

To: OECD Investment Committee and Working Party on Responsible Business Conduct
From: OECD Watch
Re: Implementation of recommendations to strengthen upcoming peer review processes
Date: 16 October 2018

Summary:

Over the past nine years, OECD Watch and its members have participated in the National Contact Point (NCP) Peer Review Process, which seeks to encourage improvement of individual NCPs as well as functional equivalence between all NCPs. The peer review initiative has great potential to strengthen the NCP grievance mechanism. Unfortunately, OECD Watch continues to observe serious gaps and shortcomings in the process and review template itself that hinder achievement of meaningful improvements and greater functional equivalence. As a result of this fact, many civil society members have lost confidence in the process. This loss of confidence is driving civil society away from seeing NCPs as an effective body for encouraging responsible business conduct, jeopardizing the legitimacy and effectiveness of the OECD Guidelines as a whole.

To address these concerns, OECD Watch presented at the UN Forum on Business and Human Rights in November 2017 and again in June 2018 to the Working Party on Responsible Business Conduct (WPRBC) a report with 18 practical recommendations to improve the peer review process. **OECD Watch urges the Investment Committee and the WPRBC to revise the peer review template without delay and implement our recommendations to ensure that the reviews of the NCPs of Spain, Argentina, Korea, and Sweden in 2019, and the NCP of Australia in 2020, follow a rigorous, transparent, and effective process. We also urge the Investment Committee to ensure that the upcoming peer review of the United Kingdom NCP in November 2018 adopts these recommendations to the extent possible under the current template.**

Background

Since 2009, OECD Watch and its members have participated actively in the peer review process for NCPs. The peer review process has great potential to help NCPs learn what particular steps each should take to meet the OECD Guidelines' core criteria of visibility, accessibility, transparency and accountability, as well as the principles for proper complaint handling through impartiality, predictability, equitability and compatibility with the Guidelines.

Unfortunately, serious inconsistencies and shortcomings in implementation of the peer review process and gaps in the peer review template itself have hindered the peer reviews from achieving their full potential. Critically, the frequent failure of peer review reports to reflect the concerns raised by civil society and the low number of meaningful improvements to NCP organisational structures and practices resulting from peer reviews is causing many civil society members to lose confidence in the validity of the process and the utility of ongoing engagement with it.

To help highlight and resolve specific concerns felt by stakeholders, OECD Watch, Accountability Counsel and the International Corporate Accountability Roundtable (ICAR) prepared in 2017-18 a detailed study of the peer review process. The study involved desk reviews as well as 27 interviews

with NCPs (both reviewed and reviewer) and representatives from all three stakeholder groups (business, unions, civil society). Preliminary findings from the study were presented in November 2017 at the UN Forum on Business and Human Rights, and the full report, entitled “Advancing and Strengthening the OECD National Contact Point Peer Review Process”¹, was shared in June 2018 during the OECD Global Forum for Responsible Business Conduct.

The report found that there were important variations and inconsistencies across peer reviews and that implementation of peer review recommendations has been incomplete and often ad-hoc, focusing on relatively easy fixes such as promotion-related activities, rather than changes to more impactful issues, such as those related to institutional structure and the specific instance process.

To remedy these shortcomings, the report formulated 18 concrete and practical recommendations focused on increasing transparency and stakeholder participation, clarifying the role of the NCP under review to strengthen independence of the review, improving the content and timeframes of the final report and ensuring implementation and follow-up on the recommendations made.

OECD Watch understands that the report has been well-received. To date, however, it does not appear that the recent peer reviews have adopted the 18 recommendations made in the report. Meanwhile, OECD Watch members involved in NCP peer reviews continued, in September 2018, to share frustration over matters, such as the recording and disclosure of stakeholder comments, already addressed in the recommendations.

OECD Watch understands that some of the 18 recommendations require a formal amendment of the peer review template, and that the Working Party on Responsible Business Conduct will likely discuss this matter at its next meeting. The Investment Committee should communicate a sense of urgency in this matter to the WPRBC to ensure that the template is revised in time for the reviews of the NCPs of Spain, Argentina, Korea, and Sweden in 2019. We believe this will enable a more rigorous, transparent, and effective peer review process that achieves meaningful improvements at NCPs and regains confidence of civil society. We also urge the Investment Committee and WPRBC to ensure that the upcoming peer review of the United Kingdom NCP in November 2018 adopts these recommendations to the extent possible under the current template.

OECD Watch is a global network with over 130 member organisations in more than 50 countries. Founded in 2003, OECD Watch’s primary aim is to help support CSO activities related to the OECD Guidelines and the work of the OECD’s Investment Committee. Membership consists of a diverse range of civil society organisations – from human rights to environmental and development organisations, from grassroots groups to large, international NGOs – bound together by their commitment to ensuring that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe. For more information, please visit www.oecdwatch.org, or contact OECD Watch’s coordinators: Marian Ingrams, Esq., m.ingrams@oecdwatch.org, and Dr. Joseph Wilde-Ramsing, j.wilde@oecdwatch.org.

¹ Available at: https://www.oecdwatch.org/publications-en/Publication_4396/