

POLICY REPORT
The 2023 Update of the OECD Guidelines for
Multinational Enterprises on Responsible Business Conduct

June 2025



Authors

Betul Kargedik

Arnau Carracelas Expósito

Gabriel Araújo

Joana Hilzbrich

Luís Sena

Mariana Nunes

Rodrigo Sepriano

Academic Coordination

Laura Iñigo Alvarez

Index

| | | |
|------|--|----|
| I. | Introduction | |
| | <i>Joana Hilzbrich, Laura Íñigo Álvarez</i> | 4 |
| II. | Chapters IV and V of the 2023 OECD Guidelines: Human Rights, Employment and Industrial Relations | |
| | <i>Betül Karagedik, Arnau Carracelas Expósito</i> | 7 |
| III. | Chapter VI of the 2023 OECD Guidelines: Environment | |
| | <i>Gabriel Araújo</i> | 17 |
| IV. | Chapter VII of the 2023 OECD Guidelines: Combating Bribery and Other Forms of Corruption | |
| | <i>Joana Hilzbrich</i> | 23 |
| V. | Implementation Procedures of the 2023 OECD Guidelines and the role of National Contact Points (NCPs) | |
| | <i>Luís Sena, Mariana Nunes, Rodrigo Sepriano</i> | 31 |
| VI. | References | |
| | | 40 |
| VII. | Annex: Comparative Tables | |
| | | 45 |

I. Introduction

Joana Hilzbrich, Laura Íñigo Álvarez

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the OECD Guidelines onwards) represent a collaborative effort by governments to provide non-binding recommendations that guide multinational enterprises toward ethical conduct, integrity, human rights and transparency within the complex global business landscape.¹ First adopted in 1976, these guidelines transcend traditional regulatory compliance, instilling a culture of responsibility and accountability among enterprises.

In today's globalised world, multinational corporations play a significant role in shaping economies and societies, and with their expansive reach comes the responsibility to uphold ethical standards and respect human rights and the environment. To guide their behaviour, the Organisation for Economic Cooperation and Development (OECD) has developed Guidelines for Multinational Enterprises that outline principles for responsible business conduct, covering areas such as human rights, labour rights, environmental protection, consumer interests, science and technology, competition and anti-corruption measures. The OECD Guidelines are soft law rules addressed by governments to multinational enterprises to increase the business contribution to sustainable development and address adverse impacts associated with business activities on rightsholders, as well as on environment and society. There are currently 51 adhering states to the Guidelines, including 38 OECD members and 13 non-members.

The Guidelines were aligned with the United Nations Guiding Principles on Business and Human Rights (UNGPs) on their 2011 revision, becoming one of the most vivid documents expressing the irradiation influence process of the UNGP². The 2023 revision, a decade in the making, addresses pressing social, environmental, and technological challenges.³ These guidelines underscore governments' dedication, particularly influential in international investment flows, to champion responsible business practices aligned with current global standards, as inadequate enforcement or the insufficient application of regulatory mandates presents a substantial barrier to safeguarding human rights, encompassing labour and environmental protections, which may stem from various factors.

¹ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris.

² MCCORQUODALE R, *Business and Human Rights* (OXFORD UNIV PRESS 2024), p. 36

³ Nicolas Tollet, 'Driving Responsible Business Practices: The Impact and Implications of the Revised OECD MNE Guidelines' (2023) <<https://www.linkedin.com/pulse/driving-responsible-business-practices-impact-revised-nicolas-tollet-1e/>> accessed 30 April 2024.

The change in the Guidelines' title, now entitled OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, signifies a profound shift, placing responsibility and ethical behaviour at the core of business practices. This transformation goes beyond regulatory compliance, embracing a conscientious approach to business. The transition from the 2011 Guidelines to the 2023 edition marks a substantial expansion. It prioritises reinforcing protections for vulnerable groups, emphasises increased disclosure of responsible business conduct information, and includes directives for aligning enterprises' lobbying activities within the Guidelines.

The 2023 revision reflects a deeper commitment to responsible business practices, incorporating a broader spectrum of considerations and emphasising transparency and accountability. Notably, the updated version broadens the scope of due diligence expectations, encompassing more than traditional supply-chain considerations. It now incorporates technology-related elements, such as data usage, recognizing the growing significance of ethical data usage and technology in contemporary business environments. Moreover, the revised version adopts a more holistic approach to due diligence, emphasising enterprises' responsibility in evaluating the broader societal and environmental impacts of their products and services. This shift reflects a deeper understanding of the far-reaching implications stemming from business operations.

The 2023 Guidelines prominently prioritise fortifying protections for vulnerable groups, alongside an emphasis on increased disclosure of responsible business conduct information. This push aims to enhance transparency and foster greater accountability within multinational entities. An essential enhancement in the 2023 version lies in incorporating directives to align enterprises' lobbying activities within the Guidelines. This addition acknowledges the potential influence of lobbying efforts on responsible business conduct, marking a broader commitment to ethical business practices.

The research aims to comprehensively analyse the 2023 Guidelines in comparison to the 2011 version, spotlighting differences, identifying new elements, and exploring opportunities to enhance business responsibility, transparency and ethical standards. The study delves into challenges posed by adapting to the updated guidelines and potential regulatory obstacles. It also underscores the heightened focus on the accountability and responsibility of Multinational Enterprises (MNEs) for the impact of their actions.

This report will focus on a set of research questions that are indicated in the next section. The structure of the report goes as follows: (i) Chapters IV and V on Human Rights and on Employment and Industrial Relations of the 2023 OECD Guidelines; (ii) Chapters VI on the Environment of the 2023 OECD Guidelines ; (iii) Chapter VII on Combating Bribery and Other Forms of Corruption of the 2023 OECD Guidelines; and (iv) Implementation procedures of the 2023 OECD Guidelines and the role of National Contact Points (NCPs) for Responsible

Business Conduct.

This report tackles the following research questions regarding the update and changes introduced to the OECD Guidelines in June 2023 as well as the opportunities offered, and possible challenges envisaged:

- Which significant changes have been incorporated in Chapters IV and V on Human Rights and on Employment and Industrial Relations of the 2023 OECD Guidelines?
- What significant changes have been incorporated in Chapter VI on the Environment of the 2023 OECD Guidelines?
- What significant changes have been incorporated in Chapter VII on Combating Bribery and Other Forms of Corruption of the 2023 OECD Guidelines?
- What significant changes have been incorporated regarding the work and procedures of National Contact Points (NCPs) for Responsible Business Conduct?
- What are the opportunities and challenges offered by the new update of the OECD Guidelines in Chapters IV-VII?
- What are essential aspects that need to be improved in the system of National Contact Points in order to better promote the OECD Guidelines and handle its specific instance procedures in a more effective manner?
- How could Portugal benefit from a strong and effective NCP in its task of promoting the OECD Guidelines and offering good offices as a non-judicial grievance mechanism?

This report has been prepared in the framework of the activities carried out by the NOVA Centre on Business, Human Rights and the Environment (NOVA BHRE), under the academic supervision of Dr. Laura Íñigo Álvarez. The NOVA Knowledge Centre for Business, Human Rights and the Environment (NOVA BHRE) is a multidisciplinary academic centre within NOVA School of Law whose main goal is to contribute to fostering responsible and Sustainable business conduct in Portugal, Europe and beyond that upholds respect for human rights, decent work and environmental standards throughout global value chains.

The text has been written by Arnau Carracelas Expósito, Betül Karagedik, Gabriel Araújo, Joana Tomaz Hilzbrich, Luís Prata e Castro, Mariana Nunes and Rodrigo Sepriano. The research leading to this report was carried out between October 2023 and December 2024.

II. Chapter IV and V of the 2023 OECD Guidelines: Human Rights, Employment and Industrial Relations

Betül Karagedik and Arnau Carracelas Expósito

Introduction

The globalisation phenomenon has devised a new playing field for social agents' interactions, with major implications in economic, social, and environmental aspects. In this new framework, a fast-changing global market dictates the rules of the game, extending the world supply of labour, establishing a transnational labour market, and facilitating the creation and development of endless global supply chains⁴, with complex structures.

This new playing field has boosted many of the developed countries economies, facilitated trade and investment opportunities and contributed to a greater efficiency and productivity⁵. However, while the process of globalisation holds the promise of development for all, it has not been equally beneficial for the Global South countries or undeveloped economies⁶. The reality is that its complexity obstructs and dilutes the application of social and labour protection along the supply chains and hinders its enforceability, leading to potential violations of human rights and working conditions⁷. The intricacy of this global market and the number of social actors involved - and its cultural differences - complicates undertaking hard-law transnational normative action for the protection of human rights and labour rights.

In this sense, Responsible Business Conduct (RBC) instruments play a crucial role in preventing and addressing the adverse impacts to human rights and the environment resulting from economic activities in the global market⁸. Firstly, for an operational reason: most of the undesired effects suffered along the value chain result from the ordinary activity of multinational enterprises, making it easier to achieve a greater impact by addressing its conduct towards prevention and mitigation. Secondly, from a moral and global justice standpoint, since companies are the social agents that benefit the most from the global market framework and the ones that

⁴Paul Verbruggen, 'New Liabilities in Global Value Chains: an introduction' (2022) 13 EJRR <<https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/newglobal-value-chains-an-introduction/5BD681F11378253071023B37DE1EFBF3>> accessed 13 March 2024.

⁵Bruce Takefman, 'The effects of globalisation on economic development' (2023), Research FDI Investment Attraction <<https://researchfdi.com/resources/articles/the-effects-of-globalization-on-economic-development/#:~:text=As%20mentioned%20above%2C%20the%20effects,of%20new%20technologies%20and%20knowledge%2C>> accessed 12 March 2024.

⁶Sarwar M. Azhar and Haris Aslam 'Globalisation and development: challenges for developing countries' (2013) <<https://www.inderscienceonline.com/doi/abs/10.1504/IJEPEE.2013.055795>> accessed 13 March 2024.

⁷Gabriele Buchholtz, 'Social and Labour Standards in the OECD Guidelines' in Niels M. Blokkder and Jacob Katz (eds) *International Organisations Law Review* (2020).

⁸María Fernanda Galán, 'Empresas y Derechos Humanos: ¿un buen negocio?' (ASIES, 2023).

contribute the most to its undesirable effects⁹.

To this purpose, the OECD Guidelines seeks to provide human rights and labour standards for multinational corporations operating in or from the 51 adhering states. In particular, the 2023 OECD Guidelines contain major changes and reaffirm human rights' due diligence (HRDD) as the cornerstone of the RBC normative action extending companies HRDD obligations beyond contractual relationships¹⁰. HRDD consists in a process, or a set of processes, that all companies should implement in order to identify, prevent, mitigate and account for how they address potential and actual adverse human rights impacts with which they may be involved.

In the next chapter we will critically go through the most relevant changes on the chapters on human rights and employment relations incorporated to the 2023 OECD Guidelines to then address its consequences, opportunities and suggest some future courses of action.

A. Human Rights in the updated version of the OECD Guidelines

The human rights chapter of the OECD Guidelines is placed as the fourth chapter and there are only minor differences between the previous and the current version of these articles. Accordingly, in the 2011 edition, it is stated that all businesses should have a policy commitment in the context of their responsibility to respect human rights. In fact, the UNGPs clarifies that in order to fulfil this responsibility to respect human rights, companies should have in place a policy commitment, human rights due diligence processes and grievance mechanisms.¹¹ In the 2023 edition, the main adjustment has to do with making this policy commitment “publicly available”. However, there are significant adjustments and improvements explained in the commentary to the chapter that are worth mentioning.

The human rights chapter includes recommendations as to how enterprises should carry out their due diligence processes in the scope of their responsibility to respect human rights. In this context, in the 2011 edition, it was stated that the recommendations were in line with the UNGPs, while in the 2023 edition, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy¹² is specifically mentioned which is a positive adjustment.

There are also other differences between the commentaries of the two editions. Paragraph 45 of the commentary begins by stating that enterprises can have impacts over almost all internationally

⁹Zoi Aliozi, ‘Climate Justice and Human Rights in a World in Climate Emergency’ (Global Campus of Human Rights, 2021).

¹⁰Marian G. Ingram, ‘The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text’ (Business and Human Rights Journal 2023) p 3.

¹¹ UNGP, Principle 15.

¹² ILO ‘Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’ (1977) The Governing Body of the International Labour Office.

recognized human rights. However, it is underlined that some sectors or activities have the potential to pose greater risks to human rights. In particular, the rights of individuals belonging to specific groups or populations will require special attention.¹³ Therefore, enterprises should implement some additional standards taking into consideration these circumstances. In this context, the 2023 edition commentary provides more detailed explanations on how these additional standards can be fulfilled. Accordingly, enterprises need to pay special attention to individuals who are more at risk due to marginalization, vulnerability, and other situations, such as human rights defenders and indigenous peoples. In this regard, enterprises can benefit from the following instruments, including, the OECD Due Diligence Guidance on Responsible Business Conduct, the OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector, and the OECD-FAO Guidance for Responsible Agricultural Supply Chains because they provide detailed practical guidance in these areas. Especially in the context of indigenous peoples' rights, it is an important requirement for enterprises to carry out their business activities within "Free, Prior and Informed Consent" (FPIC), which is also mentioned in the commentary.

Additionally, an important change in the 2023 edition is the inclusion of the reference to armed conflict situations. Both editions explain that in situations of armed conflict, enterprises should respect international humanitarian law standards. However, the 2023 edition ensured that in case of armed conflicts or heightened risk of gross abuses, enterprises should carry out "enhanced due diligence" regarding adverse effects.

Subsequently, as a minor change in paragraph 48 of the 2023 edition, it is stated that enterprises should not only use, but also enhance where needed its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. In a similar way, more detailed explanations about the content of the due diligence processes are included in the 50th paragraph. Accordingly, it has been stated that conducting human rights due diligence may require consideration of different and intersecting risks, and that stakeholder engagement can be made with such groups exposed to these distinct risks. This engagement should be meaningful and adapted within the aim of reaching marginalised or vulnerable stakeholders.¹⁴

Finally, there are also differences among commentaries regarding the issue of remediation. The 2023 edition emphasised that enterprises should establish or participate in processes that will enable remediation. Also, it suggests two additional criteria for operational-level grievance mechanisms: rights-compatibility and being a source of continuous learning, in accordance to the

¹³ D. A. Pamplona, 'The OECD Guidelines for Multinationals and the Escazú Agreement: enhancing protection to human rights defenders', Nova Centre on Business, Human Rights and the Environment Blog, 26th October 2023.

¹⁴ Marian G. Ingrams, 'The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text' (2023), 8 Business and Human Rights Journal 427, 429.

requirements of Principio 31 of the UNGPs.

