

Background note on Regulatory Developments concerning Due Diligence for Responsible Business Conduct (RBC):

The Role of Small and Medium Sized Enterprises (SMEs)

Introduction

Recent developments in environmental and human rights due diligence legislation have led to discussions around the extent to which SMEs should be subject to the same requirements as larger companies, how to ensure proportionality and reasonableness in the design of regulations, as well as implications for competitiveness, market access, costs and enforcement. As a consequence, a wide variety of approaches and perspectives are being taken in response to these issues.

These discussions coincide with the growing recognition that sustainability and inclusiveness are essential objectives of SME and Entrepreneurship (SMEE) policy.¹ Furthermore, they are taking place against the background of the COVID-19 pandemic, which has severely affected SMEs, including in their inclusion in global value chains (GVCs), and through the development of policies to support SMEs to “build back better”.²

Governments face complex challenges in fostering SME observation of responsible business conduct (RBC) standards, while also strengthening the competitiveness and participation of SMEs in GVCs in a post COVID-19 environment. Whereas these two objectives seem well aligned, their instrumentation may also include potential trade-offs which has led to important questions. This note seeks to outline some of these questions and where possible, raises key considerations policy-makers can take into account while designing due diligence legislation.

1. SMEs and RBC: Challenges and Opportunities

SMEs play a central role in global economies

Through their collective weight, SMEs are highly important to achieving objectives related to inclusiveness, sustainability and RBC. SMEs are the predominant form of enterprise globally,

¹ As documented in the 2018 OECD SME Ministerial Conference Declaration adopted in Mexico. <https://www.oecd.org/cfe/smes/ministerial/SME-Ministerial-Declaration-ENG.pdf>

² See for example OECD (2021) *One year of SME and entrepreneurship policy responses to COVID-19: Lessons learned to “build back better”* <https://www.oecd.org/coronavirus/policy-responses/one-year-of-sme-and-entrepreneurship-policy-responses-to-covid-19-lessons-learned-to-build-back-better-9a230220/>



accounting for approximately 99% of all firms in OECD countries.³ They also provide the main source of employment, accounting for about 60% of jobs on average. SMEs are major contributors to value creation, generating between 50% and 60% of value added on average among OECD countries.⁴ SMEs participate in international trade, not just in direct imports and exports, but also indirectly through global value chains, and hence contribute to jobs and growth globally. SMEs are therefore an important source of employment, social mobility and innovation.

Data on how SMEs conform to RBC standards is limited. At a macro level, given their proportion of the business population and share of value added, SMEs can play an important role in addressing RBC risks and impacts. For example, collectively, SMEs may account for up to 60-70% of GHG emissions⁵ and industrial waste.⁶ At a firm level, surveys suggest that RBC practices amongst SMEs are slightly less established than in larger companies⁷. ILO research has found that work environments tend to be more hazardous in small enterprises than in larger ones.⁸ In regards to industrial relations, trade union membership appears to be low and collective bargaining is often non-existent in smaller enterprises.⁹

In this respect, a broad scope of application with respect to RBC standards is important for society at large. It can also provide value for SMEs. Implementing RBC standards may open-up new markets or enable better prices for products and services. It may help in acquiring or retaining staff and finance. Similarly, it may prove pivotal in retaining or gaining access to global markets and integrating into supply chains as buyers or other actors upstream mandate RBC due diligence practices.

SMEs face specific challenges and opportunities in implementing RBC standards...

SMEs may face greater challenges than larger firms in screening the regulatory environment and dealing with RBC norms.¹⁰ SMEs are often aware of RBC due diligence standards, yet lack knowledge about concrete obligations and find it difficult to translate policy commitments into relevant operational procedures.¹¹ SMEs often lack leverage vis-a-vis actors in their

³ OECD (2017), Enhancing the contributions of SMEs in a global and digitalised economy, Meeting at the OECD Council at Ministerial Level, <https://www.oecd.org/industry/C-MIN-2017-8-EN.pdf>

⁴ OECD (2019), *OECD SME and Entrepreneurship Outlook 2019*, OECD Publishing, Paris, <https://doi.org/10.1787/34907e9c-en>.

