own actions. For third parties, who are called vicarious agents within the German law, a person would only then be held liable based on fault, if this person contributed to the fact that unsuited persons could interfere with legal assets of other persons, especially if a lack of due diligence in selecting business partners can be assumed (Paragraph 831 of the German Civil Code). This case is also not about holding a company liable for actions of another company, but about the fact that a company can be liable for conditions in other companies because it is in control – for instance, because the violations resulted causally from business decisions concerning this company.

In this case, the practical problem is mainly to prove the causality between a specific conduct and a specific damage – especially if many different companies had been involved in the occurrence of the damage.

5. Liability based on fault for Substandard Products

The basis for liability based on fault is a concept that has become more and more common: The party who caused the risk can be held liable for the consequences deriving from this risk. This means, the society represented by the national legal system started to assign liability for risks regardless of fault. Thus, more and more so-called offences of liability regardless of fault emerged, such as product liability under the German product liability law, which, however, derived from the EC Guideline for product liability of July 25, 1985. In this regard, the European countries' laws have already been harmonised.

The purpose of this law is similar to that of the German law as it seeks to locate the

company that caused the risk by producing the substandard product in question, i.e. the 'producer' or in other words: the first supplier selling this product. The fact of introducing this product to the market is taken into account for the risk-entailing activity.

According to Paragraph 4 of the German Product Liability Law, producer is any person producing the final product, a basic material or a part of a product (Article 1), as well as any person who introduces or sells a product in the European market (Importer, Article 2). 'Any person appearing as producer by labelling a product with his or her name, brand or any other distinctive characteristic is regarded as producer of this product.' (Paragraph 4, Article 1, Clause 2 of the German Product Liability Law). The producer is liable for the damage caused by the flaw of a product sold or supplied by him or her. Actually, this is only a special case of liability based on fault for own behaviour – though the interpretation is rather wide as obligations in regard to quality are implied. And in contrast to common liability based on fault, the basis here is liability regardless of fault.

6. Contractual Liability for Products and Supplies

Basically, the law of contract regulates that every contracting party must only assume liability for own faults and own obligations, not for faults of another party (except he or she involves other parties explicitly and directly – Paragraph 278, German Civil Code).

But there are some specific exceptions or modifications to this rule: One example is included in the new warranty of quality according to the German Civil Code based on the Consumer Goods Purchasing Guidelines of the European Union (i.e. in other EU Member States similar rules are in force). According to this rule, the vendor is liable for product characteristics the producer promised the product has – this means, the vendor must take on responsibility for characteristics about

which he or she did not express his or her opinion and probably even has no opinion at all.

Paragraph 434, Article 1, Clause 3: 'The quality [of a product...] includes also characteristics that the purchaser can expect on the basis of public statements made by the vendor, the producer or a vicarious agent, especially in the context of advertisements and labelling in regard to specific characteristics of the product in question, unless the vendor had no knowledge of the statement and was not obliged to have such knowledge, or the statement had been corrected in an adequate manner at the time the purchase contract was completed, or the statement could not influence the customer's decision to buy the product.'

In this context, publicly notified codes of conduct could also get a legal function in the future, as they define specific minimum requirements that must be met if the product is to be regarded as a 'flawless' product according to the agreed provisions of the sales contract between vendor and consumer. Again, there exists a reference to the definition of producer according to Paragraph 4, Articles I and II of the German Product Liability Law.

Actually, this rule is only an explicit determination of a natural thing always valid in contracts: If a person signs a contract, this person is liable for the consequences resulting from this contract. The reason is that contracting parties themselves can define the content of a contract and the subject matter of contractual provisions according to the principles of contractual freedom and personal autonomy. In the case of mass consumption, however, communication takes place via the market; thus, the content of the contract must be explored by paying attention to public comments of consumers on the market, not only to comments of individual vendors. If a retailer is thus held liable for faults of producers or suppliers, this liability will

result from violation of personal obligations according to contracts the retailer agreed to on a voluntary basis.

7. Responsibility for Public Statements under Competition Law

Due to its relevance for the market, this form of accountability to consumers is closely connected with accountability according to competition law.