Opportunities and challenges of the provisions on Human Rights in the 2023 OECD Guidelines

As it has been highlighted, there are no significant changes in the text of the human rights chapters between the 2011 and 2023 editions of the OECD Guidelines, being the only adjustment the fact that the policy commitment on human rights should be publicly available. Since human rights due diligence is a process that requires transparency, having policy commitments that are publicly available can be seen as a positive addition to the updated version. As a matter of fact, in Principle 16 of the UNGPs regarding policy commitment, it is underlined that the policy commitment should be public.¹⁵

Nevertheless, it seems that there are some notable differences between commentaries. The comparisons discussed above show that the 2023 edition includes direct references to some key international legal instruments, and thus it makes the 2011 edition up to date. Also, it is stated that enterprises should pay special attention to people who are marginalised and vulnerable to human rights violations, such as human rights defenders and indigenous peoples. In this regard, some instruments providing further practical guidance are included. Although it has been seen as a positive development that the new text states that companies should pay special attention to the rights of indigenous peoples within the scope of due diligence, it should be noted that this should have been expressed in more detailed and practical terms as recommended by OECD Watch.¹⁶ Moreover, references to the UN Declaration of Human Rights Defenders from 1998 should have been added in the commentary to provide further insights. As explained by Pamplona, “This is a missed opportunity to encompass the specific rights that human rights defenders are entitled to. The mention to the UN Declaration of Human Rights Defenders would be relevant as the 2023 OECD Guidelines does not provide for a rights-language, instead, it does provide for the duties of corporations”.¹⁷

Last but not least, in the updated version, some additional comments have been made for businesses operating in armed conflict situations. Armed conflict situations such as Ukraine and Gaza have shown once again that the protection of human rights is at more serious risk in these situations. Therefore, referring to the necessity for enterprises to carry out enhanced due diligence against these increased risks has been an important addition, considering the need to

¹⁵ United Nations (2011) UN Guiding Principles on Business and Human Rights Implementing the United Nations: “Protect, Respect and Remedy” Framework, HR/PUB/11/04.

¹⁶ Marian G. Ingrams, ‘The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text’ (2023), 8 Business and Human Rights Journal 427, 431.

¹⁷ D. A. Pamplona, ‘The OECD Guidelines for Multinationals and the Escazú Agreement: enhancing protection to human rights defenders’, Nova Centre on Business, Human Rights and the Environment Blog, 26th October 2023.

implement a conflict-sensitive analysis in these scenarios as part of their HRDD processes and in order to have a clear exit strategy planned in advance.

B. Employment and Industrial Relations in the updated version of the OECD Guidelines

i. Labour rights and human rights' due diligence

The first major update of the text refers to the specific extension of the human rights due diligence (HRDD) obligations to all employment relationships standards, with a specific focus on avoiding any unlawful employment relations practices¹⁸. Thus, following the United Nations Guiding Principles on Business and Human Rights (UNGPs), the updated Guidelines adhere to HRDD as the central governance mechanism to discharge corporate responsibility¹⁹. The update came at a relevant time along with the negotiations of the EU Directive on Corporate Sustainability Due Diligence (CSDDD).

Moreover, the updated text shows a firm intention to strengthen the ability of rightsholders and civil society to hold corporations accountable by extending the application of the human rights due diligence obligations, not only substantially – as we have seen, to all employment relations – but also directionally: it is now mandatory for companies to carry out their due diligence obligations both upstream and downstream along the whole supply chain, even “beyond contractual or immediate relationships”²⁰. Specifically, the text remarks that the due diligence obligations are applicable to all relations even if they are not strictly employment ones and specially for sectors with high temporality, digital transformation, informality and with decent work deficits to avoid disguised employment practices²¹. Again, within the idea of strengthening rightsholders position, the text remarks that a meaningful two-way stakeholder engagement must be ensured, paying special attention to marginalised and vulnerable groups and intersecting risks of rightsholders²², also within the responsible disengagement, obliging companies to consult them to evaluate and address potential negative impacts.

Nevertheless, the new text seems to have forgotten the reference to the ILO MNE Declaration

¹⁸OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, p 28.

¹⁹Antoine Duval, ‘Ruggie’s Double Movement: Assembling the Private and the Public Through Human Rights Due Diligence’ (2023) 41 NJHR, p 23.

²⁰Marian G. Ingram, ‘The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text’ (Business and Human Rights Journal 2023) p 3.

²¹OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, para 54.

²²OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, para 50.

as a source of analogical interpretation of unclear concepts, which was indeed recognised in the 2011 version of the Guidelines.

ii. Broadening the “worker” concept

Along with the last section, a very relevant novelty is the broadening of the concept of “worker”. The updated text adopts a wide notion of worker, not limited to the standard employment relations, but covering all persons performing work under subordination and dependence whether it mediates an employment contract or not. This way, people under informal working arrangements, bogus self-employed, other contractual arrangements or in fragmented work scenarios are covered by the standards, regardless of their position within the supply chain of a company (both upstream and downstream). Therefore, multinational enterprises are not only obliged to perform risk-based due diligence regarding their own workers, but they must respect rights of all workers – in a broad sense – along the whole supply chain²³.

iii. Health and safety

The updated Guidelines show a strong will to ensure the minimum floor standards recognised by the ILO, linking some of the obligations set in the Guidelines to the ILO Fundamental Principles and Rights at Work²⁴. Particularly, paragraph 63 refers to the ILO Convention on Occupational Safety and Health n° 155 and the Guidelines on Occupational Safety and Health management Systems should companies need guidance in the application of the OECD Guidelines.

Another example of the determination of the Guidelines to reinforce labour standards is the wording regarding the health and safety provisions. While the old text adopted a passive position of a progressive realisation (“taking adequate steps...”), the new version moves from an obligation to promote to an obligation to provide²⁵, this is, obligations of result: “maintain the highest standard of health and safety at work”²⁶.

On a negative side, paragraph 60 just “recommends” companies to provide a health and safety environment and to prevent hazards, apparently diluting this obligation to provide that could be

²³Marian G. Ingram, ‘The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text’ (Business and Human Rights Journal 2023) p 3.

²⁴OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, para 56.

²⁵Blake Hardwell, ‘Resetting the employment and industrial relations standards in the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct’ (OECD Watch and NOVA School of Law, 2023). <<https://www.oecdwatch.org/resetting-the-employment-and-industrial-relations-standards-in-the-oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct/>> accessed 9 January.

²⁶OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, p 29 art 4 c).

envisaged in the provision 4.c) of the Guidelines.

iv. Working conditions and wages

In the same way as the 2011 version, the Guidelines oblige companies to provide wages and working conditions not less favourable than comparable employers in the host country. However, the provision set in art. 4.b) now applies to both developed and developing markets when a company operates abroad, regardless of the label that the host country economy received. The update also sets as a new reference standard the “applicable international standards”²⁷ where no comparable employees’ can be found.

v. Collective bargaining and freedom of association

The Guidelines introduce some obligations regarding the right to collective bargaining and freedom of association. Firstly, in the context of negotiations, it moves from “not hindering the right to organise” of workers towards a proactive obligation of companies to promote and engage in collective bargaining with workers representatives. In this sense it also makes sure to create a relevant operating framework within consultations as now companies must ensure that these are performed through a “legitimate process, structures or mechanisms”²⁸ and updating that the provision of information to workers’ representatives must be implemented in a timely manner.

It can be envisaged an idea to restore the capacity of workers to join and establish trade unions and to collectively bargain to counter the de-unionisation phenomenon that is dangerously spreading within OECD countries in the last decades. In fact, the employer company should use its leverage (debt covenants, capital, commercial agreements...) to require companies in the supply chain to bargain with the workers representatives²⁹.

vi. Forced labour and worst forms of child labour

The update moves again from an “obligation to promote” to an “obligation to provide” by putting emphasis on “immediate, urgent and effective action” to secure the elimination of child labour and forced and compulsory labour. However, in paragraph 58, the text goes back to the idea of “taking steps” for preventing human trafficking and addressing coercive means, as debt bondage, demanding companies to “bolster transparency” around actions taken to address the

²⁷OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, p 29 art 4 b).

²⁸OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, p 28 art 3.

²⁹Blake Hardwell, ‘Resetting the employment and industrial relations standards in the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct’ (OECD Watch and NOVA School of Law, 2023). <<https://www.oecdwatch.org/resetting-the-employment-and-industrial-relations-standards-in-the-oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct/>> accessed 9 January.

referred risks.

- vii. Equality of opportunity and training and re-skilling

No novelties are found in this section, which is striking considering the discrimination that women are suffering and the disadvantaged position they found themselves in, even more intensely in the case of Global South countries. The only update here is that persons with disabilities are expressly included now in the application of the principle of equality of opportunity and treatment, to reinforce their position as rightsholders.

Lastly, paragraph 64 refers to the importance of training for up-skill and re-skill to anticipate changes in the employer needs and operations but does not go far on setting standards or granting rights for workers in this matter.

Opportunities and challenges of the provisions on Employment and Industrial Relations in the 2023 OECD Guidelines

The employment relations chapter of the updated OECD Guidelines constitutes a significant improvement in some key areas: firstly, regarding the expansion of the due diligence obligations along the supply chain regardless the typology of the relationship; secondly, the broadening of the notion of worker and its application to informal economy and other forms of fragmented work; and lastly, the undeniable spirit of the text to move from “obligations to promote” towards “obligations to provide” in a venture to strengthen the standards and have an impact on the field.

However, the negotiation of the Guidelines implied many trade-offs that resulted in a horizontally wider text, but with very limited vertical strength³⁰, and despite the improvements it left many unfilled gaps and missed relevant opportunities:

Firstly, despite the envisaged spirit of the text to move towards obligations to provide and a general idea to have an impact on the field, the text does not make enough specific references to rights or to rights-based instruments. On the contrary, it moves away from a hard-law language and misses the opportunity to shift towards a rights-based enhancement of the standards. On the same vein, the abstract and vague wording leaves both workers and companies without clear and leading instructions on how to comply with the provisions³¹. In some respects, like health and safety, it does refer to some of the relevant ILO instruments but still forgets to reference other human rights and labour instruments. In this sense, it also forgets to mention explicitly which practices are undesired due to its connection to child and forced labour and address the matter with decision. In any case, it remains unclear whether the ultimate purpose of the update was the

³⁰Danielle Anne Pamplona, ‘The OECD Guidelines for Multinationals and the Escazú Agreement: enhancing protection to human right defenders’ (OECD Watch and NOVA School of Law, 2023).

³¹María Fernanda Galán, ‘Empresas y Derechos Humanos: ¿un buen negocio?’ (ASIES, 2023) p 9.

strengthening of rightsholders to hold corporations accountable with an effective impact on the field. In any event, matter of lack of ambition or support, the text runs out of steam despite being very promising in this aspect.

Secondly, the update is rather unambitious when setting the reference standards for the payment of living wages. The opportunity was ideal to oblige companies to offer decent living wages and tackle offshoring. For instance, it could have set as reference standard the “wage of a comparable worker in the home country”, where the company operates originally, instead of the host country comparable employer standard. That way, the comparison to set the wages would be between the effectively performed tasks, not merely because of the market in which workers offer their workforce; specially when the company benefits are not limited to the host country market either. Otherwise, offshoring is recognised as a desirable practice to seek reduction of costs by paying workers from undeveloped countries extremely lower wages – even when these wages are competitive to other extremely underpaid workers in the host country.

Thirdly, the text falls short of expectations regarding the due diligence obligations, when “recognising practical limitations that companies may face in building and using its leverage”³², leaving a potential way for excuse to disclaim ability to meaningfully address the impacts³³.

In connection to the latter, there is a significant risk in taking human rights’ due diligence as the sole normative control mechanism for business accountability in the performance of their activity. To avoid the multiple risks of the shift towards due diligence as the main mechanisms of normative control in business accountability, it must be ensured with guarantees that the public empowerment meets the prerogatives given to the private sector. This is, that the latter is countered by a “publicisation of corporate governance through the integration into the HRDD process of spaces for public participation and scrutiny, as well as through the subjection of corporations to external accountability processes when they engage in HRDD”³⁴. Therefore, this private governance must be met with external accountability mechanisms and scrutinised publicly with a meaningful engagement of stakeholders³⁵. It is rather unclear that the updated version of the Guidelines has enhanced enough the engagement of stakeholders, however, it is undoubtable that they have improved the HRDD mechanisms, although at the same time, they opened the door to recognise the “practical limitations” for companies to use its leverage.

³² OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, para 24.

³³ Marian G. Ingram, ‘The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text’ (Business and Human Rights Journal 2023) p 4.

³⁴ Antoine Duval, ‘Ruggie’s Double Movement: Assembling the Private and the Public Through Human Rights Due Diligence’ (2023) 41 NJHR, p 22.

³⁵ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, OECD Publishing, Paris.

Therefore, meaningful stakeholders' engagement is a crucial aspect in any attempt to reduce the corporate accountability gap³⁶ and counter the privatisation of the normative control of companies' adverse impacts on human and labour rights, avoiding that HRDD remains merely as a compliance-based fiction of boxes-checking.

Conclusion

This section discusses the changes in the human rights and employment and industrial relations sections in the updated version of the OECD Guidelines. When the old and new versions of the OECD Guidelines are compared, it seems that there are minor changes in the human rights section, while significant changes are included in the employment and industrial relations.

In terms of the employment and industrial relations chapter, the updated Guidelines provide some major improvements in the field of labour rights and industrial relations but have missed opportunities and showed lack of ambition in several aspects, while trusting in excess the social function of private companies.

In terms of the human rights chapter, prominent changes include requiring enterprises to pay more attention to vulnerable groups such as indigenous peoples and human rights defenders and implementing enhanced human rights due diligence in conflict situations. However, these important changes are included in the commentary, not in the text of the article, and there are no detailed and technical explanations to guide enterprises in applying human rights due diligence for these specific situations.

³⁶ Caroline Omari, 'Meaningful Stakeholder Engagement 2.0.?: Tracing Developments in the Revised 2023 OECD Guidelines for Multinational Enterprises' (2023 OECD Watch and NOVA School of Law) <<https://www.oecdwatch.org/meaningful-stakeholder-engagement-2-0-tracing-developments-in-the-revised-2023-oecd-guidelines-for-multinational-enterprises/>> accessed 10 January 2024.

III. Chapter VI of the 2023 OECD Guidelines: Environment

Gabriel Araújo

Introduction

Climate change and its consequences pose the biggest challenge to humanity in the 21st century.³⁷ It has resulted in hotter temperatures, more severe storms, increased drought, a rising warming ocean, and loss of species.³⁸ Likewise, it significantly disrupted food supplies, increased health risks, and threatened the enjoyment of several human rights, such as the right to food, housing, water, health, and development.³⁹

According to the Synthesis Report of the Sixth Assessment Report of the UN Intergovernmental Panel on Climate Change (IPCC), human activities have been the primary cause of climate change, mainly the burning of fossil fuels like coal, oil, and gas.⁴⁰ Since the Paris Agreement from the 2015 United Nations Climate Change Conference (COP 21), stronger mitigation efforts have been embraced worldwide to slow down and stabilise global warming. Many countries have recently reviewed their mitigation plans to improve their effectiveness or explore new solutions. It is widely recognized across OECD countries that climate change is an existential threat that must be addressed as a core economic challenge. To that end, the OECD is collaborating with its Member and Partner countries, as well as other international and regional organizations, to identify and evaluate policy pathways that are both economically efficient and socially responsible. These pathways aim to achieve net-zero emissions at the global, national, and city/regional levels while also enhancing adaptation and promoting climate resilience.⁴¹

Approximately 20% of carbon dioxide emissions stem from the global supply chains of multinational companies.⁴² Therefore, in order to meet the objectives of the Paris Agreement, it is essential that both governments and the private sector work together. Businesses have a crucial role to play in reducing greenhouse gas emissions and mitigating the negative climate-related impacts of their operations on both people and the planet. They must also focus on strengthening

³⁷ *Climate change United Nations*. Available at: <https://www.un.org/en/global-issues/climate-change> (Accessed: 08 March 2024).

