

## OECD Due Diligence Guidance for Responsible Business Conduct

### BIAC contribution

Business, as represented by *Business at OECD* (BIAC), has long recognized the importance of responsible business conduct in a globalized world. Today, many companies have integrated responsible business conduct considerations into their overall business strategy to manage their activities in a responsible way. BIAC considers responsible business conduct as promoted by the OECD Guidelines for Multinational Enterprises (MNE Guidelines) to be an essential part of an open investment climate and in the best interest of business. To that end, BIAC is working in partnership with the OECD, national governments, its member organizations and member companies to support effective implementation of the MNE Guidelines, ensure a shared understanding of the NCP process and promote them in adhering countries and beyond to support a global level playing field.

While the MNE Guidelines include more elaborate due diligence recommendations for human rights due diligence in line with the UN Guiding Principles for Business and Human Rights, they provide no general procedural guidance for due diligence which applies to the other chapters, with the exception of science and technology, competition, and taxation. To help companies understand what due diligence means in practice and building on previous work on sectoral guidance documents developed in the framework of the “proactive agenda”, business engaged in OECD discussions on developing a practical due diligence guidance for companies, underlining that such guidance should be in line with, but not go beyond the MNE Guidelines.

It was particularly important for business that the flexibility which is an underlying concept in the MNE Guidelines recognizing that the nature and extent of due diligence depend on the precise circumstances, be reflected in the Guidance. The MNE Guidelines also clearly recognize that the encouragement of business partners to comply with the recommendations is subject to practical limitations depending on the specific circumstances. It is also recognized that the expectations are different for large MNEs and for small MNEs, due to their different capacities for implementation. Furthermore, seeking to prevent or mitigate an adverse impact to which an enterprise is only linked by a business relationship does not intend to shift the responsibility from the entity causing the adverse impact to the enterprise with which it has a business relationship.

While business engaged in the discussions with the understanding that the Guidance would not be a basis for future legislation, it is clear that in light of the increasing complexity of national and international RBC recommendations, non-prescriptive *practical* guidance for companies on how to carry out due diligence on the ground can be of value to companies.



As stated up front, the OECD Guidance, which was endorsed at this year's OECD Ministerial Council Meeting, is intended to provide practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing "plain language explanations of its due diligence recommendations and associated provisions." It recognizes one of our key requests, i.e. that the suggested practical actions are not meant to represent an exhaustive "tick box" list for due diligence and that not every practical action will be appropriate for every situation.

We therefore hope that the Guidance will serve its purpose of providing businesses looking for information about the Guidelines with a more accessible text than the MNE Guidelines themselves, and present to them practical proposals about how they could set up their due diligence, while recognizing that due diligence needs to be adapted to specific situations and that there is no one-size-fits-all.

The focus should now be on dissemination and on capacity building to ensure that companies at large understand and can benefit from the Guidance. Awareness-raising about the Guidance but also about the MNE Guidelines remains crucial as they are often not yet sufficiently known. BIAC has widely distributed the Guidance within its membership and will encourage companies to draw upon the practical tools it provides. We will also continue to support awareness raising and effective implementation of the MNE Guidelines. To assess how the Guidance has been taken up by companies, we would be pleased to help organize a dialogue with the OECD and our member companies to take stock of how it has been used and facilitate the sharing of experience.

We would like to extend our thanks to the Chair of the OECD Working Party on Responsible Business Conduct and the OECD Secretariat for having given the institutional stakeholders the opportunity to contribute to the discussions on the development of the Guidance. It is our hope that the well-organized engagement of institutional stakeholders by the OECD will also be an inspiration for national governments. BIAC stands ready to continue to engage constructively in the OECD work on responsible business conduct going forward.

Winand Quaadvlieg

Chair

BIAC Committee on Investment and Responsible Business Conduct