Future OECD work on Responsible Business Conduct

Initial Business at OECD comments

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Business has long recognized the importance of responsible business conduct (RBC). More and more companies have integrated RBC into their overall business strategies and are committed to manage their activities in a responsible way. Business at OECD has consistently underlined that RBC as promoted by the OECD Guidelines for Multinational Enterprises (MNE Guidelines) is an essential part of an open investment environment and in the best interest of business. We are therefore pleased to submit our comments on how to move towards more coherent responsible business conduct policies and key issues in the future OECD program of work.

Moving towards more coherent responsible business conduct policies

The need for consistency and alignment with key instruments

We have consistently underlined our strong support for key government-backed frameworks, such as the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD MNE Guidelines and the ILO MNE Declaration. The international coherence provided by these instruments is of crucial importance to business and must be preserved. They were established through extensive, global dialogue and multi-stakeholder engagement and have articulated a clear sense of roles and responsibilities. They have been integrated into a wide array of voluntary and regulatory measures, standards, principles, and rules and have prompted significant investment in policies and procedures to drive action.

However, today business is confronted with an increasing number of new national and international standards, legislation, guidelines, and other measures on RBC that compete with these long-established and widely used instruments. A proliferation of measures creates challenges for business operating globally, in particular if these initiatives are not aligned with and diverge from the UNGPs, the OECD MNE Guidelines, and the ILO MNE Declaration.

One specific example is the current discussion on a draft binding instrument on business and human rights. Unfortunately, and despite early involvement by the business community in the UN draft treaty process, the proposed due diligence concept and the notion of supply chain liability in the draft treaty are not compatible with the UNGPs/MNE Guidelines and do
not encourage states sufficiently to address the human rights challenges in their own jurisdictions. In October, the IOE, *Business at OECD* and BusinessEurope submitted a joint business response to the revised draft to highlight key business considerations in the context of the UN treaty process on business and human rights.

The comments are available on our [website](#).

**The role of governments in supporting effective implementation of standards**

Another area were we need more coherence relates to implementation. Increased attention must be given to the fact that governments must play an active role in supporting effective implementation of broadly supported standards. As highlighted in the OECD Policy Framework for Investment, which includes a chapter on RBC, governments “must enact and enforce the laws and regulations that protect the public interest and underpin RBC.” The state duty to protect against human rights infringements is a recognized human rights obligation under international law. It is also the duty of governments to ensure that a legal and regulatory framework is in place and enforced domestically.

A global level playing field requires balanced and effective implementation of key instruments across all adhering countries. We therefore need renewed efforts to convince all governments to ensure an enabling environment for all companies, both domestic and international, to respect human rights and support responsible business conduct so that companies can invest, create jobs and contribute to sustainable development.

We need effective implementation of the MNE Guidelines. In this respect, we would like to point out that it is not helpful that there are differences between the efficiency of National Contact Points (NCPs), which can lead to forum shopping and affect the credibility and predictability of the system. In 2015, the three institutional stakeholders had therefore called upon the OECD, in a joint statement, to further strengthen the performance of NCPs, in particular those that have to catch up, and ensure that NCPs are adequately equipped and staffed to fulfil their objectives, as set out in the OECD Guidelines.

Looking at other OECD instruments, according to a Transparency International assessment of the implementation of the OECD Anti-Bribery Convention in 2018, only seven adhering countries have active enforcement. This underlines the importance of continued emphasis on peer reviews and transparency regarding the implementation of key OECD instruments.

**Company efforts are important, but cannot substitute for the role governments must play**

Another important aspect of coherence is the need to recognize that there is a clear distinction between the role of governments and the role of business. Companies’ commitments cannot be considered a substitute for the state, and the enforcement of fundamental standards cannot be delegated to companies.
It is the duty of governments to establish and enforce laws and to create and maintain a stable and predictable policy environment as well as consistent regulatory and legal frameworks. To advance progress, all states must be encouraged to address economic, environmental and social, including human rights challenges, in their own jurisdictions by implementing national and international standards both at the national and local levels. This requires increased international cooperation and scrutiny as well as better coordination across law enforcement and different government agencies and ministries.

**Selected comments on key issues for the future program of work**

**Effective and balanced implementation of the MNE Guidelines and further outreach activities**

Fostering balanced and effective implementation of the OECD MNE Guidelines should remain an overarching priority of the OECD work on responsible business conduct. The existing differences between the functioning of NCPs demonstrate that much more work is required in this area. We support continued OECD efforts on peer reviews and capacity building to ensure that all NCPs are operating according to the criteria set out in the MNE Guidelines, which should continue to be a priority for the Working Party.