³⁸ *Causes and effects of climate change United Nations*. Available at: <https://www.un.org/en/climatechange/science/causes-effects-climate-change> (Accessed: 08 March 2024).

³⁹ *Integrating human rights at the UNFCCC | ohchr*. Available at: <https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc> (Accessed: 08 March 2024).

⁴⁰ IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report*. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, 1-34.

⁴¹ *OECD Climate Change - OECD*. Available at: <https://www.oecd.org/climate-change/> (Accessed: 08 March 2024).

⁴² Zhang, Z., Guan, D., Wang, R. et al. Embodied carbon emissions in the supply chains of multinational enterprises. *Nat. Clim. Chang.* (2020), 10, 1096–1101.

the resilience of their companies and supply chains to address and adapt to the challenges of climate change. This includes taking into account the effects of climate change on workers, local communities, and the natural environment. In this regard, OECD's RBC instruments play a crucial part in driving responsible climate action by businesses, supporting a just climate transition, and integrating climate mitigation and adaptation considerations into the core decision-making and risk management processes of businesses, including across supply chains.⁴³

Responsible business conduct (RBC) sets out the expectation that businesses should avoid and address any negative impacts of their operations while also contributing to sustainable development in the countries where they operate. Since the OECD Guidelines cover a broad range of social and environmental expectations, they can help businesses ensure that their net-zero targets align with international commitments, including countries' nationally determined contributions under the Paris Agreement. This would ensure that these targets are implemented with integrity, accountability, and responsibility, taking into account impacts on both people and the planet.⁴⁴

The OECD Guidelines were introduced in 1976 and have been updated regularly to address societal challenges and the evolving context of international business.⁴⁵ The Environment Chapter was one of the most thoroughly revised chapters, and unlike labour rights, which are primarily monitored by unions, NGOs have been very active in monitoring the impact of business conduct on the environment.⁴⁶

In June 2023, the OECD released an updated version of the OECD Guidelines, which had been long-awaited.⁴⁷ The updated guidelines contain significant changes to the Environment chapter, which now places greater emphasis on the responsibility of companies to address their adverse impacts on climate change. Furthermore, the updated Environment chapter also highlights other leading environmental impacts that companies should address in their due diligence. The

⁴³ *Guidelines for MNEs - Organisation for Economic Co-Operation and Development Guidelines for MNEs - Organisation for Economic Co-operation and Development*. Available at: <https://mneguidelines.oecd.org/rbc-and-climate-change.htm> (Accessed: 08 March 2024).

⁴⁴ *Responsible business conduct and climate change OECD Web Archive*. Available at: <https://web-archiv.oecd.org/2023-01-12/539761-rbc-and-climate-change.htm> (Accessed: 08 March 2024).

⁴⁵ *Guidelines for MNEs - Organisation for Economic Co-Operation and Development Guidelines for MNEs - Organisation for Economic Co-operation and Development*. Available at: <https://mneguidelines.oecd.org/targeted-update-of-the-oecd-guidelines-for-multinational-enterprises.htm> (Accessed: 08 March 2024).

⁴⁶ Oldenziel, Joris, and Joseph Wilde-Ramsing. "10 Years on: Assessing the Contribution of the OECD Guidelines for Multinational Enterprises to Responsible Business Conduct." *SSRN Electronic Journal* (2010), 6.

⁴⁷ OECD Watch *BRIEFING PAPER Updated OECD Guidelines give civil society more grounds to demand corporate accountability*. Available at: <https://www.oecdwatch.org/updated-oecd-guidelines-give-civil-society-more-grounds-to-demand-corporate-accountability/> (Accessed: 08 March 2024),1.

guidelines also set new standards for the corporate contribution to a just transition. And for the first time, it addresses corporate responsibility around animal welfare.⁴⁸

Changes: analysis vis-a-vis the 2011 text

i. Adverse environmental impacts

The 2023 version of the OECD Guidelines has made significant improvements in terms of its examples of adverse environmental impacts. The new introductory text now includes a non-exhaustive list of adverse environmental impacts that enterprises may be involved in. For instance, this list includes climate change, biodiversity loss, degradation of land, marine and freshwater ecosystems, deforestation, air, water, and soil pollution, as well as mismanagement of waste, including hazardous substances.⁴⁹ The definition of environmental impacts was also updated. It can be seen that the new version of the Guidelines encompasses a broader and more inclusive definition.⁵⁰ Regarding the relationship between environmental impacts and human rights, the section on health and safety in relation to environmental impacts has been removed. However, the updated definition is broader, and it is important to note that environmental impacts are often closely connected to other issues covered by the OECD Guidelines, including health and safety, worker and community impacts, and access to livelihoods or land tenure rights.⁵¹

ii. Role and responsibilities of enterprises

The 2023 version of the text has made an improvement over the 2011 version by clearly stating the responsibility of enterprises to act towards addressing environmental impacts and contributing to addressing environmental challenges. On the other hand, the 2011 version only called for the enterprises to "take due account of the need to protect the environment".⁵² The introductory text, thus, recognizes the significant role that enterprises play in advancing sustainable economies and addressing environmental challenges, including climate change.⁵³ It

⁴⁸ OECD Watch *BRIEFING PAPER Updated OECD Guidelines give civil society more grounds to demand corporate accountability*. Available at: <https://www.oecdwatch.org/updated-oecd-guidelines-give-civil-society-more-grounds-to-demand-corporate-accountability/> (Accessed: 08 March 2024), 2-4.

⁴⁹ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, 33.

⁵⁰ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, 35.

⁵¹ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, 36.

⁵² OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, 42.

⁵³ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, 33.

also urges enterprises to prevent and address any harmful environmental impacts caused by their operations.⁵⁴

iii. Due diligence

The updated Guidelines made an important improvement in the alignment with the due diligence steps. The Guidelines now align with the robust framework on corporate RBC due diligence developed since 2011 in the OECD’s due diligence guidance.

The environment chapter was redrafted, and the coverage is now explicit and much clearer. It is noteworthy that paragraph 1 was reframed, and as to information sharing, the word “potential” was removed from paragraph 1(d) in relation to the sharing of information on “potential” as well as actual adverse environmental impacts. Still, paragraph 5(c) requires the provision of “relevant and accurate information on environmental impacts” to entities with which they have business relationships.

Moreover, the updated Guidelines now provide more comprehensive instructions for companies on the importance of engaging with stakeholders during the due diligence process. This includes guidance on how to engage with stakeholders in a meaningful way. Paragraph 2 of the new guidelines specifically requires companies to engage with relevant stakeholders who have been affected by any adverse environmental impacts. This is an improvement from the previous version of the guidelines, which did not require this level of engagement. The updated guidelines make it clear that stakeholder engagement is a crucial part of the environmental due diligence process and must be done meaningfully.

iv. Alignment with international standards

The Environment chapter has been updated significantly to align with the international standards on the environment. In the previous version from 2011, climate change was not even mentioned, so this new update is a positive step forward. The updated text specifically emphasizes the importance of developing transition plans, implementing mitigation targets, and avoiding the use of carbon credits to address emissions, except as a last resort.⁵⁵ Furthermore, it makes reference to the Paris Agreement and highlights the crucial role that enterprises play in achieving the global goals of reducing greenhouse gas (GHG) emissions to net zero, which is necessary to mitigate and adapt to climate change.⁵⁶ It also expects enterprises to ensure that their GHG emissions and

⁵⁴ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 33.

⁵⁵ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 37.

⁵⁶ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 36-37.

impact on carbon sinks are in line with the internationally agreed-upon global temperature goals based on the best available science, including that from the International Panel on Climate Change (IPCC).⁵⁷

The new chapter emphasizes other major negative environmental impacts that businesses should consider as part of their due diligence.⁵⁸ While the previous guidelines from 2011 did not address many of these issues, companies are now required to identify and mitigate their potential effects on a wide range of environmental concerns, including biodiversity, degradation of land, marine and freshwater ecosystems, land tenure, and animal welfare.⁵⁹

Opportunities and challenges of the provisions on the Environment of the 2023 OECD Guidelines

Although the updates to the standards are generally strong, there are still areas where the update falls short of civil society expectations and needs further guidance. For instance, despite the inclusion of a non-exhaustive list of adverse environmental impacts that enterprises can be involved in, the list comes in the introductory text instead of in paragraph 1, raising doubts about the enforceability of those provisions. Moreover, despite a broader and more inclusive definition, the term “significant” is vague and can be used to narrow the scope of the impacts covered by it.

Regarding the relationship between environmental impacts and human rights, it is uncertain whether the changes made in the 2023 text serve to improve the 2011 version. This is because human rights are often used as a tool to compel companies to address their environmental impacts, which could be viewed as a limitation. However, the definition provided in the commentary text (para. 68) and the reference in the commentary text (para. 70) help to counteract such limitations. At the same time, from an environmental perspective, this clear call for companies to address environmental impacts could be valuable, as it allows for new perspectives of the impacts regardless of human harm.

As to the alignment with the OECD Guidance on Due Diligence, the new text represents an important improvement once it makes the coverage explicit and much clearer. However, on the one hand, the change made to paragraph 1(d), which now excludes the word "potential", is being viewed unfavourably by civil society. This is because it could lead to a situation where the public and stakeholders are not informed promptly of potential negative environmental impacts, making

⁵⁷ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 37.

⁵⁸ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 33.

⁵⁹ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, 37-38.

it challenging for them to respond in time. On the other hand, the chapter now incorporates expanded guidance for enterprises on the importance of stakeholder engagement in due diligence.

Significant updates elevate the focus on companies' responsibility to address their adverse impacts on climate change, representing an important step forward. Considering the 2011 text did not mention climate change, the new text can be seen as a positive development. Also, the 2023 text highlights the issue of biodiversity, which was not addressed in the previous version. This reference can aid resource-intensive industries in reconsidering their current methods and operations and prioritising the transition to sustainable production. However, it overlooks the adverse impacts on indigenous peoples connected to conservation efforts. Similarly, the 2023 text has improved by encouraging the avoidance of degradation. But again, the OECD has failed to mention concerns about the negative impact on indigenous peoples in connection with reforestation efforts. Lastly, the 2023 text has made significant progress by mentioning animal welfare for the first time, although a stronger text that includes animal welfare in the introductory list of adverse impacts and explicitly references it on the due diligence obligations would have been preferable.

IV. Chapter VII of the 2023 OECD Guidelines: Combating Bribery and Other Forms of Corruption

Joana Tomaz Hilzbrich

Introduction

The OECD Guidelines bring significant amendments, indicating that a profound adjustment has been made in order to align with the changing landscape of corrupt practices, which no longer include just bribery. This emphasis on broader forms of corruption holds significance on multiple fronts and recognizes that corruption is a multidisciplinary subject⁶⁰, and that bribery is now comprehensively recognized as part of a larger matrix of corrupt behaviours, that encompass various conducts and outcomes, such as bribery of public officials, employees in business relationships, trading influence, embezzlement, misuse of sponsorships or donations. All these conducts (and their outcomes) align with the objectives aimed to be countered by the OECD Guidelines, which reflect a proactive response to the contemporary landscape of unethical conduct, showcasing a conscientious effort to address the multifaceted dimensions of corruption.

In general terms, corruption can be described as an illicit activity that involves the abuse of authority or power (either by a public or private entity) for personal gain and benefit, whether financial or otherwise, in exchange for providing another with a benefit too.⁶¹ Thus, conducts that pertain to engaging in unlawful activities, exceeding legal limits in the misuse of power or authority, and obtaining personal benefits from one's position of power can be described as acts of corruption.⁶² It should be noted that bribery and other forms of corruption can originate from either side of a relation, be it on the recipients of the corruption or the givers⁶³ - on the demand-side incentives of government officials (public corruption), for example, and incentives of

⁶⁰ Salman Bahoo, Ilan Alon and Andrea Paltrinieri, 'Corruption in international business: A review and research agenda' (2020) 29 *International Business Review* <<https://doi.org/10.1016/j.ibusrev.2019.101660>> accessed 21 November 2023.

⁶¹ Alvaro Cuervo-Cazurra, 'Corruption in international business' (2016) 51 *Journal of World Business* <<https://ssrn.com/abstract=2967999>> accessed 10 March 2024.

⁶² Salman Bahoo, Ilan Alon and Andrea Paltrinieri, 'Corruption in international business: A review and research agenda' (2020) 29 *International Business Review* <<https://doi.org/10.1016/j.ibusrev.2019.101660>> accessed 21 November 2023.

⁶³ Salman Bahoo, Ilan Alon and Andrea Paltrinieri, 'Corruption in international business: A review and research agenda' (2020) 29 *International Business Review* <<https://doi.org/10.1016/j.ibusrev.2019.101660>> accessed 21 November 2023.

managers on the supply-side (private corruption)⁶⁴ - a notion clearly stated in the wording of the Guidelines.⁶⁵

According to the 2023 OECD Guidelines, the terms bribery and other forms of corruption align with key international instruments such as the OECD Anti-Bribery Convention⁶⁶, in force since February 15, 1999, and should be interpreted according to them.⁶⁷

The paradigm shift from the 2011 Guidelines to the updated 2023 version signifies a comprehensive re-evaluation and an elevation in the level of accountability imposed on multinational enterprises for their actions. These revised Guidelines underscore a growing recognition of these entities' expansive influence and their consequential impact on the economic, social, and ethical spheres. By broadening the framework to encompass broader aspects of corruption and unethical practices, the 2023 Guidelines convey a clear message: multinational enterprises are expected to bear a higher level of responsibility and transparency regarding the ethical dimensions of their operations. This shift emphasises ensuring compliance with legal regulations and proactively mitigating adverse effects, upholding ethical standards across their global operations.⁶⁸

Recognizing the significance of these behaviours is crucial due to their widespread occurrence in international business transactions. Such practices raise substantial moral and political concerns, posing a serious threat to the foundations of good governance and sustainable economic development⁶⁹. Furthermore, these behaviours distort international competitive conditions, necessitating vigilant oversight and concerted efforts to foster ethical conduct within the global business landscape. Addressing these issues becomes paramount for establishing a fair, transparent, and equitable international business environment that upholds principles of integrity and supports the pursuit of sustainable economic growth.⁷⁰

⁶⁴ Alvaro Cuervo-Cazurra, 'Corruption in international business' (2016) 51 *Journal of World Business* <<https://ssrn.com/abstract=2967999>> accessed 10 March 2024.

⁶⁵ As an example, Commentary 92 expressly refers to the demand-side of bribery, and addresses remedies to combat it, whereas the supply-side is referred to throughout the Chapter's paragraphs when addressing bribery and other forms of corruption at the enterprise (organisational) level.

⁶⁶ OECD (1997), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention)*, OECD Publishing, Paris.

⁶⁷ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, p 40.