Accountability according to competition law was the subject matter in the third Saipan case. Retailers had been sued for unfair trading practices and misleading advertise in which they emphasised that they sold goods 'Made in America' – which suggested deceptively that these goods had not been produced under sweatshop conditions. The reason was, and this applies also according to German law: If a company makes public statements, it will be liable for the truth of these statements. This means, if a company makes public statements about the conditions under which the products they sell are produced, it can be hold liable for the truth of these statements under competition law. Again, in this case the company is not liable for conduct of another party, but only for its own conduct – i.e. keeping given promises.

8. Conclusions

Finally, I want to mention that this is only a very rough summary; and as I am an expert in the fields of industrial and procedural law I had not too many chances to explore the questions arising in this context more intensely. There are certainly many more examples from other contexts. Another point is that I based this article mainly on German substantial law, but actually it would be necessary to compare different legal systems and examine definitions of responsibility in different legal systems.

But in my opinion, the following applies in general (in regard to industrial law I already did some legally comparative work): The categories resulting from this

brief article can probably be used to identify points of view to structure the subject of corporate responsibility by taking different legal spheres and legal systems into account. In that regard, the outcome is really very interesting for our purpose. Central principles of responsibility are **dependency, control and potential control**.

Thus, it can be concluded: apart from exceptional cases (Corporate Accountability Paragraphs 278 and 31 of the German Civil Code dealing with close internal relations) it has never been the case that a company had been held liable for faults of another individual or company. It is mostly about the fact that a company violated **own duties** (duty of due diligence or duty of supervision) or produced risks. As a result, these rules are not dealing with liability for behaviour of another party, but with the question for which consequences of its own behaviour or its own failures a company can be held liable.

To decide this question the two alternatives of liability based on fault and liability regardless of fault can be used. Under modern market conditions, objective risk assignments on the basis of liability regardless of fault, based on the consideration that somebody had or has actually the possibility to control a risk, gain growing acceptance in regard to liability under civil law. Nevertheless, assignment of individual guilt remains to be based on liability based on fault, particularly under penal law.

In regard to responsibility for own behaviour the reason for liability and thus the type of violated duties must be defined: Is the case dealing with liability for violation of heteronymous standards or with liability for voluntarily agreed (contractual) obligations, i.e. autonomous standards? The scope of legal duties is determined by law and order. The scope of contractual or voluntarily agreed obligations is determined by

interpretation of existing agreements. In regard to mass business, public statements in the related market must be taken into account.

In order to solve the question whether own duties (either legal or contractual duties) were violated or not, the factual control over the events in question is important. In this context, factual, socio-economic categories get legal force. Potential factual control plays a role where the subject is liability for omissions, i.e. violation of the duty of action. This requires that a company took on duties on a voluntary basis or that the existing law assigned duties to the company for definite reasons.

III. Consequences for the Interpretation of the OECD Guidelines

If we examine the OECD Guidelines, we may firstly ask what form of duties and responsibility is addressed – the legal form (heteronymous standards) or the contractual form (autonomous standards)?

Guidelines are obligations that governments took over on behalf of their nations.

They are political expectations addressed by governments to companies. Thus, the guidelines expect companies to take over responsibilities on a voluntary basis. Therefore, it seems there is every reason to understand the Guidelines as regulations for competition and consumer contracts.

This is supported by the language of Article II.2 according to which the subject is not that companies are to be held liable for behaviour of third parties, such as their business partners. The subject is rather that companies themselves should conduct a specific behaviour.

The description of the behaviour required, however, is rather abstract: It is dealing with exerting 'control'. The explanations (reflecting the opinion of the CIME) state that the benchmark for this obligation is

the extent to which companies have the 'capability' to 'exert control over the conduct of their business partners'. Actually, this is a rather natural thing, as responsibility or desirable action can only extend as far as the company is capable to act in the required manner at all. Therefore, the scope of actions depends on the potential factual control that according to the explanations depend on characteristics related to sector, company and product, number of suppliers or other business partners, structure and complexity of the supplier chain as well as market position of the company in relation to its suppliers and other business partners.

