

To: OECD Working Party on Responsible Business Conduct (WPRBC)  
From: OECD Watch  
Re: Civil society recommendations on topics of focus for update in the OECD Guidelines  
Date: 3 March 2022

### Overview of submission

To support WPRBC delegates in choosing among options for action following the stocktaking on the Guidelines, OECD Watch sets out here our own recommendations on topics of focus for update.

As background – the stocktaking on gaps in the Guidelines has highlighted – from the perspective of diverse stakeholders and delegates alike – that the Guidelines’ standards are neither fully up-to-date nor fully complete, and that the baseline expectations for National Contact Points (NCPs) are too vague. These gaps are causing the standards to lose relevance and utility as a guide on responsible business conduct (RBC), and promoting increasing divergence in the effectiveness and accountability of NCPs. The most impactful way to close these gaps is to update the standards and Procedural Guidance directly, rather than issue separate interpretative guidance or trainings. **OECD Watch recognises the limited capacity of delegates and the secretariat to take on a full-scale overhaul, and we do not believe a wholesale update is necessary. Instead, we set out here our suggestions on what, where, and why *targeted* updates should be made to achieve most impact in raising RBC.**

Our own guiding rule is to focus foremost on updates to issues a) of high importance to civil society, that are b) particularly inadequately clarified in the Guidelines, and that will c) have broadest and deepest impact in improving business conduct.

Based on an analysis of these factors, we have listed below in a **rough** order the update areas of top concern to civil society. Our analysis shows most impactful and urgent need for updates to:

1. The Procedural Guidance to improve the baseline expectations for NCPs;
2. The General Policies chapter to clarify the steps and scope of due diligence and identify cross-cutting issues and standards topics vital to ensuring RBC;
3. The Environment chapter to clarify expectations for businesses to avoid and address their contribution to climate change and other adverse environmental impacts; and
4. The Disclosure chapter to ensure transparency on information material to assessing MNEs’ implementation of the six steps of due diligence and the other standards in the Guidelines.

For these four topics in particular, we explain our thinking according to the three factors listed above. For all the topics raised by OECD Watch, we provide a basic indication of the updates needed on each issue, and then [link](#) to more detailed and updated briefs from OECD Watch that discuss the issues, related gaps in the Guidelines, impacts of those gaps on lowering norms and complaint outcomes, and preliminary recommendations of text edits.

Finally, we conclude by urging that the WPRBC ensure stakeholder participation in the upcoming April and May discussions on options for next steps.

### Analysis

#### 1. Procedural Guidance

Updates are most critically needed to the baseline expectations for NCPs. We refer delegates to OECD Watch’s more detailed brief outlining key clarifications needed in the [Procedural Guidance](#) to support the effective and coherent functioning of NCPs.



- a) Civil society concern: The non-accountability of individual NCPs and lack of functional equivalence in the NCP system as a whole is consistently cited as one of the highest concerns of civil society. This is so not only because it limits access to remedy for victims, but because NCPs' collective failures to effectively promote the Guidelines and identify, explain, and support accountability for corporate non-adherence to the standards is actually preventing MNEs from understanding and implementing the standards.
- b) Extent of gap in the Guidelines: The Guidelines are unduly spare in establishing expectations for for the organisational structures, promotional activities, and complaint handling procedures of NCPs. *OECD Watch does not endorse a one-size-fits-all approach for NCPs; we believe numerous organisational structures and modes of operation can be and are currently effective.* However, the Guidelines should more clearly identify *ineffective* structures, procedures, and promotional activities and, on numerous areas of agreement, should recommend common practices to streamline implementation across all NCPs. We caution that updates to the Procedural Guidance should not seek to lower complainants' access to individual NCPs, but raise the bar for all NCPs to build stakeholder confidence in broader use of the mechanisms.
- c) Impact of potential amendments: The NCPs are the linchpin of the Guidelines system; clarifying expectations for NCPs to achieve more coherence and equivalence in their structures and operations could be **transformative** in raising MNE understanding and implementation of the standards, and facilitating meaningful elements of remedy for complainants.

## 2. General Policies

Among standards chapters, OECD Watch encourages edits first and foremost in the General Policies chapter. We refer delegates to OECD Watch's more detailed brief outlining key clarifications needed on [General Policies](#).

