

SUBMISSION OECD WATCH

October 2013

Working Party on Responsible Business Conduct

Introduction

1. OECD Watch welcome this opportunity to make a submission to the Working Party on Responsible Business Conduct, in relation to the agenda of its forthcoming meeting on the 14th of October. We would like however, to raise a concern with regards to the short time allowed for consulting with members and preparing a detailed submission on the important issues and proposals tabled for this meeting coupled with the absence of a stakeholder consultation session on the WPRBC's agenda. The high number of proactive agenda proposals as well as the important request for clarification of Norway would have warranted a more meaningful stakeholder consultation process. This concern is aggravated by the fact that a representative of the Norwegian Bank Investment Management (NBIM) is attending as part of the Norwegian delegation, creating an unequal playing field between the parties involved in the case concerning NBIM's minority shareholdings in POSCO that resulted in Norway's request for clarification.

State owned or state operated entities: Practice what you preach

2. OECD Watch has taken note of Norway's request for clarification relating to the application of the OECD Guidelines to Sovereign Wealth Funds (SWFs) and Central Banks (CBs). It is disturbing to see that a country with such a good reputation of promoting and supporting human rights, and having been at the forefront in supporting the development of the UN Guiding Principles on Business and Human Rights and their alignment with the OECD Guidelines during the 2011 update, is now seeking to exempt SWFs and Central Banks from the OECD Guidelines. If governments that made a binding commitment to the OECD Guidelines are not willing to practice what they preach through their own entities and commercial activities, what credibility do they have in expecting from enterprises to observe high standards of responsible business conduct?

3. OECD Watch strongly urges the Investment Committee not to make an exemption for SWFs and CBs, which could significantly undermine the credibility of the OECD Guidelines as a government-backed and government-implemented instrument. NCPs should assess on a case-by-case basis whether an entity owned or operated by the State is engaged in commercial activities and therefore covered by the OECD Guidelines. Furthermore, it is the state duty to protect human rights, as reiterated the UN Guiding Principles, so regardless of the application of the OECD Guidelines, state-owned or state operated enterprises as well as other state entities have the same responsibilities to undertake due diligence to avoid causing or contributing to adverse impacts and seeking to prevent or mitigate adverse impacts with which they are associated through their business relationships.

Follow-up work on Due Diligence in the financial sector

4. The clarification that minority shareholdings of Financial Institutions are covered under the OECD Guidelines' term 'business relationships' is welcomed and in line with the recent statements of the Dutch and Norwegian NCPs regarding the involvement of APG and NBIM in POSCO. OECD Watch supports the principle of coherence between instruments for responsible business conduct, in particular between the OECD Guidelines and the UN Guiding Principles. It is therefore recommended that the WPRBC first and foremost ascertains the interpretation of the meaning of such terms through existing interpretative language (such as the OHCHR's Interpretive Guide) or seeks further interpretation from the OHCHR or the UN Working Group on Business and Human Rights.

5. OECD Watch recommends that a similar approach as taken in clarifying the scope and application of 'business relationships' in the financial sector is taken in clarifying what is meant by '*being directly linked to their operations, products or services by a business relationship*', in the

context of the financial sector. OECD Watch is therefore not in favour of the proposed approach for the next phase of the financial sector proactive agenda project (DAV/INV/RBC/RD(2013)17), where guidance for interpreting what this language means to the financial sector is sought from a whole range of ‘relevant people with intimate knowledge of the language’. Rather, OECD Watch recommends that in Phase 1 of the proposed next phase of the Proactive Agenda Project, first-hand clarification is requested from the official bodies mandated to provide clarifications. In other words, OECD Watch proposed that the WPRBC requests the Office of the High Commissioner on Human Rights (OHCHR) and the UN Working Group on Business and Human Rights an interpretation on what is meant by ‘directly linked to their operations, products or services by a business relationship’. After this interpretation and the WPRBC’s appreciation thereof, a broader discussion with stakeholders can be undertaken to assess this interpretation in specific case study examples, and in developing further guidance where necessary.

Proliferation of Proactive Agenda Projects

6. On a number of previous occasions OECD Watch has raised concerns about the number of Proactive Agenda Projects. Although these projects can make an important contribution to identifying risks of non-compliances with the OECD Guidelines in particular sectors, regions or activities, the high number of proposed projects bear the risk that the WPRBC loses sight of what OECD Watch would consider the highest priority which is to improve NCP performance and enhance functional equivalence. OECD Watch therefore calls on the WPRBC to prioritise this work and ensure adequate resources and time is allocated to: ensuring at least two NCP meetings a year including stakeholder consultations; robust peer learning and peer reviews; capacity building and training; and a well-resourced OECD secretariat equipped play its oversight role over proper NCP reporting and maintaining the Specific Instances database. OECD Watch strongly urges governments to prioritise their Voluntary Contributions towards these activities.

Project proposal on Responsible Sourcing in Textile and Garment Industry

7. At the June Annual Meeting of NCPs and Global Forum on Responsible Business Conduct, OECD Watch already expressed its reservations towards the proposal to develop yet another Proactive Agenda Project on responsible sourcing in the textile and garment industry. In view of the multitude of existing multi-stakeholder initiatives in the global garment industry and in particular the promising binding Accord on Fire and Building Safety in Bangladesh, OECD Watch questions whether there is an added value and broad stakeholder demand for such a Proactive Agenda Project. A proposed mapping of existing national, international, multi-stakeholder or industry-led initiatives in particular seems to be an unnecessary duplication of work that has already been undertaken frequently in this sector. OECD Watch is therefore only supportive of one meeting to discuss whether and if so in what form a Proactive Agenda Project at the OECD could add value to the existing efforts to improve labour conditions in the global textiles and garment industry.

8. In the light of the limited time available to properly consult with its members, OECD Watch would like to be able to make additional submissions concerning the specific Proactive Agenda Projects proposed.