Conclusions

*By Cornelia Heydenreich
(Germanwatch)*

The meeting jointly organised by the Development Department of the Protestant Church (EED), Germanwatch, OECD and TUAC investigated the question to what extent multinational enterprises can be held responsible for their supplier relations. Special emphasis was placed on questions concerning ecological and social standards that were especially discussed within the context of the instrument represented by the OECD Guidelines. This conclusion presents the most important items of the lectures and discussions and draws conclusions for the future debate. In his introducing lecture, Prof. Dr. Ulrich Jürgens from the Science Centre Berlin took the automotive industry as example to explain the actual developments and trends of the globalised economy. Many observations can be transferred to other sectors as well. During the last years, the percentage of international suppliers has significantly increased, in the automotive industry this trend has been observed since the 1990s. The fact that the influence of multinational enterprises on quality, technology and logistics reaches quite far so that it can be assumed that they could influence ecological and social standards can also be transferred to other sectors. Heino von Meyer from the OECD Berlin Centre explained origin and contents of the OECD Guidelines, which are an important instrument for regulating corporate responsibility. Since their review in 2000 they also apply to supplier relations. Cornelia Heydenreich from Germanwatch reported about practical experiences with the Guidelines within the context of supplier relations and criticised in particular the introduction of the so-called 'investment nexus' that, from the viewpoint of NGOs, causes a limitation of the Guidelines' scope. The corporate representatives from Adidas, Volkswagen

and BASF explained how their enterprises handle their supplier relations. It became obvious that sectors such as the textile industry, which has been characterised by outsourcing processes since decades and generates 99% of its profits externally, employ the most activities concerning supplier relations. Other sectors such as the chemical industry came under public scrutiny due to other problems, such as workplace safety, and have started to consider supplier-related aspects only recently. All three examples showed that it is not relevant for enterprises whether investment or other business relations exists if the reputation of their brand name is negatively affected. In practice, it is rather important how strong the influence on individual business partners can be. In the textile industry, there are successful efforts to join forces to enforce compliance with specific standards, if one enterprise's share in the production of a supplier alone is not important enough to achieve such compliance. Awareness of supplier relations, however, was hardly ever raised by internal processes within enterprises, but mostly by public pressure. Roland Schneider introduced the problems concerning supplier relations in his lecture, highlighting the social consequences deriving for employees in developing countries. Discussions on corporate responsibility for social and ecological issues are relatively new in the science of business management and were introduced through other sciences. Dr. Michael Stephan explained that, in business management, responsibility is defined by dependencies. Such dependencies derive from investment relations on the one hand, i.e. the share of investments, but on the other hand they can also derive from 'investment-like relationships'. This can be realised by market power, i.e. by dominance over customers or suppliers, or by so-called co-specific investments that can be most effectively used in combined operation with a specific company. Concerning the legal viewpoint, Eva Kocher from the

University of Hamburg explained that responsibility derives from accountability and liability structures. For this purpose, especially laws on industrial law, product liability and competition laws can be used. Within the context of globalisation processes, the question to what extent laws can be enforced across national borders is especially interesting. Sustainability rating agencies, which emerged more and more during the last years, include also supplier-related questions into their considerations. Claudia Mauritz from scoris introduced her methods and experiences. Until today, supplier-related questions have not been a specifically important element; on average, their contribution to the evaluation amounts to about 10%, which can be seen especially clearly in the textile industry; at Adidas, for instance, they contribute 14%. Critical evaluation is mainly based on information of NGOs, and this fact shows clearly that companies that are not under public scrutiny are evaluated differently. In the final panel discussion, representatives of the Federal Ministry of Economic Affairs, BDI, TUAC and EED discussed the instrument represented by the OECD Guidelines. In this discussion, different positions became evident: the Ministry of Economic Affairs appreciated the present implementation of the OECD Guidelines and the BDI supported the use of voluntary instruments like the OECD Guidelines. TUAC and NGOs, however, demanded a less restrictive interpretation of this instrument and emphasised that the Guidelines must take the actual developments within the context of globalisation into account. The lectures and discussions showed that the perception concerning the scope of corporate responsibility changed. Corporate influence does not derive from investments alone, but also from investment-like relationships. In order to define to what extent companies can be held responsible in a specific situation, investment relations are not relevant or at least not the only decisive factor, neither in

science theories nor in the practice of companies. These questions are not relevant for sustainability ratings either. Important is how the multinational enterprise can exert influence, but its influence can also derive from market power or so-called co-specific investments. Thus, the present OECD practice to link corporate influence to an investment nexus and to exclude business relationships per se seems to miss the truth. This documentation shall therefore contribute to stimulate the discussions at OECD level. Moreover, the explanations on 'investment nexus' and 'investment-like relationship' from the viewpoint of business management provide interesting inspirations for the future debate.



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