- a) Civil society concern: The Guidelines' due diligence provisions, which primarily appear in Chapter II, are one of the greatest recent additions to the Guidelines and cited in almost every complaint filed – indicating both their importance to civil society and, unfortunately, the ongoing failure of companies to undertake due diligence properly. Clarifying the steps and topics to be covered by the due diligence process is a top priority for civil society.
- b) Extent of gap in the Guidelines: The General Policies chapter's language on due diligence does not track with the six steps laid out in the OECD's due diligence guidance, nor reflect the scope of due diligence over cross-cutting issues and business activities relevant to numerous standards topics. The chapter also does not strike the right – i.e. complete, balanced – tone for the subsequent standards, because it overemphasizes some issues while failing completely to signal expectations on numerous other topics essential to RBC.
- c) Impact of potential amendments: Amendments to the General Policies chapter would have far-reaching influence. First, because due diligence is the key process by which MNEs implement RBC in general, small additions to commentary that clarify the steps and scope of cross-cutting issues and practices to be covered by due diligence would positively impact MNEs' adherence with *all the other* standards covered in the Guidelines. Second, amendments to ensure balanced and complete introduction of all standards and issues relevant to RBC would better set the tone for the document and establish fundamental principles. Specifically:
  - Targeted edits to commentary on due diligence should clarify the six steps of due diligence and note:
    - The heightened due diligence needed to: address risks and impacts to individuals from marginalised and disadvantaged groups; account for how digitalisation may alter or worsen an MNEs' RBC impacts; and account for how poor animal welfare in value chains may impact an MNE's fulfilment of the standards in the other chapters.

- The importance of ensuring due diligence over all business practices (to include lobbying activities, judicial activities, communications activities, shareholder engagement, and others), to ensure all business practices are undertaken in a manner that supports, rather than undermines, MNEs' fulfilment of the RBC standards.
- Targeted edits or additions to the principles in Chapter II should also signal the following as critical elements of RBC:
  - Disclosing information material to understanding MNEs' fulfilment of the standards covered in the Guidelines (beyond financial disclosures); addressing risks and impacts to people including human rights defenders, workers, consumers, and individuals from marginalised and disadvantaged groups; addressing risks and impacts to the environment and climate change; and avoiding corruption and tax avoidance.

### 3. Environment (and climate change)

The Environment chapter also needs update critically, to ensure it addresses the issue of climate change and other leading environmental impacts. We refer delegates to OECD Watch's more detailed brief outlining key clarifications needed on [Environment](#).

- a) Civil society concern: Climate change and environmental degradation are leading concerns for civil society (and the world at large), given their impact not only on the environment but also human rights and society.
- b) Extent of gap in the Guidelines: The Environment chapter does not mention climate change at all, nor address numerous common adverse environmental impacts of MNEs such as: deforestation; destruction of biodiversity, ecosystems, and protected areas; pollution; overuse of water; etc.
- c) Impact of potential amendments: Given the close link between respect for the environment and prevention of climate change and respect for human rights, clarification to the Guidelines' expectations for MNEs on this issue would be far-reaching. Expectations are needed for MNEs on both climate emissions targeting and climate adaptation, climate-related misinformation and lobbying, and the need to avoid and address other adverse environmental impacts. It is also important to consider the impact of *not* updating the Guidelines Environment chapter: if the Guidelines are *not* updated to explicitly call on MNEs to address their contribution to climate change, they truly lose their relevance in the business and human rights space.

### 4. Disclosure

Updates should also be prioritized to the Disclosure chapter to make it internally coherent with 1) disclosures expected in relation to the due diligence process and 2) disclosures of information material to assessing an MNE's compliance with the other standards in the chapter. We refer delegates to OECD Watch's more detailed brief outlining key clarifications needed on [Disclosure](#).

- a) Civil society concern: Improving disclosure standards for MNEs' has been a long-standing priority for civil society. Improved disclosure is the key means by which civil society and policymakers alike can identify gaps and needed next steps in promoting RBC.
- b) Extent of gap in the Guidelines: The Disclosure chapter is badly out of date with more recent norms, initiatives, and even national and regional laws on corporate RBC-related transparency. The chapter only encourages (rather than asserts MNEs "should") disclose their social and environmental risks, making the chapter out of synch with the OECD's due diligence guidance, which calls for communication on RBC risks, impacts, and responsive steps at *every step* of due diligence. The low bar for disclosure also makes it more difficult to ascertain whether MNEs' are implementing the standards in the Guidelines.
- c) Impact of potential amendments: Strengthening expectations for MNEs to disclose their impacts and responsive actions is one of the most powerful steps the OECD could take to encourage



MNEs meaningfully to address those impacts. Updates to the disclosure standards would help keep the Guidelines relevant and on par with parallel initiatives, and tangibly encourage improvement across the other standards chapters in the Guidelines. Improving MNE disclosure would also make analysis of MNE impacts easier for civil society and NCPs in specific instances.