⁶⁸ Michele Ford et al., 'Calling multinational enterprises to account: CSOs, supranational institutions and business practices in the global south' (2023) 4(1) *Global Networks* <<https://doi.org/10.1111/glob.12438>> accessed 21 November 2023.

⁶⁹ Anita Ramasastry, 'Is There a Right to Be Free from Corruption?' (2015) 49(2) *UC Davis Law Review* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926618#> accessed 07 March 2024.

⁷⁰ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, p 5.

Comparative Analysis between the 2011 and 2023 Guidelines

i. Ethical Business Conduct

The evolution from the 2011 to the 2023 Guidelines signifies a profound transformation in their approach to ethical business conduct: in 2011, the Guidelines primarily concentrated on preventing undue advantages for public officials or employees of business partners; while in 2023 a broader perspective is adopted and now articulates a comprehensive mandate that urges enterprises to refrain from any form of corrupt activity now covering relationships with entities associated with the enterprise and their affiliates or kin.

This shift underscores the importance of awareness-raising efforts in both the private and public sectors, aimed at preventing and detecting acts of corruption through targeted, profession and sector-specific campaigns, as well as through collective action. These endeavours contribute to building a culture of integrity and ethics, fostering a more resilient and responsible global business community.⁷¹

ii. Internal Controls, Due Diligence and Corporate Governance

The changes between the 2011 and 2023 Guidelines delineates a significant change in the recommended approach to internal controls and compliance programmes for enterprises. The previous version focused on preventing bribery through risk assessments and financial record accuracy. In contrast, the 2023 version adopts a broader perspective, advocating for the development of internal controls, ethics, and compliance measures in accordance with current international standards.⁷²

This new approach addresses various forms of corruption under an expanded risk-based assessment, incorporating factors like responsible business conduct, regulatory landscapes, diverse business relationships, engagements with foreign governments, and third-party involvement. Conflict of interest registered in financial procedures are emphasized to prevent corrupt acts, with stress on continuous monitoring and reassessment for sustained effectiveness.⁷³

This shift represents a move from a narrow focus on bribery to a holistic approach, offering a more robust framework aligned with contemporary global business.

⁷¹ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, p 6.

⁷² OECD Guidelines (2023), paragraphs 2 to 4.

⁷³ OECD Guidelines (2023), paragraph 2.

The comparison between both Guidelines also reveals significant changes in documented due diligence and corporate governance guidance, particularly in addressing bribery and corruption.⁷⁴ The updated version represents a shift towards more comprehensive and refined directives, aligning with contemporary ethical and regulatory landscapes. It expands the focus beyond specific bribery risks, now encompassing a broader spectrum of risks related to bribery and other forms of corruption, reflecting a more inclusive evaluation of potential ethical breaches in line with evolving corporate compliance. Enterprises are explicitly mandated to ensure agents refrain from illicit influence and adhere to professional standards when dealing with public officials.⁷⁵ Additionally, it introduces the requirement of an updated list of agents involved in transactions with public entities, emphasizing transparency and regulatory compliance through concomitant documentation.

This evolution signifies a move towards more inclusive language, refined directives on agent conduct, and an emphasis on contemporaneous record-keeping. It mirrors an adaptation to contemporary ethical and regulatory landscapes, meeting stringent corporate governance requirements to effectively mitigate bribery and corruption risks.

Notably, the 2023 Guidelines distinguish themselves by specifying measures such as board and senior management commitment to internal controls, a clear corporate policy against bribery and corruption, and the imperative of disclosing management systems. It also emphasizes fostering a culture of integrity, signalling a shift towards a more proactive approach in addressing instances of malpractice.

The integration of the UN Guiding Principles on Business and Human Rights highlights the broader commitment to ethical conduct, underscoring the need for human rights due diligence as an integral aspect of the revised guidelines.⁷⁶

iii. Employee Awareness and Compliance

The new guidelines indicate a higher ethical standard and increased regulatory expectations in organisational governance⁷⁷, when compared to the previous versions. The key-change is the inclusion of various malpractices within corporate environments and its extension beyond employees to include individuals and entities linked through business relationships. This acknowledges the importance of extending compliance measures to third parties like contractors,

⁷⁴ OECD Guidelines (2023), paragraph 4.

⁷⁵ OECD Guidelines (2023), paragraph 1.

⁷⁶ Leonard Feld, 'A (Slight) Raise of the Bar: Due Diligence in the 2023 Update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023) The Nova BHRE Blog, <<https://novabhre.novalaw.unl.pt/a-slight-raise-of-the-bar-due-diligence-in-the-2023-update-of-the-oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct/>> accessed 27 February 2024.

⁷⁷ OECD Guidelines (2023), paragraph 6.

agents, and partners, aligning with contemporary imperatives in comprehensive corporate governance. The new version also emphasises the need to adapt training programs and disciplinary procedures to accommodate linguistic, cultural, and technological nuances. This reflects an evolved approach, recognizing the intricacies in implementing effective training and enforcement strategies. The new version also aligns with the Anti-Bribery Recommendation’s⁷⁸ call for robust internal control, ethics, and compliance programs that consider language, cultural and technological barriers in globalised business realms.

iv. Political Contributions

The new version, when compared with the 2011 Guidelines, reveals significant differences in guiding principles for corporate conduct related to political contributions and associated obligations.⁷⁹ This evolution indicates refined ethical standards and heightened regulatory expectations within organisational governance.

The main difference lies in the scope of regulated entities. The new version broadens the scope of candidates, parties, and affiliated political organisations to include “organisations linked to political parties or candidates”, which indicates a more comprehensive regulatory stance.

Unlike the previous version, there is also a specific emphasis on compliance with “national laws” when it comes to political contributions, explicitly mandating adherence to national legal frameworks, under a stricter standard while at the same time introduces a formal requirement for the approval of senior management when it comes to political contributions, which established an (institutionalised) oversight mechanism.

Another notable change is the explicit prohibition, under the new version, of obligating workers to support political candidates or organisations, emphasising the importance of autonomy and non-coercion in the workplace regarding political affiliations, which was absent in the 2011 version⁸⁰.

Opportunities and challenges of the provisions on Corruption in the 2023 OECD Guidelines

The transition from the 2011 Guidelines to the 2023 Guidelines marks a profound advancement in legal compliance, underscored by explicit and stringent mandates. This shift signifies more than just aligning with national and international laws on bribery; it represents a comprehensive

⁷⁸ OECD (2021), Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, OECD Publishing, Paris.

⁷⁹ OECD Guidelines (2023), paragraph 7.

⁸⁰ OECD Guidelines (2023), paragraph 7.

evolution. The 2023 version introduces meticulous requirements, indicating a nuanced yet substantial change in the regulatory landscape.

In contrast to its predecessors, the 2023 Guidelines surpass the mere emphasis on compliance with national laws. They now incorporate detailed specifications, such as a heightened focus on adhering to national laws, the integration of public disclosure mandates, and a stipulation for senior management approval concerning political contributions. This expanded compliance spectrum, encompassing various forms of corruption, underscores a more holistic and sophisticated approach.

Granted that the new version of the Guidelines represents a positive shift in terms of both the level of practices it now encompasses, and its attempt to prioritise a more robust enforcement system against bribery and corruption, representing a clear departure from a passive adherence to established frameworks towards the implementation of a formalised and stringent oversight mechanism, it is nonetheless, true that the vast majority of laws and regulations are largely ineffective due to weak enforcement by the competent authorities.⁸¹

However, if we look closer at the explicit requirement for senior management approval, it is possible to conclude that the presence of such a requirement reflects a structured process, which suggests a heightened institutional commitment to upholding legal frameworks. This, in turn, has the potential to significantly enhance transparency and accountability within enterprises, fostering a culture of unwavering compliance.

The expanded compliance scope beyond bribery acknowledges the intricate nature of corrupt practices, demonstrating an understanding of the need to comprehensively address a broader spectrum of unethical behaviours. Emphasising compliance with national laws highlights adaptability across diverse jurisdictions. These nuanced changes in legal compliance standards represent a concerted effort to reinforce multinational enterprises' adherence to legal frameworks. They indicate a commitment to enhanced transparency and integrity in operations, establishing a stringent stance against corruption and unethical practices globally.⁸²

⁸¹ Alvaro Cuervo-Cazurra and Mehmet Genc, 'Transforming disadvantages into advantages: developing-country MNEs in the least developed countries' (2008) *Journal of International Business Studies* 39(6) <<http://www.palgrave-journals.com/jibs/journal/v39/n6/pdf/8400390a.pdf>> accessed 10 March 2024.

⁸² Srividya Jandhyala and Fernando Oliveira, 'The role of international anti-corruption regulations in promoting socially responsible practices' 2021 190 *Journal of Economic Behavior and Organization* <<https://doi.org/10.1016/j.jebo.2021.07.017>> accessed 21 November 2023. David Hess, 'Business, Corruption, and Human Rights: Towards a New Responsibility for Corporations to Combat Corruption' (2017) 4 *Wisconsin Law Review* <https://www.researchgate.net/publication/325391877_Business_Corruption_and_Human_Rights_Towards_a_New_Responsibility_for_Corporations_to_Combat_Corruption> accessed 07 March 2024.

Implementing the proposed measures across diverse jurisdictions, with different political, economic and cultural backgrounds may pose a huge challenge (due to variations in both legal systems and corruption levels), it also provides a basis for improved global cooperation among governments, businesses, civil society, and international organisations, under the shared goal of combating bribery and other forms of corruption, which presents a lot of benefits (be it cultural, political or economical for each jurisdiction).⁸³

In terms of opportunities, the application of the OECD Guidelines allows the implementation of a corporate culture that prioritises ethics and compliance, thus enhancing reputation and building trust (positive brand image), with an emphasis on the necessity of adequate training and support to enhance the capabilities of businesses, when needed, in order to foster a culture of overall ethical behaviour.⁸⁴

In order to strengthen corporate accountability, due diligence politics must address crucial governance challenges. These challenges include insufficient attention to outcomes in reporting obligations, weak state monitoring, limited stakeholder involvement, and difficulties in establishing legal liability.⁸⁵

However, some challenges persist: managing compliance within expansive global business networks and intricate supply chains is challenging. Ensuring adherence to anti-bribery protocols across multifaceted networks involving numerous stakeholders, subcontractors, and subsidiaries presents a substantial hurdle.

Furthermore, providing resources and capabilities for companies, particularly smaller or medium-sized enterprises, to implement anti-bribery and corruption measures poses yet another challenge, as these companies often face limitations in financial resources and specialized expertise. Likewise, ensuring adequate training, resources, and support assumes critical importance for achieving effective compliance across the board, which can also be a challenge due to the exact same reasons. Thus, it is imperative to provide SMEs with the support and resources needed to help them implement effective anti-bribery and corruption measures to ensure that these companies also are able to achieve compliance with regulatory standards.⁸⁶

⁸³ *Ibidem*.

⁸⁴ David Hess, 'Business, Corruption, and Human Rights: Towards a New Responsibility for Corporations to Combat Corruption' (2017) 4 Wisconsin Law Review <https://www.researchgate.net/publication/325391877_Business_Corruption_and_Human_Rights_Towards_a_New_Responsibility_for_Corporations_to_Combat_Corruption> accessed 07 March 2024.

⁸⁵ Almut Shilling-Vacaflor and Andrea Lenschow, 'Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges' (2023) 17 Regulation and Governance <<https://doi.org/10.1111/rego.12402>> accessed 27 December 2023.

⁸⁶ OECD (2020), Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change, OECD Publishing, Paris, p. 62.

One additional remark that concludes the overview of the challenges and opportunities of the provisions of Chapter VII, is the imperative necessity to prevent and address harm effectively, which may straddle both challenges and opportunities within the context of implementing anti-bribery measures. While this concept extends beyond the confines of the present chapter, its relevance is particularly pronounced concerning the obligations of enterprises in executing human rights due diligence and the corresponding duties assigned to states, notably encapsulated within the framework of state duty to protect (which encompass measures aimed at addressing misconduct perpetuated by businesses, ranging from prevention to investigation, sanction, and rectification).⁸⁷

This delineation underscores a crucial dichotomy between procedural and substantive remedies. Procedural remedies concern the accessibility and efficacy of mechanisms for lodging complaints and resolving disputes, whereas substantive remedies are intrinsically linked to the outcome of the remedy, emphasizing the need for impactful reparations rather than nominal compensation. Substantive remedies aspire towards a restoration process that surpasses mere financial redress, striving to reverse the adverse effects of harm suffered and reinstating the affected party to a position resembling their pre-transgression state.⁸⁸

However, the efficacy of substantive remedies pivots significantly on their availability and accessibility. Regulatory frameworks that forbid corporate misconduct but lack effective mechanisms to redress harm risk being ineffectual, particularly as victims and enterprises may not possess equal capacities or resources to pursue remedies. Establishing substantive remedies, particularly outside the confines of the judicial system, presents an opportunity to level the playing field among all parties involved in misconduct cases.⁸⁹

Despite the provision of procedural remedies, access to substantive remedy through judicial channels may be hindered by power imbalances, with better-resourced parties often holding a distinctive advantage. This disparity not only undermines the pursuit of justice but also distorts the potential victims to translate procedural access into substantive relief. Consequently, in the realm of human rights and business conduct, there is a clear opportunity to enhance non-adversarial conflict resolution mechanisms (such as the NPCs, for example), perceived as better

⁸⁷ Karin Buhmann, 'Confronting challenges to substantive remedy for victims: Opportunities for OECD NCPs under a due diligence regime involving civil liability' (2023) *Business and Human Rights Journal Nordic & European Company Law Working Paper 23/2023*, 4 <<https://ssrn.com/abstract=4486979>> accessed 21 November 2023.

⁸⁸ Karin Buhmann, 'Confronting challenges to substantive remedy for victims: Opportunities for OECD NCPs under a due diligence regime involving civil liability' (2023) *Business and Human Rights Journal Nordic & European Company Law Working Paper 23/2023*, 4 <<https://ssrn.com/abstract=4486979>> accessed 21 November 2023.

⁸⁹ *Ibidem*.



suited to ensure that interests of the disadvantaged party (usually, the victim) are adequately articulated and considered in the substantive outcome of the process.⁹⁰

⁹⁰ *Ibidem.*

V. Implementation Procedures of the 2023 OECD Guidelines and the role of National Contact Points (NCPs)

Luís Prata e Castro, Mariana Nunes and Rodrigo Sepriano

Introduction

In the contemporary global landscape, fostering responsible business conduct (RBC) and promoting business and human rights standards have become integral components of the international economic cooperation and development agenda. In this scenario, the Organization for Economic Cooperation and Development (OECD) has been at the forefront of advancing these principles through various mechanisms, with a particular focus to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (from now on the OECD Guidelines) and the role of the National Contact Points (NCP)⁹¹.

The formal establishment of the NCP mechanism occurred in 2000, with the revision of the OECD Guidelines⁹². This represented a significant milestone in the OECD's commitment to enhancing corporate accountability and promoting ethical business practices on a global scale. With the adoption of the UNGPs in 2011, the OECD Guidelines were further updated strengthening the mandate of National Contact Points (NCPs). NCPs were tasked with more robustly promoting the effective implementation of the Guidelines, serving as fora for mediation, and resolving conflicts between businesses and stakeholders. This enhanced mandate is designed to ensure that NCPs can address and mediate issues arising from multinational enterprises' activities and operations and its compliance with the Guidelines⁹³.