We welcome the fact that four new countries have adhered to or are in the process of adhering to the OECD Declaration on International Investment and RBC. This is a welcome step, and we recommend further outreach to ensure additional adherence.

*Business at OECD* considers responsible business conduct as promoted by the OECD MNE Guidelines an essential part of an open investment climate and has been a strong supporter of further OECD outreach activities. In our view, the MNE Guidelines are an essential reference instrument for responsible business conduct to help ensure a level playing field in global markets.

At the same time, efforts must continue to ensure that these countries live up to the standards of the OECD instruments. In this context, we appreciated the recent meeting with Kazakhstan, which underlined the importance of further efforts both in the areas of investment and RBC. Dialogue with stakeholders should continue.

Recognizing the importance of further outreach and the need to spread RBC at the global level, we very much welcome the projects on responsible supply chains in Asia and on RBC in Latin America and the Caribbean. Such cooperation has the potential to allow for in-depth engagement with countries in the region as well as targeted promotion of the MNE Guidelines and related due diligence guidance.
**Proactive agenda**

A significant amount of work has taken place in the context of the OECD proactive agenda, including the development of guidance documents in the extractives, agriculture, garment and footwear, and finance sectors. While business strongly supports practical guidance for companies and has engaged constructively in the various advisory groups, we underline that if future work is considered, it should be based on clear demand and added value. Duplication of work should be avoided. In addition, the recommendations in the guidance documents must remain fully in line with and not go beyond the OECD MNE Guidelines. Consistency with the MNE Guidelines and other key international instruments must be preserved.

We support further work on raising the visibility of the existing guidance documents, which have been developed. This should be supported by close cooperation with key stakeholders. Work on assessing the effectiveness of the guidance on the ground would also be of interest.

**Work on specific chapters of the Guidelines**

Recognizing the importance of a holistic approach to implementing responsible business conduct, we underline the importance of close cooperation with other Directorates if work on specific chapters is considered. Duplication must be avoided, and the lead should be where there is most of the expertise.

Addressing the link between the fight against corruption and responsible business conduct is particularly important. Corruption increases inequality, raises the costs of doing business, undermines trust and erodes the rules of law. It also interferes with key aspects of conducting due diligence.

In this context, we would like to inform the Working Party that we are currently working on a comprehensive guidance on the link between the anti-corruption and the human rights agendas. The objective of the guide is to help member associations and companies to connect the dots between the fight against corruption and other fields of responsible business conduct, with a focus on human rights, and to provide practical guidance on how companies can address these issues in a coherent manner.

We also suggest cooperation on the issue of state-owned enterprises (SOEs). The OECD has carried out groundbreaking analysis on the corruption risks in SOEs, which was followed by the adoption of the OECD Anti-Corruption and Integrity Guidelines for SOEs earlier this year. Looking at responsible business conduct in SOEs more broadly, in cooperation with other parts of the OECD, could provide interesting insights.

With regard to taxation, we are actively engaged in and support the OECD/G20 work on Base Erosion and Profit Shifting (BEPS). The legal implementation of BEPS is still ongoing. A separate project on RBC and tax might at this point be premature. Close coordination with the Center for Tax Policy will be essential.
**RBC, public procurement and infrastructure**

We welcome the integration of RBC in various OECD reviews. We also suggest a close link with work on public governance to join forces on fostering responsible business conduct and offering a conducive policy framework within which companies can operate.

In this context, we are also interested in learning more about planned work on RBC and public procurement and on RBC related to infrastructure. We underline the importance of encouraging fair competition and transparency in public procurement. It is important to create a level playing field and positively support private sector efforts towards responsible business conduct. At the same time, it is crucial to give special consideration to SMEs and abstain from unnecessarily high levels of requirements.

**Connecting RBC with investment policy**

As recognized by the OECD Declaration on International Investment and Multinational Enterprises, there is a clear link between investment and RBC. Many of the recent investment treaties address responsible business conduct and sustainable development issues. Bearing in mind that the main objective of investment treaties is to boost investment and create new economic opportunities by increasing market access, business is engaging constructively in the discussions on how to foster sustainable development and responsible business conduct in their investments. As this issue was also discussed at the recent investment meetings, we will develop our detailed recommendations ahead of the next meeting.

Finally, we have noted that the OECD RBC Division has now been renamed *RBC Center*. We understand that this has the potential to facilitate cooperation with other parts of the OECD. At the same time, we strongly recommend to keep cooperation with and oversight of the OECD Investment Committee, recognizing that the OECD MNE Guidelines are an integral part of the OECD Declaration on International Investment and MNEs. Government efforts to offer an enabling and open investment environment must go hand in hand with business acting responsibly. For the sake of policy coherence, this link should be maintained.