## 5. Human rights

Civil society has urged improvement of the Guidelines on several human rights issues, including respect of [land rights](#), the rights of [human rights defenders](#), and the rights of individuals from [marginalized and disadvantaged groups](#). As elaborated in the linked briefs on this subject, small additions primarily to commentary in the Human Rights or, for some topics, the General Policies chapter, would signal the importance of these issues in relation to RBC, and offer basic guidance for MNEs on implementation actions.

## 6. Labour rights

To a large degree, a primary challenge for the labour chapter is MNEs' failure to implement it. Given this, our brief on [labour rights](#) emphasizes that targeted additions primarily in the commentary of the chapter would improve practical guidance for MNEs on addressing persistent as well as new challenges, such as harmful impacts arising from purchasing practices, irresponsible divestment/disengagement, outsourcing of core business activities, digitalization of the workspace, and others. The chapter could also be updated to echo the expectation, from Chapter II, of labour rights-related due diligence across MNEs' value chains.

## 7. Taxation

Increasing global focus on fair corporate tax payment, alongside an increase in complaints addressing tax avoidance, warrant targeted updates to the tax chapter – matching OECD as well as other international standards – to 1) expressly identify “tax avoidance” as *irresponsible* business conduct and 2) provide guidance in commentary on the transactions MNEs' should avoid and disclosures they should make to help ensure fair payment of taxes. Please see further detail in our [taxation](#) brief.

## 8. Animal welfare and digitalisation

Both animal welfare and digitalization are missing entirely from the Guidelines. We believe both are sufficiently important and cross-cutting in their relation to other standards of the Guidelines to warrant address through distinct chapters on these issues. At a minimum, these topics should be addressed in relation to due diligence, to underscore that attention to both animal welfare and the impact of digitalisation on MNEs' RBC footprint is often or always an essential part of an MNEs' due diligence process. Please see further details in our [animal welfare](#) and [digitalisation](#) briefs.

## 9. Corruption

Corruption is closely linked to violation of human and labour rights and environmental degradation, yet only the narrower subject of bribery is discussed in the Guidelines. Tweaks to broaden the scope of the chapter to all MNE-linked forms of corruption, and to clarify in commentary the disclosures and practices useful in helping MNEs avoid corruption, would keep the chapter useful for businesses. Please see further detail in our [corruption](#) brief.

## 10. MNE Definition (Concepts and Principles)

Civil society seeks clarification of the broad scope of non-traditional MNEs, to include state-linked entities involved in commercial activity, that are covered by the Guidelines' scope. Please see further details in our brief on the [MNE definition](#).

Finally, we ask very seriously that the WPRBC involve stakeholders in the upcoming April and May discussions on options for next steps. The stakeholders have vital perspective to share on the critical decision of whether, and what, steps to pursue following the stocktaking. We appreciate the engagement of stakeholders and the public so far; it would be a loss to the Working Party if we are now excluded from the discussion on next steps.

### Conclusion

The stocktaking on gaps in the Guidelines has shown that gaps in the Guidelines' standards and Procedural Guidance are causing the standards to lose relevance and utility as a guide on RBC limiting the effectiveness of NCPs. The most impactful way to close these gaps is to update the standards and Procedural Guidance directly. A wholesale update is not necessary. Instead, OECD Watch has urged here targeted edits on topics according to their importance to civil society, the extent of corresponding gap in the Guidelines, and the anticipated breadth and depth of impact of the update. Based on our analysis, updates are most urgently needed to the Procedural Guidance and Chapters II, III, and VI of the Guidelines. This brief has set out basic explanations of the updates recommended on all the issues of concern to civil society, and [linked](#) to more detailed guidance from OECD Watch. We appreciate the opportunity to provide our inputs, welcome questions and discussion with individual states and the WPRBC, and look forward to further formal engagement with the WPRBC on this subject.

### About OECD Watch

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 adverse impacts around the globe. For more information, please visit [www.oecdwatch.org](http://www.oecdwatch.org).

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