The 2011 version also introduced specific operational criteria for NCPs, focusing on visibility, accessibility, transparency, and accountability, in order to enhance the effectiveness and reliability of NCPs. To ensure consistency and clarity in handling cases, the 2011 update encouraged NCPs to adopt standardized procedures⁹⁴. Furthermore, the 2011 update emphasised the importance of regular reporting on NCP activities. The update promoted greater international cooperation and coordination among NCPs from different countries, encouraging NCPs to share best practices to implement a unified approach to uniformly disseminate the OECD Guidelines across different jurisdictions.⁹⁵

⁹¹ Svoboda, Ondrej. (2020). Coming of Age: The System of OECD National Contact Points for Responsible Business Conduct in Its 20 Years. 10.1007/8165_2020_53.

⁹² Letnar Cernic, Jernej. (2008). Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises. *Hanse Law Review* 3.

⁹³ OECD (2012), Innovations in NCP Structure and Procedures", in Annual Report on the OECD Guidelines for Multinational Enterprises 2011: A New Agenda for the Future, OECD Publishing, Paris, Available at: <https://doi.org/10.1787/mne-2011-4-en>, (Accessed: 15 June 2024).

⁹⁴ OECD (2012), Innovations...*op cit notam* 5.

⁹⁵ OECD (2012), Innovations...*op cit notam* 5.

The 2023 version of the Guidelines has strengthened implementation procedures in order to ensure the visibility, effectiveness, and functional equivalence of National Contact Points for Responsible Business Conduct. As indicated, all 51 governments that adhere to the OECD Guidelines are obliged to establish an NCP domestically. NCPs can be described as agencies established by governments to promote the OECD Guidelines, and to handle cases referred to as “specific instances” as a form of non-judicial grievance mechanism⁹⁶.

The OECD Guidelines establish a double pivotal role for the NCPs: firstly, they serve to promote the Guidelines and secondly, they act as a forum for discussion of all matters relating to the Guidelines.⁹⁷ In short, NCPs promote the Guidelines by advocating responsible corporate conduct, resolving disputes, and fostering constructive dialogue among different stakeholders. Through adherence to the OECD Guidelines, NCPs aim to promote sustainable corporate practices conducive to societal well-being and inclusive growth.

As indicated, NCPs provide a mediation and conciliation platform for the resolution of cases commonly referred to as “specific instances”. Through this procedure, any individual or organization with an interest in the matter can submit a case to an NCP regarding a company operating in or from the country of the NCP in relation to the non-compliance of the Guidelines.

One of the main advantages of this system is that the NCP possess jurisdictional flexibility, which allows them to consider issues that arise outside of their country of origin. It should be noted that specific instances are not legal cases and that NCPs are not judicial bodies. Furthermore, NCPs are unable to impose sanctions, directly provide compensation, or compel parties to participate in a conciliation or mediation process. The objective of dispute resolution through NCPs is to achieve a mutually acceptable solution through the identification of constructive solutions and the establishment of a mutual agreement between the parties involved.⁹⁸

Regarding their institutional design, it is essential that the structure of each NCP balances stability and flexibility and at the same time offers impartiality. In this regard, five types of institutional design of NCPs can be identified: *monoagency* or *single agency* (composed of one or several representatives of a single ministry); *inter-agency* (composed of representatives from several ministries); *multipartite* (composed of representatives of the government, business and trade unions, or/and including representatives from civil society); *expert-based* or *independent* NCPs (composed of independent experts); and *hybrid structure* (could combine single-agency or inter-

⁹⁶ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>, p. 5.

⁹⁷ OECD (2019), Guide for National Contact Points on Structures and Activities, OECD Guidelines for Multinational Enterprises.

⁹⁸ OECD (2019), Guide for National Contact Points on Structures and Activities, OECD Guidelines for Multinational Enterprises, p. 15.

agency with expert-based type).⁹⁹ Some adhering countries have adapted their structures in order to promote impartiality and transparency. For example, in 2018 the French NCP was restructured as an independent unit within the Treasury Department to increase its visibility and autonomy.¹⁰⁰ Also, in 2019 the Australian National Contact Point innovated by introducing in its structures the figure of independent examiners, who are experts contracted to the Treasury to manage complaints against multinational enterprises brought to the NCP. Their responsibilities include decision-making, communication and conciliation with parties, and publishing statements on findings. Additionally, independent examiners raise awareness of the functions of the Australian NCP and promote responsible business conduct standards under the OECD Guidelines through their networks and events¹⁰¹.

According to official data provided by the OECD, NCPs have currently received over 650 specific instances regarding issues arising in over 100 countries and territories¹⁰². Nevertheless, in the case of Portugal, the Portuguese NCP has just received one specific instance, filed by a trade union regarding the activities of a multinational enterprise operating in Portugal¹⁰³.

NCPs and Main Adjustments after the 2023 Update

The main amendments and adjustments on National Contact Points (NCPs) for Responsible Business Conduct, as outlined in the OECD Guidelines 2023 version, involve several key aspects aimed at enhancing their effectiveness and functional equivalence across different countries. Among the key changes introduced in Part II of the Guidelines entitled Implementation Procedures, it is important to highlight some crucial aspects.

Firstly, the notions of visibility, accessibility, transparency, accountability, impartiality, and predictability of the NCPs were highlighted. These mechanisms are now expected to operate based on these core effectiveness criteria, with the objective of ensuring that they are functional and trusted by stakeholders.

⁹⁹ Laura Íñigo Álvarez (2025): "Improving the Effectiveness of Non-Judicial Mechanisms Under the OECD National Contact Points: Issues of Legitimacy and Accessibility," In *Exploring Corporate Human Rights Responsibilities in OECD Case law*. Cham, Switzerland: Springer Cham, 135-153.

¹⁰⁰ *op cit. notam* 6, p. 7.

¹⁰¹ Australian National Contact Point Complaint Procedure, Available at: <https://ausncp.gov.au/sites/default/files/2022-07/AusNCP-complaint-procedures.pdf> accessed 19 June 2024.

¹⁰² OECD, 'Database of Specific Instances' <https://mneguidelines.oecd.org/database/> accessed 16 June 2024.

¹⁰³ Direção-Geral das Atividades Económicas, 'Base de Dados de Instâncias Específicas Coordenadas Pelo PCN PT' <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/ponto-de-contacto-nacional-para-conduta-empresarial-responsavel/base-dados-de-instancias-especificas.aspx> accessed 16 June 2024. In May 2004, the Portuguese National Contact Point (NCP) received a request for a review from a trade union which alleged that a multinational enterprise had breached the employment and industrial relations provisions of the Guidelines resulting from a factory closure in Portugal. After an initial assessment, the NCP concluded that the Guidelines had not been breached and subsequently concluded the procedure with the agreement of the parties involved.

Despite the considerable diversity of institutional arrangements that NCPs currently face in adherent countries, their organisational structure must be flexible enough to be oriented by effectiveness criteria. These criteria include the composition of NCPs, which may be comprised of government officials, interagency bodies, or multi-stakeholder bodies including representatives from business, labour, and NGOs. In particular, governments are encouraged to involve various stakeholders to enhance the effectiveness of NCPs. In this regard, there are recommendations for the composition of the NCP, with a particular focus on the possibility of having a multistakeholder body, including civil society organisations. The recommendations also focus more on stakeholder engagement, in order to boost the effectiveness of the Guidelines.

The promotion and dissemination of the Guidelines is also included in the role of the NCPs. These instances are pivotal in disseminating the OECD rules through suitable channels, including online information and in national languages. They should also promote related OECD guidance on responsible business conduct.

Coordination and cooperation roles have also been formally incorporated into the NCPs' specific actions. In other words, NCPs serve as facilitators of dialogue in different adhering countries. They are expected to cooperate on matters related to the Guidelines and share experiences regularly in order to foster a coherent approach globally. In other words, NCPs are expected to facilitate dialogue in different adhering countries, cooperate on matters related to the Guidelines, and share experiences regularly to foster a coherent approach globally. Finally, adhering countries are expected to undertake periodic peer reviews of their NCPs to ensure they meet the required standards and continuously improve their effectiveness.

There are also significant changes in the Investment Committee provisions as the Investment Committee gains relevance as it can now determine that an NCP has, for an extended period and without legitimate reason, manifestly not been operating in a way consistent with these Procedures, it can make appropriate recommendations to the adherent state and invite it to report back within a set timeframe. This new feature increases the involvement with the implementation of the Guidelines and ensures a coherent application of the Guidelines.

Regarding specific instances, there has been a number of relevant clarifications. NCPs are obliged to make available to the public the results of the proceedings by issuing a final statement in several phases of the procedure, that is: when the issue raised does not warrant further examination; when the parties have reached an agreement; when no agreement is reached, or the party is unwilling to participate in the proceedings. These statements would serve to bring more transparency to the procedures. Also, the results of specific instances must now be notified to the Investment Committee and WPRBC timely.

Finally, it has been recommended that the NCP engage in follow-up where relevant once the specific instance has closed, in relation to the implementation of the recommendations or if there has been an agreement concluded by the parties. In this context, it is also recommended that the NCP publish a follow-up statement. Furthermore, any follow-up that the NCP intends to undertake should also be referred to in the final statement, including deadlines to do so.

Opportunities and challenges of the Implementation procedures and the role of NCPs in the 2023 OECD Guidelines

While the 2023 update of the Guidelines has covered a range of relevant topics, the improvements in the Implementation Procedures of the Guidelines as regards the work of NCPs can be seen as the weakest part by some civil society organisations and scholars¹⁰⁴, as the changes remain merely recommendations and mostly optional, something that considerably hinders the effectiveness of NCPs and the NCP system as a whole. It should be highlighted that periodic peer reviews to NCPs activities were introduced and this will have to be done by adherent states. These peer reviews will allow NCPs to increase effectiveness and share best practices, by ensuring recommendations and doing a deep analysis on the conducted activities. However, there are still issues on how NCPs should interpret and apply the Guidelines that could have been better addressed. In this regard, some key issues can be referred to as elements of criticism and improvement.

The first identifiable critic regards clarity of the procedure, as the need for clearer mechanisms and stronger enforcement mechanisms for NCPs that could provide them with better guidance on their roles and responsibilities¹⁰⁵. Stakeholders, including both complainants and corporations, face uncertainty about the nature of the NCPs' involvement in dispute resolution. This raises the question of "Should the NCPs primarily serve as mediators, facilitating negotiations and agreements between parties? Or should they take on a more authoritative role as decision-makers, making determinations on whether a corporation has breached the guidelines?". This ambiguity creates confusion and frustration among those involved in disputes, and without clear guidance on the NCPs' function, stakeholders struggle to navigate the resolution process effectively, i.e., this lack of clarity undermines the credibility and effectiveness of the NCP system as a whole. Thus, addressing this issue is essential for ensuring that the NCPs can fulfil their intended purpose of promoting RBC and solving conflicts in a fair and transparent manner.

¹⁰⁴ Marian G Ingrams, Katharine Booth, and Joseph Wilde-Ramsing, 'What's new?: "Targeted update" strengthens OECD Guidelines for Multinational Enterprises' (OECD Watch, 9 June 2023) <https://www.oecdwatch.org/whats-new-targeted-update-strengthens-oecd-guidelines-for-multinational-enterprises/> accessed 19 May 2024.

¹⁰⁵ In Maheandiran, Bernadette. 'Calling for Clarity: How Uncertainty Undermines the Legitimacy of the Dispute Resolution System under the OECD Guidelines for Multinational Enterprises.' *Harvard Negotiation Law Review* 20:205, (2015) pp. 205–244.

In a similar vein, Ingrams¹⁰⁶ has urged for clearer mechanisms and stronger enforcement mechanisms for National Contact Points (NCPs) as well as ensure effective implementation of the Guidelines in order to facilitate the resolution of complaints. To address this specific challenge, OECD Watch, an organization that serves as a coalition of civil society organizations working to promote corporate accountability through the effective implementation of the OECD Guidelines, suggests the need for reforms that empower NCPs with greater authority and resources to fulfil their mandate, providing NCPs with enhanced investigative powers, ensuring adequate funding, and staffing levels, and establishing clear mechanisms for monitoring and enforcing compliance with the guidelines. Ochoa Sanchez¹⁰⁷ has also advocated for a more proactive role of the NPCs in enforcing compliance with the OECD Guidelines for Multinational Enterprises, highlighting important principles that ensure fairness and effectiveness in resolving complaints.

Other similar critics refer to the lack of predictability, transparency, institutional arrangements and stakeholder engagements, as the need for reforms that empower NCPs since they lack authority and resources to fulfil their mandate. In particular, it has been mentioned that NCPs have insufficient investigative powers, inadequate funding, and staffing levels, and lack clear mechanisms for monitoring and enforcing compliance with the Guidelines¹⁰⁸.

There is also criticism regarding their insufficient transparency and accountability in the operations, including making information about NCP processes and decisions more accessible to the public, as well as establishing mechanisms for independent oversight and review of NCP activities¹⁰⁹. It is of paramount importance that NCPs demonstrate transparency in their operations if they are to build trust and credibility among their stakeholders, which include businesses, governments, civil society, and the public in general. This requires transparent communication regarding processes, decisions, and outcomes¹¹⁰. In this regard, some authors have questioned the current role of NCPs as true remedy mechanism and has emphasized the need for more transparency and stakeholder engagement. Letnar Čerňič highlighted the need of

¹⁰⁶ In Ingrams, Marian. 'The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text' (2023) *Business and Human Rights Journal*, pp. 1–7. doi:10.1017/bhj.2023.40.

¹⁰⁷ In Ochoa Sanchez, Juan Carlos. 'The Roles and Powers of the OECD National Contact Points Regarding Complaints on an Alleged Breach of the OECD Guidelines for Multinational Enterprises by a Transnational Corporation' (2015) 84:1 *Nordic Journal of International Law*

¹⁰⁸ In Ingrams, Marian. 'The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text' (2023) *Business and Human Rights Journal*, pp. 1–7. doi:10.1017/bhj.2023.40.

¹⁰⁹ In Ingrams, Marian. 'The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text' (2023) *Business and Human Rights Journal*, pp. 1–7. doi:10.1017/bhj.2023.40.

¹¹⁰ In, OECD. (2022). "Annual Report on the OECD Guidelines for Multinational Enterprises 2022: Promoting Responsible Business Conduct in a Changing World." Available at: OECD Annual Report 2022.

parliamentary scrutiny and public engagement in monitoring NCP performance and judicial review of NCP decisions as a key element to enhance accountability¹¹¹. Also, Booth¹¹² has criticized the fact that the term “remedy” is still not present in the procedures for NCPs, reinforcing the criticism of the role of NCP as truly remediation mechanism.

The Portuguese NCP

The Portuguese National Contact Point for the OECD Guidelines for Multinational Enterprises (PT NCP) was established in 2000 as an interagency that operates between the Directorate-General for Economic Activities (DGAE) and the Agency for Investment and Foreign Trade of Portugal (AICEP Portugal Global) intending to assist “companies and stakeholders to adopt appropriate measures for the promotion and implementation of the OECD Guidelines for Multinational Enterprises”¹¹³. The PT NCP undertook a peer review process in 2023 where a number of recommendations were proposed in order to improve its accessibility, visibility, transparency and impartiality¹¹⁴.