⁵ OECD (2019) An OECD Strategy for SMEs: Synthesis of SME related analysis on SMEs and the Environment [CFE/SME(2019)7/ANN1]

⁶ Shashwat Koirala, OECD (2018) SMEs: Key Drivers of Green and Inclusive Growth https://www.oecd.org/greengrowth/GGSD_2018_SME%20Issue%20Paper_WEB.pdf


⁷ F. Snagg, C. Cibrario Assereto (2020), *Human rights supply chain due diligence: new legislation on the horizon in the EU and UK*, Butterworth Journal of International Banking and Financial Law, <https://www.clearygartlieb.com/-/media/files/human-rights-supply-chain-due-diligence.pdf>; Directorate-General for Justice and Consumers (European Commission) British Institute of International and Comparative Law, Civic Consulting, LSE (2020), *Study on due diligence requirements through the supply chain, Final Report*, United Kingdom, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en> (hereinafter EC and LSE (2020))

⁸ In Europe, 82% of all occupational injuries and 90% of all fatal accidents occur in enterprises with up to 100 employees. See International Labour Organization (2019), *Small Matter: Global evidence on the contribution to employment by the self-employed, micro enterprises and SMEs*, Geneva, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_723282.pdf

⁹ Id.

¹⁰ OECD (2018), *Fostering greater SME participation in a globally integrated economy*, Discussion paper, Plenary session 3, SME Ministerial Conference, Mexico City, <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Plenary-Session-3.pdf>

¹¹ International Organization of Employers and International Labour Organization (2016), *SMEs and Human Right's: What is the current state of play, what are the opportunities and challenges, what kind of support is needed?*



supply chains, making implementation of certain aspects of due diligence more challenging (e.g. identifying impacts and encouraging business relationships to prevent and mitigate impacts), especially if their supply chain extends internationally.¹²

SMEs may also lack access to the resources needed to adopt RBC recommendations due to the lack of financial liquidity and small margins. Much of the costs related to due diligence should be commensurate to firm size and risk exposure. In many instances, due diligence actions will be covered by existing processes (such as health and safety compliance systems or labour relations management)¹³ and thus may not represent additional costs. However, in other cases, SME's may face disproportionate costs associated with due diligence relative to larger firms. For example, large companies may benefit from economies of scale in implementing aspects of due diligence and may have more specialized resources in place to support implementation (for example, existing staff specialised in value chain management, technological solutions, etc.).¹⁴ Additionally, other due diligence related costs such as membership fees for participation in industry schemes or multi-stakeholder initiatives, or subscription to proprietary databases, may not be proportionate to the size of the enterprise.

Larger companies are also more likely to see greater financial benefits from reputational enhancements afforded through RBC relative to SMEs, which are often less consumer facing.¹⁵ However, in instances in which RBC standards are a legal or market requirement,¹⁶ RBC implementation can allow SMEs to participate in new markets and integrate into global supply chains. Stronger participation by SMEs in global markets can enhance technology spill-over, managerial know-how, skill-set development and productivity.¹⁷

... However some characteristics of SMEs may facilitate implementation of RBC expectations

Certain characteristics of SMEs may also facilitate more effective implementation of RBC standards. For example, SMEs generally have more informal processes and management structures in comparison to larger companies¹⁸. In this respect, they may have a more agile

https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_535220.pdf; A joint IOE/ILO 2016 survey of more than 250 SMEs from 32 countries.

¹² See EC and LSE (2020)

¹³ In some cases, SMEs have been found to incur lower additional costs, such as under the EU Non-Financial Reporting Directive, which finds that large companies' additional annual costs amount to 155,000 and 604,000 EUR, while SMEs additional cost are substantially lower, amounting to 8,000 and 25,000 EUR Directorate-General for Justice and Consumers (European Commission) British Institute of International and Comparative Law, Civic Consulting, LSE (2020), Study on due diligence requirements through the supply chain, Final Report, United Kingdom, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

¹⁴ Directorate-General for Justice and Consumers (European Commission) British Institute of International and Comparative Law, Civic Consulting, LSE (2020), Study on due diligence requirements through the supply chain, Final Report, United Kingdom, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>


¹⁵ Directorate-General for Justice and Consumers (European Commission) British Institute of International and Comparative Law, Civic Consulting, LSE (2020), Study on due diligence requirements through the supply chain, Final Report, United Kingdom, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

¹⁶ SMEs are increasingly required to adhere to codes of conduct and programmes for sustainable supply chain management, including best practices on issues such as health and safety, labour rights, human rights, anti-corruption practices and environmental impact.

