

Updated OECD Guidelines for Multinational Enterprises: A Boost for Good Practices

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Introduction

On June 8, 2023, the OECD released a “targeted update” of the OECD Guidelines for Multinational Enterprises. These guidelines serve as a global standard for responsible business conduct (RBC) and cover various aspects such as human rights, labour rights, environment, bribery, consumer interests, and more. This was the first update since 2011 when a chapter on human rights was included. The update involved negotiations and compromises, but overall, it strengthens the guidelines and aligns them with international norms on RBC. This process was conducted by 51 adherent States, including the Member States of the European Union, while benefiting from the involvement of several stakeholders regarding business such as the Trade Union Advisory Committee to the OECD, and OECD Watch and also two open consultations to stakeholders worldwide. As seen, it was a very broad and open process, evolving diverse stakeholders potentially affected by these updates. This update has also the goal of supporting the Declaration on Promoting and Enabling Responsible Business Conduct in the Global Economy that “sets out an expectation that all businesses avoid and address negative impacts of their operations, while contributing to sustainable development in the countries where they operate”. The targeted update was done using parameters set by the Working Party on Responsible Business Conduct such as avoiding a wholesale revision of the Guidelines; was based on stocktaking exercise and also current practices by Adherents and guided by six criteria of coherence, leadership, achievements and strengths, focus and proportionality to ensure a more effective and useful update. Marian Ingrams, Katharine Booth, and Joseph Wilde-Ramsing highlighted some of the main updates of the guidelines in an article published on the Business and Human Rights Resource Centre

Key Updates

The latest targeted update introduces a myriad of significant enhancements, reinforcing corporate accountability and empowering rights holders and civil society to combat the adverse impacts on people and the planet. These are some of the key updates incorporated in the Guidelines:

1. **Climate Change and Environment:** Corporations are now compelled to proactively identify and mitigate their adverse effects on climate change, biodiversity, deforestation, pollution, and other environmental concerns through rigorous due diligence. Aligned with the Paris Agreement, the guidelines underscore the importance of adopting and monitoring mitigation targets to ensure compliance with international agreements. Furthermore, businesses are urged to refrain from activities that undermine the climate adaptation of workers, communities, and ecosystems. Moreover, the guidelines emphasize the implementation of robust environmental management systems to facilitate the remediation of adverse environmental impacts. As well, as recognizing the significance of a fair energy transition, enterprises are called upon to address and mitigate the social and environmental consequences associated with shifting from fossil fuels to renewable energy sources on these updated guidelines.
2. **Applying Due Diligence to Technology Impacts and Product Use:** The updated guidelines extend the scope of due diligence to encompass the digital sphere, requiring companies to identify and address adverse impacts linked to technology and digitalization, including data gathering and use. There are also new recommendations regarding due diligence on product and service use risks along with operational risks.
3. **Ensuring Transparency and Downstream Application of Due Diligence:** The guidelines firmly assert that companies must undertake due diligence across their entire value chain, including impacts caused by consumers and users. Failure to ensure downstream due diligence may result in direct association with adverse impacts. Furthermore, the due diligence process must encompass all forms of corruption. Disclosing responsible conduct information changed regarding principles and scope to ensure more transparency in updated recommendations.
4. **Broader Protection for Vulnerable Persons and Groups:** The guidelines underscore the imperative of enterprises paying special attention to the adverse impacts on marginalized or vulnerable groups, recognizing their unique and intersecting risks. Enterprises are also urged to abstain from any form of reprisals against human rights defenders. They are expected to address and mitigate harms related to reprisals within their operations and those of their business partners, while actively promoting safe spaces for defenders. The guidelines emphasize the importance as well of respecting the rights of all workers within a company's value chain, including their rights to form unions and engage in collective bargaining.
5. **Stakeholder Engagement and Responsible Disengagement:** Enterprises are expected to engage in genuine, two-way dialogues with stakeholders, particularly those who are directly affected by business activities that may harm them. Such engagement must be conducted in good faith, attentively considering stakeholders' perspectives and removing barriers to their participation. The updated guidelines underscore the importance of responsible decision-making when considering disengagement from a business relationship. Meaningful consultation with rights holders and addressing potential adverse impacts associated with disengagement are essential steps aligned with stronger stakeholder engagement.

Moving Forward

Several issues would deserve further consideration, for instance, the insufficient enforcement, as the Stocktaking Report On The OECD Guidelines For Multinational

Enterprises reflects the importance of more enforcement of these guidelines or them being accompanied by stronger regulation, being this seen as a limitation to the guidelines' effectiveness. There is also a need for consistency of lobbying activities with the Guidelines, ensuring "transparency and integrity in lobbying activities" as referred in point A-5 regarding general policies of enterprises. Point 6 of the commentary on Chapter II: General Policies refers to the necessity of enterprises to "take due account of the Recommendation on Principles for Transparency and Integrity in Lobbying". The lobbying arising from such big corporations can give rise to under hindering the goals of the guidelines and violate these guidelines, so we think that the reference to those principles regarding lobbying is a positive action. Even with the update regarding marginalized or vulnerable groups, OECD Watch considers that there is a shortfall regarding guidance on "corporate engaging with groups experiencing vulnerability or marginalization" those being mainly women, indigenous people and human rights defenders by not guiding regarding "gender-specific impacts of businesses" and vague references to the topic. OECD Watch also develops on the issues of "incorrect and incomplete guidance on respecting the rights of indigenous people" as these updates are positive, they still lack on "acknowledge indigenous peoples collective rights" while also providing poor guidance for companies to respect rights "to FPIC (free prior and informed consent) and other key rights". There is also a lack of guidance for companies to develop and enhance the "safe space" of human rights defenders.

Conclusion

The updated Guidelines now demand businesses establish science-based emission reduction targets in line with global temperature goals, making this alignment crucial to avoid reputational damage, exclusion from tenders, and potential legal repercussions. Comprehensive due diligence processes are now essential, encompassing climate change, biodiversity, deforestation, animal welfare, and pollution, all of which are intrinsically linked to human rights, necessitating corresponding adaptations in corporate policies. Notably, the Guidelines explicitly include biodiversity conservation, land and marine degradation mitigation, and deforestation addressing. Failure to comply with these measures poses risks to both reputation and finance, as investors increasingly factor in biodiversity impacts. At the same time, while the revised NCP procedure improves due process and transparency, businesses must proactively address climate change, biodiversity, and human rights to mitigate litigation risks. Essential steps include refreshing sustainability due diligence policies and involving legal departments in non-financial disclosures.

These strengthened accountability measures, focused attention on environmental concerns, commitment to stakeholder engagement, and emphasis on human and worker rights reflect the evolving expectations and aspirations for responsible business practices. By aligning with international norms and addressing emerging challenges, these updated guidelines serve as a crucial framework for businesses to contribute to sustainable development, fostering positive impacts in the global economy and acting as a "boost" for responsible business practices.

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