As regards the institutional arrangements, the Portuguese NCP structure is composed of members from the Ministry of Economy and Maritime Affairs (represented by the DGAE) and the Ministry of Foreign Affairs (represented by AICEP Portugal Global). In this sense, one of the core recommendations has to do with including an advisory board and/or integrating different stakeholders into its structure, as well as assign appropriate human and financial resources¹¹⁵. As argued by different scholars, the multipartite or expert-based types of NCP structure are preferred, since these would increase the legitimacy and impartiality of the procedure. In fact, Buhmann affirms that “It is likely that the more independent and/or multipartite, the higher the likelihood that the NCP, the process, and the outcome will be perceived of by stakeholders to be legitimate”.¹¹⁶

As for the submission of cases, the NCP has participated as lead NCP in only one case from 3 May 2004. However, there were other cases in which the Portuguese NCP intervened, specifically

¹¹¹ In Letnar Černej, Jernej. 'Corporate Responsibility Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises' (2008) 4:1 *Hanse Law Review* 71.

¹¹² OECD Watch, 'State of Remedy 2022: Examining Outcomes of Complaints Concluded in 2022, Exploring Highlights for Remedy under the Updated OECD Guidelines' (19 July 2023) <https://www.oecdwatch.org/state-of-remedy-2022/> accessed 18 May 2024.

¹¹³ “Direção-Geral das Atividades Económicas - National Contact Point Portugal for Responsible Business Conduct” <<https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct.aspx>>.

¹¹⁴ OECD, 'OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Portugal' (2023) <https://mneguidelines.oecd.org/ncps/national-contact-point-peer-reviews-portugal.pdf> accessed 17 May 2024.

¹¹⁵ OECD, 'OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Portugal' (2023) <https://mneguidelines.oecd.org/ncps/national-contact-point-peer-reviews-portugal.pdf> accessed 17 May 2024, pg 6-7.

¹¹⁶ Karin Buhmann (2020), *supra* note 9, 47.

in four other cases¹¹⁷: the Portuguese NCP intervened in a case led by the Danish NCP in 2013 linked to the agricultural sector and labour right breaches¹¹⁸, in 2014 the Portuguese NCP intervened in a case lead by the Polish NCP also related to labour rights¹¹⁹. In 2020, the Portuguese NCP intervened in two more cases, one on a complaint submitted against Teleperformance during and related to the COVID-19 pandemic¹²⁰. In the second case, the Portuguese NCP intervened in a case of the Chilean NCP on Tensa EIP¹²¹ company regarding a liquidation company process. As for promotional activities, peer review refers that since 2022 the NCP has shown clear improvement in comparison to previous years where there was lack of initiative in promotional efforts¹²².

The lack of cases submitted to the PT NCP could be linked to issues of lack of visibility, that is why the dissemination of the Guidelines is so important, together with the awareness-raising about the availability of the specific instance procedure to the public in general and relevant stakeholders. In this sense, the PT NCP could potentially play a key role in areas such as agriculture, construction, energy or the service sector, in particular, tourism.

After the peer-review process was conducted, the PT NCP has been already incorporating the necessary changes to the promotional activities and the public information available in their website. They have now created a YouTube channel where they promote the Guidelines and the NCP work.¹²³ However, as it happens with other NCPs, much would depend on the resource allocation, both financial and human resources, and changes to the institutional structure to follow with all the proposed recommendations.

¹¹⁷ B Albuquerque, 'The Portuguese National Contact Point: Challenges and Opportunities' (Nova Centre on Business, Human Rights and the Environment Blog, 25 January 2022) <https://novabhre.novalaw.unl.pt/the-portuguese-national-contact-point-challenges-and-opportunities/> accessed 16 June 2024.

¹¹⁸ Organisation for Economic Co-operation and Development, 'Alleged human and labour rights in Denmark and Portugal' <https://mneguidelines.oecd.org/database/instances/dk0009.htm> accessed 16 June 2024.

¹¹⁹ 'Employment Relations Including Trade Unions Issues Involving a Polish Enterprise Being Part of a Multinational Company with Headquarters in Portugal' (no date) Guidelines for MNEs - Organisation for Economic Co-operation and Development <https://mneguidelines.oecd.org/database/instances/pl0004.htm> accessed 16 June 2024.

¹²⁰ 'UNI Global Union and 4 French Trade Union Federations (CFDT Fédération Communication Conseil Culture, CGT-FAPT, CGT Fédération des Sociétés d'Etudes and FO-FEC) & Teleperformance' (no date) Guidelines for MNEs - Organisation for Economic Co-operation and Development <https://mneguidelines.oecd.org/database/instances/fr0030.htm> accessed 16 June 2024.

¹²¹ Organisation for Economic Co-operation and Development, 'Liquidator & Tensa EIP' <https://mneguidelines.oecd.org/database/instances/cl0016.htm> accessed 16 June 2024

¹²² OECD, 'OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Portugal' (2023) <https://mneguidelines.oecd.org/ncps/national-contact-point-peer-reviews-portugal.pdf> accessed 17 May 2024, pg 6-7.

¹²³ Please see https://www.youtube.com/@DGAE_GOV_PT

VI. References

Bahoo, Salman; Alon, Ilan; and Paltrinieri, Andrea. “Corruption in international business: A review and research agenda”, 29 *International Business Review* (2020) <<https://doi.org/10.1016/j.ibusrev.2019.101660>>.

Bhatt Kinnari; Erdem Turkelli, Gamze. “OECD National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization?”, *Business and Human Rights Journal*, 6(3), (2021), 423-448. doi:10.1017/bhj.2021.30.

Bommier, Swann. “Responsabilité environnementale des entreprises et régulation extraterritoriale - L’implantation de Michelin en Inde à l’épreuve des Principes directeurs de l’OCDE”, *Etudes internationales* 47 (2017): 107-130.

Bugalski, Natalie; Pred, David. “Lessons from the ANZ-Phnom Penh Sugar Case for the OECD National Contact Point System of Corporate Accountability”, *Business and Human Rights Journal*, 1-6, (2023) doi:10.1017/bhj.2023.24.

Buhmann, Karim. “Confronting challenges to substantive remedy for victims: Opportunities for OECD NCPs under a due diligence regime involving civil liability” (2023) *Nordic & European Company Law Working Paper* 23/2023, 4 <https://ssrn.com/abstract=4486979>.

Buhmann, Karim. “National Contact Points under OECD’s Guidelines for Multinational Enterprises: Institutional Diversity Affecting Assessments of the Delivery of Access to Remedy in Accountability”, In *International Business Operations and the Law: Providing Justice for Corporate Human Rights Violations in Global Value Chains*. Routledge, 2019, 38-59.

Buhmann, Karin. “Confronting Challenges to Substantive Remedy for Victims: Opportunities for OECD National Contact Points under a Due Diligence Regime Involving Civil Liability”, *Business and Human Rights Journal*, 1-24 (2023) doi:10.1017/bhj.2023.9

Cantú Rivera, Humberto. “The OECD and Human Rights: the Case of the Guidelines for Multinational Enterprises and the National Contact Points”, *Anuario Mexicano de Derecho Internacional* 15 (2015): 611-658.

Cantú, Rivera, Humberto, “Corporate Liability for Human Rights Abuses in Latin American Courts: Some Recent Developments”, 7 *Business and Human Rights Journal* 481 (2022).

Corcione, Elena. “In the Wake of Bonsucro: Multi-Stakeholder Initiatives and Third-Party Certifiers at the Test Bench of OECD National Contact Points”, *Business and Human Rights Journal*, 8(2): (2023) 271-276. doi:10.1017/bhj.2023.17.

Cuervo-Cazurra, Alvaro “Corruption in international business” (2016) 51 *Journal of World Business* <<https://ssrn.com/abstract=2967999>>.

Cuervo-Cazurra, Alvaro and Genc, Mehmet, “Transforming disadvantages into advantages: developing-country MNEs in the least developed countries” (2008) *Journal of International Business Studies* 39(6) <<http://www.palgrave-journals.com/jibs/journal/v39/n6/pdf/8400390a.pdf>>.

De Almeida, Margarida Grave, and Inna Choban De Sousa Paiva. “Audit Committees and Its Effect on Environmental, Social, and Governance Disclosure.” In *2022 17th Iberian Conference on Information Systems and Technologies (CISTI)*, 1–6. Madrid, Spain: IEEE, 2022. <https://doi.org/10.23919/CISTI54924.2022.9820167>.

De Schutter, Olivier. “The Prevention of Corruption as Part of Mandatory Due Diligence in EU Legislation”, Transparency International EU and Global Witness (2021) <<https://transparency.eu/wp-content/uploads/2021/04/Web-The-Prevention-of-Corruption-Due-Diligence-EU-Legislation.pdf>>.

Eppel, Jeremy. “Sustainable Development and Environment: A Renewed Effort in the OECD.” *Environment, Development and Sustainability* 1, no. 1 (1999): 41–53. <https://doi.org/10.1023/A:1010052116045>.

Feld, Leonard. “A (Slight) Raise of the Bar: Due Diligence in the 2023 Update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct” (2023) *Nova Centre on Business, Human Rights and the Environment Blog*.

Ford et al., Michele. “Calling multinational enterprises to account: CSOs, supranational institutions and business practices in the global south” (2023) 4:1 *Global Networks* <<https://doi.org/10.1111/glob.12438>>.

Hess, David. “Business, Corruption, and Human Rights: Towards a New Responsibility for Corporations to Combat Corruption” (2017) 4 *Wisconsin Law Review*.

Hösli, Andreas, and Rolf H. Weber. “Climate Change Reporting and Due Diligence: Frontiers of Corporate Climate Responsibility.” *European Company and Financial Law Review* 18, no. 6 (March 15, 2022): 948–79. <https://doi.org/10.1515/ecfr-2021-0035>.

Ingrams, Marian G. “The 2023 Update of the OECD Guidelines sets Stronger Standards for Companies but Weak Expectations for Governments – High and Lowlights from the New Text”, *Business and Human Rights Journal*, 1-7 (2023), doi:10.1017/bhj.2023.40

Jandhyala, Srividya and Oliveira, Fernando. “The role of international anti-corruption regulations in promoting socially responsible practices” 190 *Journal of Economic Behavior and Organization* (2021) <<https://doi.org/10.1016/j.jebo.2021.07.017>>.

Khoury; Stéfanie, Whyte, David. “Sidelineing Corporate Human Rights Violations: The Failure of the OECD’s Regulatory Consensus”, 18:4 *Journal of Human Rights* 363, (2019).

Letnar Černic, Jernej. “Corporate Responsibility Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises”, 4:1 *Hanse Law Review* 71 (2008).

Letnar Černic, Jernej. “The Divergent Practices of NCPs under OECD Guidelines for Multinational Enterprises: Time for a More Uniform Approach?”, *International Labor Rights Case Law* 7.1 (2021).

Lichuma, Caroline O. “Meaningful Stakeholder Engagement 2.0.?: Tracing Developments in the Revised 2023 OECD Guidelines for Multinational Enterprises”, *Nova Centre on Business, Human Rights and the Environment Blog*, 24th October 2023.

M Fiss, Owen, “The Death of the Law?”, 72:1 *Cornell Law Review* 1 (1986).

Macchi, Chiara. “The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of ‘Climate Due Diligence.’” *Business and Human Rights Journal* 6, no. 1 (February 2021): 93–119. <https://doi.org/10.1017/bhj.2020.25>.

Macchi, Chiara. “The Role of the OECD National Contact Points in Improving Access to Justice for Victims of Human Rights Violations in the EU Member States”. In *La implementación de los Principios Rectores de las Naciones Unidas sobre empresas y los derechos humanos por la Unión Europea y sus Estados miembros*, Thomson Reuters-Aranzadi (2017): 145-165.

Macchi, Chiara. *Business, Human Rights and the Environment: The Evolving Agenda*. The Hague: T.M.C. Asser Press, 2022. <https://doi.org/10.1007/978-94-6265-479-2>.

Maheandiran, Bernadette. “Calling for Clarity: How Uncertainty Undermines the Legitimacy of the Dispute Resolution System under the OECD Guidelines for Multinational Enterprises.” *Harvard Negotiation Law Review* 20 (2015): 205–44.

Martin-Chenut, Kathia, De Quenaudon, René; Varison, Leandro. “Les Points de contact nationaux : un forum de résolution des conflits complémentaire ou concurrent du juge ?” In *La RSE saisie par le droit perspectives interne et internationale*, edited by Kathia Martin-Chenut and René de Quenaudon. Pedone (2015).

May, Christopher. “Market Exchange and the Rule of Law: Confidence in Predictability”, 10:2 *Hague Journal on the Rule of Law* 365 (2018), 385.

McCorquodale, Robert, “Defining the International Rule of Law: Defying Gravity?”, 65:2 *International and Comparative Law Quarterly* 277 (2016).

Murray, Jill. “A New Phase in the Regulation of Multinational Enterprises: The Role of the OECD.” *Industrial Law Journal* 30, no. 3 (September 1, 2001): 255–70. <https://doi.org/10.1093/ilj/30.3.255>.

Ochoa Sánchez, Juan Carlos, “The Roles and Powers of the OECD National Contact Points Regarding Complaints on an Alleged Breach of the OECD Guidelines for Multinational Enterprises by a Transnational Corporation”, 84:1 *Nordic Journal of International Law* 103 (2015).

Ochoa Sánchez, Juan Carlos. “An Empirical Examination of the Function of the OECD National Contact Points to Handle Complaints on an Alleged Breach of the OECD Guidelines for Multinational Enterprises.” In *Bulletin of Comparative Labour Relations: Protecting Labour Rights in a Multi-Polar Supply Chain and Mobile Global Economy*, edited by Roger Blanpain, Jan Wouters, Glenn Rayp, Laura Beke, and Axel Marx, 89, Wolters Kluwer (2014) 159–69.

Oldenziel, Joris, and Joseph Wilde-Ramsing. “10 Years on: Assessing the Contribution of the OECD Guidelines for Multinational Enterprises to Responsible Business Conduct.” *SSRN Electronic Journal*, 2010. <https://doi.org/10.2139/ssrn.1641036>.

Rajamani, Lavanya, and Jacqueline Peel. “International Environmental Law: Changing Context, Emerging Trends, and Expanding Frontiers.” In *The Oxford Handbook of International Environmental Law*, edited by Lavanya Rajamani and Jacqueline Peel, 2nd ed., xciv-C1.N187. Oxford University Press, 2021. <https://doi.org/10.1093/law/9780198849155.003.0001>.

Ramasasthy, Anita, “Is There a Right to Be Free from Corruption?” (2015) 49(2) *UC Davis Law Review* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926618#>.

Ruffing, Kenneth G. “The Role of the Organization for Economic Cooperation and Development in Environmental Policy Making.” *Review of Environmental Economics and Policy* 4, no. 2 (July 1, 2010): 199–220. <https://doi.org/10.1093/reep/req007>.

Ruggie, John Gerard, and Tamaryn Nelson. “Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges.” *SSRN Electronic Journal*, 2015. <https://doi.org/10.2139/ssrn.2601922>.

