Consultation with the OECD Policy Makers Roundtable for Responsible Business Conduct

June 2017

1. National Action Plans on Business and Human Rights to enable policy coherence for responsible business conduct

Human Rights are a high priority for the international business community. The UN Guiding Principles and the OECD MNE Guidelines are the authoritative international frameworks for business and human rights. Business has been active in taking up the Principles, while at the same time, a number of governments have launched or are in the process of launching National Action Plans (NAPs) for the implementation of the UN Guiding Principles.

Key Business Considerations

- **Business commitment:** It is important to recognize the substantial progress which has been achieved in recent years within firms and industry initiatives on human rights. These range from public commitments, enhancement of corporate governance mechanisms through impact assessments and due diligence related to human rights, as well as training and capacity-building programs both within the company and with business partners.

- **More states should develop NAPs:** More States should develop NAPs, since, at the moment, still a relatively small number of countries has adopted a NAP. Therefore, we hope that countries – including developing and emerging ones – will take further steps to develop and implement a NAP.

- **Policy coherence:** Policy coherence is generally important, also in the case of promoting human rights. Policy coherence relies on good communication and coordination across ministries. At the same time, we need more coherence and cooperation at the international level, to exchange best practice, address human rights issues at the global level and create a level playing field. Outreach is particularly important to encourage additional adherence to the OECD MNE Guidelines, to ensure a global level playing field for business.

- **The scope should be focused, but not prescriptive:** There is a temptation when a NAP is formulated to make it too broad. The Guiding Principles should be the main focus. It is also important to keep in mind the essence of the Guiding Principles, including their voluntary character, which can lead to very substantial benefits in the field. National Action Plans should therefore avoid proposing substantive elements that are too prescriptive to ensure the flexibility of governments to use the best suitable policy instrument.
- **The involvement of business should be systematic and representative:** While it is important to get feedback of individual companies, business should be consulted through its representative organizations. Representative business organizations have the mandate to speak on behalf of the business community as a whole and are able to give comprehensive feedback, while ensuring that the voice of SMEs, which do not have the time to engage in discussions, is being heard.

- **It is important to outline clear responsibilities:** NAPs should, in the spirit of the UN Guiding Principles, provide a clear and well-understood differentiation between the responsibilities of governments as the primary duty-bearers under international law, and those of non-State actors including business. It is the duty of states to enact and implement human rights. This task cannot be delegated to companies. The enforcement of fundamental environmental and social standards cannot be delegated to companies.

- **An enabling legal and political environment is key to a well-functioning NAP:** It is important to remember that human rights infringements are still to a large extent due to failing state structures or inaction. Companies’ commitments can play an important role to complement the efforts of governments, but they cannot be considered a substitute for the State. 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.

- **The focus should be on implementation:** NAPs should focus on the implementation of the UN Guiding Principles. The perspective of SMEs must play an important role since SMEs are the essential backbone of most economies around the world. They have different resources and challenges when it comes to the implementation of the UN Guiding Principles.

- **Guidance on how to implement the UN Guiding Principles is needed:** All countries need support on implementation of the UN Guiding Principles. In particular, since countries with a large informal sector struggle to implement the UN Guiding Principles, these States should also assist companies in meeting their human rights obligations.

- **The role of NCPs and co-ordination mechanisms should be clearly defined:** The OECD MNE Guidelines play an important role in this area, in particular because of their unique implementation mechanism and the addition of the human rights chapter. It is important that NCPs are functioning well, are sufficiently staffed and equipped, and maintain close links with the private sector. Particular attention should be paid to less effective NCPs, which require additional guidance. It is also important that there is a common understanding among stakeholders on the precise nature of the NCP procedure as a mediation platform where the parties come together to look for a future-oriented solution.
2. Responsible Business Conduct in Government Procurement Practices

Public Procurement is being increasingly used as a policy lever to further government action in different policy areas. It is in this context that the OECD Recommendation on Procurement calls on Adherents to foster the use of public procurement to support secondary policy objectives.

Key Business Considerations

• **Encourage fair competition and transparency in public procurement**: Governments should ensure an adequate degree of transparency of, and accessibility to, general procurement information to avoid conflicts of interest and corrupt practices. The publication of tender documentation and contract documents is important for increasing accountability and reducing illegal direct procurement. To ensure open, fair and transparent conditions of competition, procurement procedures should follow international standards of transparency.

• **Give special consideration to SMEs**: Improving SME access to public procurement depends on well balanced contracts, applying suitable qualification criteria, and abstaining from unnecessarily high levels of requirements which would put SMEs at a disadvantage compared to larger companies.

• **Recognize self-cleaning**: Governments should exclude tenderers that have been convicted of illicit practices. However, effective self-cleaning efforts should also be recognized, allowing bidders to reapply if they have implemented the necessary measures to manage the risk.

• **Responsible government conduct**: In addition to responsible business conduct, there is an urgent need for responsible government conduct and transparency throughout all stages of public procurement. In the area of bribery for example, BIAC has consistently asked for addressing the demand side. We call upon the OECD to show clear commitment to combat bribe solicitation and explore options for future work in this area, including collective action efforts with the private sector. This would represent a significant step forward towards a more corruption-free business environment that would establish the necessary confidence for the business community.
3. Responsible Business Conduct and economic diplomacy tools

Economic diplomacy and support to business in foreign markets can take different forms, including financial support, such as export credits and investment guarantees, as well as public services, such as trade missions and capacity building. In the area of export credits, the OECD Common Approaches provide that members should promote awareness of the OECD MNE Guidelines and where appropriate consider any statements or reports made publicly available by their NCPs at the conclusion of a specific instance procedure. Some countries have developed more integrated approaches to economic diplomacy, and in one country, the refusal by a business to participate in "good offices" effort bars that business from getting government support in economic diplomacy.

Key Business Considerations

- **Foster transparency**: Governments have a range of economic diplomacy tools at their disposal to promote RBC among businesses operating abroad. The interplay between different instruments and the role of the NCPs in this context has been evolving in some countries. As a first step, business needs transparency about what measures are in place, both at the national and international levels.

- **International approaches**: In light of the fact that certain measures are national policy decisions which are not based on the OECD Guidelines, to the extent possible measures taken by governments should be based on internationally agreed approaches.

- **Promote engagement in the NCP process by building trust in the system**: BIAC has consistently underlined the importance of constructive engagement in “good faith” of all the parties involved. While we note the economic diplomacy measures that have been taken by some countries, we underline that the best way to ensure wide-spread support and active engagement in the process is to ensure trust in the NCP system and a common understanding of what the system is: a platform to help parties work constructively on the basis of facts and trust towards a common future-oriented solution, which is to the advantage of all parties.

- **Stimulate proactive engagement**: Countries should consider that if the NCP process is linked to too many legal requirements, this could change the nature of how the system is perceived. We would like to recall that the Guidelines are intended to stimulate responsible behavior and engage companies proactively. Linking them to too many legal requirements, which in addition vary across countries, could be counter-productive to a constructive bottom-up approach, intended to get the wide variety of MNEs proactively engaged in responsible business conduct.