Policy makers’ roundtable on responsible business conduct

Policy making and policy coherence for responsible business conduct

Business has long recognized the importance of responsible business conduct in a globalized world. Many companies have integrated responsible business conduct (RBC) into their overall business strategy to manage their activities in a responsible way. BIAC has consistently underlined that responsible business conduct as promoted by the OECD Guidelines for Multinational Enterprises (MNEs) is an essential part of an open investment climate. To that end, BIAC supports effective implementation of the MNE Guidelines and active outreach efforts in countries that are not yet adhering to the Guidelines.

However, when considering responsible business conduct, it is important to draw a clear distinction between the role of companies and the role of governments. Companies’ commitments can play an important role to complement the efforts of governments, but they cannot be considered a substitute for the State. The enforcement of fundamental environmental and social standards cannot be delegated to companies. It is the role of governments to establish and enforce law and to create and maintain stable and predictable political systems as well as regulatory and legal frameworks. In this context, we would also like to underline the importance of integrity in the public sector and addressing issues such as bribe solicitation at the border, as highlighted during the recent OECD Integrity Forum on Global Trade without Corruption.

Due attention also needs to be given to supply chains, which are becoming increasingly important. Many companies that are active in their supply chain management have developed sophisticated approaches to promoting their core values and principles beyond their own business, taking into account the companies’ leverage over the entity concerned, the importance of the business relationship to the company, the severity of the potential impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.

Global supply chains are often diverse, complex and unstable; bigger companies have thousands of suppliers in many tiers, and these suppliers are often continually changing. In view of the complexities of certain supply chains, there are practical limitations with regard
to the ability of enterprises to effect change in the behavior of suppliers. These relate among others to product characteristics, the number of suppliers, the structure and complexity of the supply chain, and the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain. There is no one-size-fits-all for companies’ compliance programs; for example SMEs cannot have the same program in place as MNEs. Therefore, expectations must be realistic and proportionate, and practical limitations companies face in having concrete leverage must be considered.

Public-private initiatives and sector specific initiatives, often developed in the context of stakeholder dialogue, have the potential to promote responsible business conduct in a concrete and practical way. In this context, the OECD proactive agenda, which is intended to help enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries through practical guidance, can play an important role.

The OECD MNE Guidelines cover all major areas of business ethics, underlining the importance of coherence in policymaking. Several OECD instruments are of direct relevance for RBC. For example, the recently updated OECD/G20 Principles for Corporate Governance include several references to the OECD MNE Guidelines. At the same time, the MNE Guidelines recommend enterprises to uphold good corporate governance principles.

The OECD MNE Guidelines also underline the importance of fighting against bribery and corruption, where the OECD has a unique instrument, the OECD Anti-Bribery Convention addressing the supply side of bribery transaction. While duplication should be avoided and the specific objective of each instrument should be underlined, consistency among the various OECD instruments and the dedicated programs OECD has regarding the other themes addressed in the MNE Guidelines should be promoted.

Aside from responsible business conduct, the OECD has undertaken a number of horizontal activities, including on sustainable development and green growth, demonstrating its ability to look at key policy issues in a cross-cutting way and fostering policy coherence. For example, the annual OECD Forum on Green Growth and Sustainable Development presents an important opportunity to bring together policy makers from different ministries to discuss how to make policies mutually supportive.

While the OECD has an important role as a platform that can be used to promote policy dialogue across Ministries and fostering policy coherence, it is important that specific OECD projects on responsible business conduct remain focused on areas where the OECD has a concrete added value, including fostering balanced and effective implementation of the MNE Guidelines, ensuring a shared understanding of the NCP process as a mediation platform, and encouraging outreach and cooperation with non-member countries.
Connecting responsible business conduct with development and investment policy

Business recognizes that there is a link between investment and responsible business conduct. This link is clearly illustrated by the OECD Declaration on International Investment and Multinational Enterprises, which consists of four pillars: national treatment, international investment incentives and disincentives, conflicting requirements, and the MNE Guidelines. On the one hand, the Declaration commits adhering countries to improve the investment climate. On the other hand, companies are encouraged to apply the standards of responsible business conduct as elaborated in the MNE Guidelines. BIAC considers the Declaration one of the key OECD instruments, and agrees that an open investment environment and responsible business conduct should be mutually supportive.

Another key instrument in this respect is the OECD Policy Framework for Investment (PFI), which supports governments putting in place policies that mobilize private investment – both domestic and international investment - while supporting economic growth and sustainable development. The PFI addresses investment in a comprehensive manner and includes a strengthened chapter on RBC.

The PFI clearly recognizes that RBC is not only a matter for business. Governments need to provide an adequate policy framework. The updated chapter on RBC therefore underlines that while it is the role of businesses to act responsibly, governments have a duty to protect the public interest and a role in providing an enabling framework for RBC. The RBC chapter therefore includes specific recommendations on how governments can foster RBC, among others through the establishment of an adequate regulatory framework, facilitation and communication, cooperation and leading by example.

Bearing in mind that companies’ efforts are essential, but cannot be a substitute for the efforts of governments, the PFI can play an important role to help set a stable and predictable policy framework for companies operating in developing countries. OECD outreach efforts on responsible business conduct should therefore be carried out hand in hand with efforts to implement the PFI and addressing issues associated with weak governance of host countries.

As highlighted by a 2014 OECD report on investment treaty law, sustainable development and responsible business conduct, recent investment treaties frequently address responsible business conduct and sustainable development. According to this study, three-fours of international investment agreements concluded between 2008 and 2013 contain language pertaining to sustainable development and responsible business conduct. An increasing number of countries also include sustainable development and responsible business conduct considerations in their trade agreements.

It should be born in mind that the main objective of investment agreements is to boost investment and create new economic opportunities by increasing market access. At the
same time, investment treaties also offer an opportunity to foster sustainable development, while recognizing countries’ right to define the precise scope of environmental and labor protection they deem necessary, and encourage effective domestic implementation of international conventions that they have previously ratified.

BIAC stands ready to discuss the link between investment and responsible business conduct in a balanced manner and underlines the importance of the OECD MNE Guidelines, as the most comprehensive and government-backed responsible business conduct instrument. We also underline the importance of voluntary and business-driven approaches by companies, which have the merit of being able to adjust to different business models and supply chain structures.

As recognized by the recent OECD Ministerial Council Meeting, we welcome the OECD’s role in supporting the implementation of the 2030 Agenda and the achievement of the Sustainable Development Goals (SDGs). The OECD can make an important contribution by providing fact-based policy advice, grounded in evidence and underlining the overarching importance of policy coherence.