Ruggie, John; Tamaryn, Nelson. “Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges.” *The Brown Journal of World Affairs* 22 (1)(2015), 99– 127.

Shilling-Vacaflor, Almut and Lenschow, Andrea, “Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges” (2023) 17 *Regulation and Governance* <<https://doi.org/10.1111/rego.12402>>.

Souque, Maylis. “L'affaire Michelin en Inde: une illustration du rôle normatif du PCN et de l'effectivité des Principes directeurs de l'OCDE”. In *L'entreprise multinationale et le droit international, Actes du colloque annuel de la Société française pour le droit international*, edited by Laurence Dubin, Pierre Bodeau-Livinec, Jean-Louis Iten and Vincent Tomkiewicz, Pedone (2017) 381-404.

Souque, Maylis. “Structure et rôle des Points de Contact Nationaux : Diversité et Culture”. In *Actes du colloque organisé par l'OCDE et la SFDI pour les 40 ans des Principes directeurs de l'OCDE le 19 décembre 2016*, edited by Maylis Souque”, Pedone (2017) 141-155.

Van't Foort, Sander. “The History of National Contact Points and the OECD Guidelines for Multinational Enterprises”, *Rechtsgeschichte-Legal History* 25 (2017): 195-214.

Zhang, Yuling, Hao Zhao, and Manqi Zhu. “Multinational Enterprises and Environmental Degradation--What Makes Multinational Enterprises Hard to Be Held Accountable and Solutions.” *Highlights in Business, Economics and Management* 7 (April 5, 2023): 127–34. <https://doi.org/10.54097/hbem.v7i.6933>.

OECD Documents and Instruments

OECD (1997), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention), OECD Publishing, Paris.

OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing, Paris.

OECD (2020), Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change, OECD Publishing, Paris, p. 62.

OECD (2021), Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, OECD Publishing, Paris.

OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris.

VIII. Annex: Comparative Tables

Chapter on Human Rights:

| OECD 2011 | OECD 2023 |
|---|---|
| 4 - Have a policy commitment to respect human rights. | 4 - Have a publicly available policy commitment to respect human rights. |

Chapter on Employment and Industrial Relations:

| OECD 2011 | OECD 2023 |
|---|---|
| Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards: | Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards, avoiding any unlawful employment and industrial relations practices, and in line with due diligence expectations described in Chapters II and IV: |
| 1/a: Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing. | 1/a: Respect the right of workers to establish or join trade unions and representative organisations of their own choosing, including by avoiding interfering with workers' choice to establish or join a trade union or representative organisation of their own choosing. |
| 1/b: Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching | 1/b: Respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment. |

| | |
|---|---|
| <p>agreements on terms and conditions of employment.</p> | |
| <p>1/c: Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.</p> | <p>1/c: Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency.</p> |
| <p>1/d: Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.</p> | <p>1/d: Contribute to the elimination of all forms of forced or compulsory labour and take immediate and effective measures towards the elimination of forced or compulsory labour as a matter of urgency.</p> |
| <p>1/e: Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.</p> | <p>1/e: Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, age, religion, political opinion, national extraction or social origin, persons with disabilities or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.</p> |
| | <p>1/f: Provide a safe and healthy working environment in line with the ILO Declaration on Fundamental Principles and Rights at Work.</p> |

| | |
|---|---|
| <p>2/b: Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.</p> | <p>2/b: Provide information in a timely manner to workers' representatives which is needed for meaningful negotiations on conditions of employment.</p> |
| <p>3: Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.</p> | <p>3: Promote consultation and co-operation between employers and workers and their representatives through legitimate processes, structures or mechanisms on matters of mutual concern.</p> |
| <p>4/a: Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.</p> | <p>4/a: Observe standards of employment, contractual arrangements and industrial relations throughout their operations.</p> |
| <p>4/b: When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.</p> | <p>4/b: When multinational enterprises operate in other countries, wages, benefits and conditions of work offered across their operations should not be less favourable to the workers than those offered by comparable employers in the host country. Where comparable employers may not exist, enterprises should provide the best possible wages, benefits and conditions of work, within the framework of government policies and applicable international standards. These should be related to the economic position of the enterprise, but should be at least adequate to</p> |

| | |
|--|--|
| | <p>satisfy the basic needs of the workers and their families.</p> |
| <p>4/c: Take adequate steps to ensure occupational health and safety in their operations.</p> | <p>4/c: Maintain the highest standards of safety and health at work.</p> |
| <p>6: In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.</p> | <p>6: In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the affected workers and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects of such changes. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.</p> |

| | |
|--|---|
| <p>7: In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.</p> | <p>7: In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize or bargain collectively.</p> |
|--|---|

Chapter on the Environment:

| OECD 2011 | OECD 2023 |
|--|--|
| <p>Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:</p> | <p>Enterprises play a key role in advancing sustainable economies and can contribute to delivering an effective and progressive response to global, regional and local environmental challenges, including the urgent threat of climate change. Within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, enterprises should conduct their activities in a manner that takes due account of the need to protect the environment, and in turn workers, communities and society more broadly, avoids and addresses adverse environmental impacts and contributes to the wider goal of sustainable development. Enterprises can be involved in a range of adverse environmental impacts.</p> <p>These include, among others:</p> <ul style="list-style-type: none"> a) climate change; b) biodiversity loss; c) degradation of land, marine and freshwater ecosystems; d) deforestation; e) air, water and soil pollution; f) mismanagement of waste, including hazardous substances. Important differences across environmental impacts are outlined in the commentary to this chapter, including with respect to climate change and how an individual enterprise’s relationship to such impacts should |

| | |
|---|---|
| | <p>be considered in the context of relevant frameworks.</p> |
| <p>1. Establish and maintain a system of environmental management appropriate to the enterprise, including:</p> <p>a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;</p> <p>b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and</p> <p>c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.</p> | <p>1. In particular, enterprises should:</p> <p>Establish and maintain a system of environmental management appropriate to the enterprise associated with the operations, products and services of the enterprise over their full life cycle, including by carrying out risk-based due diligence, as described in Chapter II, for adverse environmental impacts, including through:</p> <p>a) identifying and assessing adverse environmental impacts associated with an enterprise’s operations, products or services, including through collection and evaluation of adequate and timely information regarding the adverse impacts associated with their operations, products and services and where activities may have significant adverse environmental impacts, preparing an appropriate environmental impact assessment;</p> <p>b) establishing and implementing measurable objectives, targets and strategies for addressing adverse environmental impacts associated with their operations, products and services and for improving environmental performance. Targets should be sciencebased, consistent with relevant national policies and international commitments, goals, and informed by best practice;</p> <p>c) regularly verifying the effectiveness of strategies and monitoring progress toward environmental objectives and targets, and periodically reviewing the continued relevance of objectives, targets and strategies;</p> <p>d) providing the public, workers, and other</p> |

| | |
|---|--|
| | <p>relevant stakeholders with adequate, measurable, verifiable (where applicable) and timely information on environmental impacts associated with their operations, products and services based on best available information, and progress against targets and objectives as described in paragraph 1.b;</p> <p>e) providing for, or co-operating in, remediation as necessary to address adverse environmental impacts the enterprise has caused or contributed to, and using leverage to influence other entities causing or contributing to adverse environmental impacts to remediate them.</p> |
| <p>2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:</p> <p>a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and</p> <p>b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.</p> | <p>2. Conduct meaningful engagement with relevant stakeholders affected by adverse environmental impacts associated with an enterprise's operations, products or services.</p> |
| <p>3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant</p> | <p>3. Consistent with the scientific and technical understanding of the risks, where there are threats of serious or irreversible damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty or pathways as a reason for postponing cost-effective measures to prevent or minimise</p> |

| | |
|---|--|
| <p>environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.</p> | <p>such damage.</p> |
| <p>4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.</p> | <p>4. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.</p> |
| <p>5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.</p> | <p>5. Continually seek to improve environmental performance, at the level of the enterprise and, where appropriate, entities with which they have a business relationship, including by:</p> <ul style="list-style-type: none"> a) adopting technologies, where feasible best available technologies, to improve environmental performance; b) developing and providing products or services that have no undue environmental impacts; are safe in their intended use; are durable, repairable and can be reused, recycled, or disposed of safely and that are produced in an environmentally sound manner that uses natural resources sustainably, minimises as far as possible energy and material input as well as generation of pollution, greenhouse gas emissions and waste, in particular hazardous waste; c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including by providing relevant and accurate information on their environmental impacts (for example, on greenhouse gas emissions, impacts on biodiversity, resource efficiency, reparability |

| | |
|---|---|
| | and recyclability or other environmental issues). |
| <p>6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:</p> <p>a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;</p> <p>b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;</p> <p>c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and</p> <p>d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.</p> | <p>6. Provide adequate education and training to workers in environmental, health and safety matters, including on the management of hazardous and non-hazardous materials and waste as well as the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies. Providing support, including capacity building on environmental management, to suppliers and other business relationships, particularly small- and medium-sized enterprises and small holders, where appropriate and feasible.</p> |
| <p>7. Provide adequate education and training to workers in environmental health and safety</p> | <p>7. Contribute to the development of environmentally responsible and economically</p> |

| | |
|--|--|
| <p>matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.</p> | <p>efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.</p> |
| <p>8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.</p> | |

**Chapter on Bribery and Other Forms of
Corruption:**

| OECD Guidelines 2011 | OECD Guidelines 2023 |
|---|--|
| <p>Foreword: Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:</p> | <p>Foreword: Adverse impacts on matters covered by the Guidelines are often enabled by means of corruption. As such, an enterprise’s implementation of effective anticorruption measures is an important contribution to the avoidance of other adverse impacts covered by the Guidelines. Enterprises should not engage in any act of bribery or other forms of corruption.</p> <p>In particular, enterprises should:</p> |
| <p>1) Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.</p> | <p>1) Not engage in any act of corruption, including the offering, promising or giving of any undue pecuniary or other advantage to public officials or employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates. Likewise, enterprises should not request, agree to or accept any undue pecuniary or other advantage from public officials or the employees of persons or entities with which an enterprise has a business relationship. Enterprises should not use third parties or other intermediaries, including, inter alia, agents, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates.</p> |
| <p>2) Develop and adopt adequate internal controls, ethics and compliance programmes or</p> | <p>2) Develop and adopt adequate internal controls, ethics and compliance programmes or measures</p> |

measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

for **adequately** preventing, detecting **and addressing** bribery **and other forms of corruption**, developed on the basis of a *risk-based* assessment, **taking in to account the** individual circumstances of an enterprise, in particular **the enterprise risk factors related to bribery and other forms of corruption (including, inter alia**, its geographical and industrial sector of operation, **other responsible business conduct issues, the regulatory environment, the type of business relationships, transactions with foreign governments, and use of third parties)**. These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, **conflict of interest registers**, records, and accounts, to ensure that they cannot be used for the purpose of **engaging in** or hiding bribery **or other acts of corruption**. Such individual circumstances and risks should be regularly monitored and re-assessed as necessary to **determine the allocation of compliance resources and** to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming involved in bribery **or other forms of corruption**. **These internal controls, ethics and compliance programmes or measures for preventing and detecting all forms of corruption should also include carrying out risk-based due diligence as described in Chapter II.**

| | |
|---|---|
| <p>3) Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.</p> | <p>3) Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.</p> |
| <p>4) Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.</p> | <p>4) Ensure, taking into account the particular risks related to bribery and other forms of corruption, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, an updated list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements. Enterprises should take steps to ensure that their agents avoid exercising illicit influence and comply with professional standards in their relations with public officials.</p> |
| <p>5) Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.</p> | <p>5) Enhance the transparency of their activities in the fight against bribery and other forms of corruption and foster a culture of integrity. Measures could include i) strong, explicit and visible support and commitment from the board of directors or equivalent governing body and senior management to the enterprise's internal controls, ethics and compliance programmes; ii) a clearly articulated and visible corporate policy prohibiting bribery and other forms of corruption, easily accessible to all employees and relevant third parties, including, inter</p> |

| | |
|--|---|
| | <p>alia, foreign subsidiaries, agents, and other intermediaries; and iii) disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation in the fight against bribery and other forms of corruption. Enterprises are encouraged to disclose, without prejudice to national laws and requirements, any misconduct related to bribery and other forms of corruption, as well as the measures adopted to address cases of suspected bribery and other forms of corruption. These measures may include, but are not limited to, processes for identifying, investigating, and reporting the misconduct and genuinely and proactively engaging with law enforcement authorities.</p> |
| <p>6) Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.</p> | <p>6) Promote awareness of and compliance with enterprise policies and internal controls, ethics and compliance programmes or measures against bribery and other forms of corruption, among employees and persons or entities linked by a business relationship, through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures that take into account applicable language, cultural and technological barriers.</p> |
| <p>7) Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public</p> | <p>7) Not make illegal contributions to candidates for public office or to political parties or to other organisations linked to political parties or political candidates. Political contributions</p> |

| | |
|---|--|
| <p>disclosure requirements and should be reported to senior management.</p> | <p>should fully comply with national laws including public disclosure requirements and should require senior management approval. This includes not obliging workers to support a political candidate or a political organisation.</p> |
|---|--|

Part II. Implementation Procedures: National Contact Points

| OECD 2011 | OECD 2023 |
|---|---|
| <p>Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.</p> | <p>Adherents shall set up National Contact Points for Responsible Business Conduct (NCPs) to further the effectiveness of the Guidelines. NCPs shall have the following responsibilities:</p> <ul style="list-style-type: none"> a) Promote awareness and uptake of the Guidelines, including by responding to enquiries; b) Contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances. <p>In addition, where appropriate and in coordination with relevant government agencies, NCPs may also</p> <ul style="list-style-type: none"> provide support to efforts by their government to develop, implement, and foster coherence of policies to promote responsible business conduct. <p>The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of NCPs.</p> |
| <p>National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.</p> | <p>NCPs in different Adherents shall co-operate, if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other NCPs are undertaken.</p> |

| | |
|---|--|
| <p>National Contact Points shall meet regularly to share experiences and report to the Investment Committee.</p> | <p>NCPs shall meet regularly to share experiences and report to the Investment Committee.</p> |
| <p>Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.</p> | <p>Adherents shall make available human and financial resources to their NCPs so that they can effectively fulfil their responsibilities in a way that fully meets the effectiveness criteria described in the Procedures attached to this Decision, taking into account internal budget capacity and practices.</p> |
| | <p>Adherents shall undertake periodic peer reviews of their NCPs, subject to modalities adopted by the Working Party on Responsible Business Conduct (WPRBC).</p> |
| <p>Procedures: The role of National Contact Points (NCPs) is to further the effectiveness of the <i>Guidelines</i>. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.</p> | <p>Procedures: The role of National Contact Points for Responsible Business Conduct (NCPs) is to further the effectiveness of the <i>Guidelines</i>. NCPs will operate in a manner that is:</p> <ol style="list-style-type: none"> 1. visible, 2. accessible, 3. transparent, 4. accountable, 5. impartial and equitable, 6. predictable, and 7. compatible with the <i>Guidelines</i>. <p>These principles together comprise the core effectiveness criteria of NCPs. NCPs,</p> |

| | |
|---|--|
| | <p>considering their particular circumstances, will pursue functional equivalence, meaning that all NCPs function with an equivalent degree of effectiveness, through achieving the core effectiveness criteria.</p> |
| <p>Institutional Arrangements:</p> <p>Consistent with the objective of functional equivalence and furthering the effectiveness of the Guidelines, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.</p> | <p>Institutional Arrangements:</p> <p>Consistent with the objectives of functional equivalence of NCPs and furthering the effectiveness of the Guidelines, Adherents have flexibility in organising their NCPs to meet the core effectiveness criteria. In determining the institutional arrangements of their NCP, governments will seek the active support of social partners where applicable, and other stakeholders as well as other relevant government agencies.</p> |
| <p>Accordingly, the National Contact Points:</p> <p>1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.</p> | <p>Accordingly, the NCPs:</p> <p>1. Will be composed, organised, and sufficiently resourced to provide an effective basis for dealing with the broad range of issues covered by the Guidelines, have access to expertise on all relevant aspects of the NCP mandate, operate in an impartial manner and maintain an adequate level of accountability to the adhering government.</p> |
| <p>2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government</p> | <p>2. Can use different forms of organisation to meet the core effectiveness criteria and pursue functional equivalence, keeping in mind the importance of maintaining stakeholder</p> |

| | |
|--|--|
| <p>office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.</p> | <p>confidence. For example, an NCP can consist of a senior government official or a government office headed by a senior official; an interagency or inter-ministerial body composed of, or led by, senior officials; a body composed of representatives from the government, the business community, worker organisations and other non-governmental organisations (multi-stakeholder), and/or independent experts. Governments are encouraged to include representatives of the business community, worker organisations and other non-governmental organisations in advisory or oversight bodies where useful to assist the NCP in its tasks.</p> |
| <p>3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.</p> | <p>3. Will develop and maintain meaningful relations and engage with social partners where applicable, as well as representatives of the business community, worker organisations, non-governmental organisations, and/or other interested parties that are able to contribute to the effectiveness of the Guidelines.</p> |
| <p>Information and Promotion: The National Contact Point will:</p> <p>1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.</p> | <p>Information and Promotion: The NCP will:</p> <p>1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. NCPs should also promote related OECD due diligence guidance on responsible business conduct, taking into account the specific nature of the guidance</p> |

| | |
|--|---|
| | <p>as mentioned in the Guidelines Chapter II, Commentary paragraph 15. Relevant stakeholders, including prospective investors (inward and outward), should be informed about the Guidelines, as appropriate.</p> |
| <p>2. Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.</p> | <p>2. Raise awareness of the Guidelines, their implementation procedures, and the NCP itself, including</p> <p>through co-operation, as appropriate, with relevant government agencies, the business community,</p> <p>worker organisations, other non-governmental organisations, and the interested public.</p> |
| <p>3. Respond to enquiries about the Guidelines from:</p> <p>a) other National Contact Points;</p> <p>b) the business community, worker organisations, other non-governmental organisations and the public; and</p> <p>c) governments of non-adhering countries.</p> | <p>3. Respond to enquiries about the Guidelines and OECD due diligence guidance, as well as the NCP</p> <p>itself, including from:</p> <p>a) other NCPs;</p> <p>b) the business community, worker organisations, other non-governmental organisations and the public; and</p> <p>c) governments of non-Adherents.</p> |
| <p>Implementation of Specific Instances:</p> <p>The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the <i>Guidelines</i> in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the <i>Guidelines</i>. The</p> | <p>Implementation of Specific Instances:</p> <p>The NCP will, serving as a non-judicial grievance mechanism, contribute to the resolution of issues that arise relating to the implementation of the <i>Guidelines</i> in specific instances in a manner that is consistent</p> <p>with the core effectiveness criteria listed in</p> |

NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.

Section I.A. above. NCPs will publish their case-handling procedures, i.e. procedures they follow in handling specific instances, which will be consistent with these

Procedures. NCPs are encouraged to consult their stakeholders in developing their case-handling procedures. The NCP will offer a forum for discussion and its expertise on the *Guidelines* to assist the

business community, worker organisations, other non-governmental organisations, and other interested parties concerned to resolve the issues raised in an efficient and timely manner and in accordance with

applicable law and the *Guidelines*. Depending on the characteristics of each case, this assistance may

include supporting constructive dialogue, facilitating agreements between the parties and/or issuing recommendations. The aims of such assistance may include furthering the implementation of the *Guidelines* in the future and/or addressing adverse impacts in a way consistent with the *Guidelines*.

In providing this assistance, the NCP will:

1. Where other NCPs are concerned due to the characteristics of the Specific Instance, coordinate in

good faith with them to choose the lead and supporting NCPs.

| | |
|--|---|
| <p>2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:</p> <ul style="list-style-type: none"> a) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non- governmental organisations, and relevant experts; b) consult the NCP in the other country or countries concerned; c) seek the guidance of the Committee if it has doubt about the interpretation of the <i>Guidelines</i> in particular circumstances; d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues. | <p>2. Consult the parties on the issues raised and make an initial assessment of whether these issues warrant further examination and respond to the parties involved.</p> |
| <p>3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:</p> <ul style="list-style-type: none"> a) a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision; b) a report when the parties have | <p>3. Where, based on an initial assessment, the NCP decides that the issues raised warrant further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:</p> <ul style="list-style-type: none"> a) seek advice from relevant authorities, and/or representatives of the business community, |

| | |
|--|--|
| <p>reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;</p> <p>c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the <i>Guidelines</i> as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.</p> <p>The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.</p> | <p>worker organisations, other non-governmental organisations, and relevant experts;</p> <p>b) consult the NCP or NCPs in any other Adherent or Adherents concerned;</p> <p>c) seek information on similar specific instances from the Secretariat or guidance from the WPRBC if it has doubt about the interpretation of the <i>Guidelines</i>. Such information and guidance is advisory, confidential and case-specific and does not amount to clarifications of the interpretation of the <i>Guidelines</i>, which remain the responsibility of the Committee as per Section II.2.c) below. Subject to available resources, it should be provided expeditiously to avoid delays in the handling of the case;</p> <p>d) offer and, with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as mediation or conciliation, to assist the parties in resolving the issues.</p> |
| <p>4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about</p> | <p>4. At the conclusion of the proceedings and after consultation with the parties involved, make the results of the proceedings publicly available, taking into account the need to protect sensitive business and other stakeholder information, by publicly issuing a final statement:</p> |

and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

a) when the NCP decides that the issues raised do not warrant further examination. The statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the steps taken by the NCP in considering the submission and parties' engagement in the proceedings, and the reasons for the NCP's decision;

b) when the parties have reached agreement on the issues raised. The statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the steps

taken by the NCP in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto. The NCP may also include recommendations on the implementation of the Guidelines in its

statements when an agreement has been reached, as appropriate;

c) when no agreement is reached or when a party is unwilling to participate in the proceedings. This statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the reasons why the NCP decided that the issues raised warranted further examination and the steps taken by the NCP in assisting the parties, including information on parties' engagement in the proceedings. The NCP should also include recommendations on the implementation of the Guidelines where relevant. Where appropriate, the statement could also include the reasons why an agreement could not be reached. If allowed by applicable law and

| | |
|---|--|
| | <p>the NCP’s case-handling procedures, the NCP may, at its own discretion, set out its views in its final statement on whether the enterprise observed the <i>Guidelines</i>.</p> <p>The NCP will notify the results of its specific instances to the Committee and the WPRBC in a timely manner.</p> |
| <p>5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.</p> | <p>5. Engage in follow-up where relevant once the specific instance has closed, on the implementation of recommendations or, if any, the agreement reached by the parties. The NCP should publish a follow up statement. Any follow up that the NCP intends to undertake should also be referred to in the final statement, including deadlines to do so.</p> |
| | <p>6. Act with transparency and make parties to a specific instance aware of all relevant facts and arguments brought to the NCP by other parties, in particular during the good offices phase. However, upon a reasonable request by a party, for example to protect sensitive information and/or the interests of stakeholders involved in the specific instance the NCP may keep certain information confidential from the other parties.</p> |
| | <p>7. Inform the parties that they may not disclose publicly or to a third party, during or after the proceedings, facts and arguments shared by the other parties or the NCP (including where relevant by an external mediator or conciliator)</p> |

| | |
|--|--|
| | <p>during the proceedings described in paragraphs 1-5 above, unless the sharing party agrees to their disclosure, such facts and arguments are already in the public domain, or not disclosing would be contrary to the provisions of national law.</p> |
| | <p>8. If issues arise in non-Adherents, take steps to develop an understanding of the issues involved, and follow these Procedures.</p> |
| | <p>9. Throughout the process, NCPs should take all appropriate steps within their capacities to address risks of reprisals against parties to a specific instance. If they become aware of an actual or potential instance of reprisal, NCPs should, to the extent possible, support the party concerned in avoiding and mitigating any harm and contact relevant authorities, in consultation with the person(s) at risk where possible. Governments should also take relevant steps to protect the NCP and its members from reprisals.</p> |
| | <p>Support for government efforts to promote responsible business conduct:</p> <p>In furthering the effectiveness of the Guidelines, NCPs may, where appropriate and in coordination with relevant government agencies, support efforts by their government to develop, implement, and foster coherence of policies aimed at promoting responsible business conduct. Providing or requesting such</p> |

| | |
|---|---|
| | <p>support should take into account the NCP's resources and capacity to fulfil their responsibilities described</p> <p>in paragraph I.1. of the <i>Decision</i>.</p> |
| <p>Reporting:</p> <p>1. Each NCP will report annually to the Committee.</p> | <p>Reporting:</p> <p>1. Each NCP will report annually to the Committee and the WPRBC.</p> |
| <p>2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.</p> | <p>2. Reports should contain information on the nature and results of the activities of the NCP, including</p> <p>in specific instances.</p> |
| | <p>Peer Reviews:</p> <p>Adherents will undertake periodic peer reviews of their NCP organised by the Secretariat, as a means to</p> <p>increase effective implementation of the Guidelines, share best practices, and foster NCP effectiveness</p> <p>and functional equivalence. Modalities for periodic peer reviews, including procedures for conducting peer</p> <p>reviews, the duration of the peer review cycle and funding arrangements, will be approved by the WPRBC</p> <p>and reviewed at the end of every cycle. The first cycle of periodic peer reviews will only be launched after</p> <p>such modalities have been approved.</p> |

| | |
|--|---|
| <p>Investment Committee:</p> <p>1. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.</p> | <p>Investment Committee:</p> <p>1. The Committee, the WPRBC and the Secretariat will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances, each in accordance with their respective responsibilities.</p> |
| <p>2. The Committee will, with a view to enhancing the effectiveness of the Guidelines and to fostering the functional equivalence of NCPs:</p> <p>a) consider the reports of NCPs;</p> <p>b) consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances;</p> <p>c) consider issuing a clarification where an adhering country, an advisory body or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances;</p> <p>d) make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines;</p> <p>e) co-operate with international partners;</p> <p>f) engage with interested non-adhering countries on matters covered</p> <p>by the <i>Guidelines</i> and their implementation.</p> | <p>2. The Committee, with the assistance of the WPRBC, will, with a view to enhance the effectiveness of the Guidelines and to foster the functional equivalence of NCPs:</p> <p>a) consider the annual reports of NCPs described in Section I.E. above. Based on such reports, the WPRBC will annually issue a public report analysing the activities of NCPs;</p> <p>b) consider a substantiated submission by an Adherent, an advisory body (BIAC or TUAC) or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances. The Committee will approve the response by consensus. The Adherent whose NCP is the subject of a substantiated submission will participate in the process in good faith, and is expected to join the consensus except in exceptional circumstances;</p> <p>c) consider issuing a clarification of the interpretation of the Guidelines at the request of an Adherent, an advisory body (BIAC or TUAC) or OECD Watch. Such request may concern</p> |

| | |
|---|---|
| | <p>whether an NCP has correctly interpreted the Guidelines in specific instances, but in such cases, the Committee will not reach conclusions on the conduct of individual enterprises;</p> <p>d) make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines. When, based on the last two annual reporting cycles and upon proposal by the WPRBC, the Committee determines that an NCP has, for an extended period of time and without legitimate reason, manifestly not been operating in a way consistent</p> <p>with these Procedures, it may make appropriate recommendations to the Adherent and invite it to report back within a set timeframe, and the Committee may do so repeatedly until it is satisfied that the issues have been addressed. The Committee and the WPRBC will reach</p> <p>decisions on these matters by consensus. The Adherent whose NCP is concerned will</p> <p>participate in the process in good faith, and is expected to join the consensus except in exceptional circumstances;</p> <p>e) co-operate with international partners;</p> <p>f) engage with interested non-Adherents on matters covered by the Guidelines and their implementation.</p> |
| <p>3. The Committee may seek and consider advice from experts on any matters covered by the</p> | <p>3. The Committee and the WPRBC may seek and consider advice from experts on any matters</p> |

| | |
|---|--|
| <p><i>Guidelines</i>. For this purpose, the Committee will decide on suitable procedures.</p> | <p>covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.</p> |
| <p>4. The Committee will discharge its responsibilities in an efficient and timely manner.</p> | <p>4. The Committee and the WPRBC will discharge their responsibilities in an efficient and timely manner.</p> |
| <p>5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation’s Programme of Work and Budget, will:</p> <ul style="list-style-type: none"> a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the <i>Guidelines</i>; b) collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the <i>Guidelines</i> in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances; c) facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the <i>Guidelines</i> such as | <p>5. In discharging their responsibilities, the Committee and the WPRBC will be assisted by the Secretariat, which, under the overall guidance of the Committee and the WPRBC, and subject to the Organisation’s Programme of Work and Budget, will:</p> <ul style="list-style-type: none"> a) serve as a central point of information for NCPs that have questions on the promotion, interpretation, and implementation of the <i>Guidelines</i>. Information on the interpretation of the <i>Guidelines</i> will be provided in accordance with I.C.2.c) above; b) collect and make publicly available – including by supporting the WPRBC with the publication of the annual report analysing NCP activities under II. 2. a) above – relevant information on recent trends and emerging practices with regard to NCPs’ institutional arrangements, promotional activities and the implementation of the <i>Guidelines</i> in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and |

| | |
|---|--|
| <p>promotion and the facilitation of conciliation and mediation;</p> <p>d) facilitate co-operation between NCPs where appropriate; and</p> <p>e) promote the <i>Guidelines</i> in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the <i>Guidelines</i> among non-adhering countries.</p> | <p>conduct regular analysis of these specific instances;</p> <p>c) facilitate peer learning activities, as well as capacity building and training, in particular for NCPs of new Adherents and new NCP personnel, on the <i>Guidelines</i> and their Implementation Procedures such as promotion and the facilitation of conciliation and mediation;</p> <p>d) organise periodic peer reviews of NCPs as indicated under Section I.F. above;</p> <p>e) facilitate co-operation between NCPs where appropriate; and</p> <p>f) promote the <i>Guidelines</i> in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the <i>Guidelines</i> among non-Adherents.</p> |
| | <p>Miscellaneous:</p> <p>These Procedures do not give rise to additional rights or obligations under international law.</p> |