Intracen, SME Competitiveness: Standards and regulation matter, SME Competitiveness Outlook 2016, https://www.intracen.org/uploadedFiles/intracenorg/Content/Redesign/Projects/SME_Competitiveness/Part%20I.pdf; World Trade Organization (2016), Levelling the trading field for SMEs, World Trade Report 2016, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf

¹⁷ OECD (2017), Enhancing the contributions of SMEs in a global and digitalised economy, Meeting at the OECD Council at Ministerial Level, <https://www.oecd.org/industry/C-MIN-2017-8-EN.pdf>

¹⁸ O. Perera (2008), International Institute for Sustainable Development, How Material is ISO 26000 Social Responsibility to Small and Medium sized enterprises (SMEs)?, https://www.iisd.org/sites/default/files/publications/how_material_iso_26000.pdf



and adaptive organisational culture, as well as greater cohesion and sense of collective purpose.¹⁹ SMEs may be able to align and coordinate various decision-making functions across the company to support RBC and due diligence engagement with business partners more efficiently. Large enterprises with expansive operations and with many products or services may need more formalised and extensive systems to effectively identify and manage risks compared to smaller enterprises with a more limited range of products or services.²⁰ Furthermore, SMEs will likely have fewer suppliers than large companies and are more likely to have long-lasting business relationships.²¹ On aggregate, they also have fewer foreign operations than larger firms, and tend to focus mostly on countries close to their home market,²² which can reduce the complexity of supply chain due diligence.

In sum, the observance of RBC standards by SMEs can provide a number of positive externalities and benefits to SMEs, although additional support may be necessary to ensure that private investment in RBC is sufficient and actually delivers value for individual SMEs. Policy and regulatory approaches should be designed to reflect the specific characteristics of enterprises, including enterprise size, but also taking into account business models, risk exposure, position in global value chains and the context of their operations. This is discussed further in the following section.

¹⁹ Bergström, and J. Grunewald (2009), Corporate Social Responsibility in SMEs: A Case study of prerequisites for a small company to create value through the implementation of a code of conduct, Stockholm School of Economics, Stockholm <http://arc.hhs.se/download.aspx?MediumId=768> ; Von Weltzien Heivik, H., & Shankar, D. (2011). How Can SMEs in a Cluster Respond to Global Demands for Corporate Responsibility? *Journal of Business Ethics*, 101(2), 175-195. Retrieved June 9, 2021, from <http://www.jstor.org/stable/41475974>

²⁰ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

²¹ Francis West for Shift, “SMEs and the Corporate Responsibility to Respect Human Rights Busting the Myth that Bigger is Always Better” May 2019, available at: <https://www.shiftproject.org/resources/viewpoints/busting-myth-smes-corporate-responsibility-respect-human-rights/>; <https://shiftproject.org/smes-and-the-corporate-responsibility-to-respect-human-rights/>; https://www.standardizations.org/bulletin/?p=531&utm_content=bufferc1f28&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

²² OECD (2019), *OECD SME and Entrepreneurship Outlook 2019*, OECD Publishing, Paris, <https://doi.org/10.1787/34907e9c-en>.



Box 1: RBC Standards & SMEs

Under OECD standards on responsible business conduct (RBC) Small and Medium-sized Enterprises (SMEs) are expected, like other businesses, to behave responsibly and carry out due diligence to identify and respond to adverse environmental and social impacts they may be involved in. The OECD Guidelines for Multinational Enterprises (MNE Guidelines) provide that *“Governments wish to encourage the widest possible observance of the Guidelines. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the Guidelines nevertheless encourage them to observe the Guidelines’ recommendations to the fullest extent possible.”* (Chapter I, para 6)

However they also recognise that *“the nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the Guidelines, and the severity of its adverse impacts.”* (Chapter II, Commentary para 15)


The OECD Due Diligence Guidance for Responsible Business Conduct (Due Diligence Guidance) also acknowledges the specific circumstances and challenges many SMEs may face in implementing due diligence. In particular it notes that *“while resource constraints may be a challenge for all enterprises, small enterprises particularly may have fewer personnel and financial resources to carry out due diligence [...] [a]t the same time, they often have greater flexibility on policy-making and implementation and may have fewer impacts or suppliers to manage as compared to larger enterprises.”* (Annex, Q6)

The Due Diligence Guidance also recognizes that while the size and resource capacity of an enterprise (among other factors) do not change its responsibility to conduct due diligence and act responsibly, it may affect *how* an enterprise carries out due diligence and responds to certain risks.” (Annex, Q6)

In this respect the RBC risk-based due diligence approach puts an emphasis on proportionality to help to ensure that due diligence processes can be tailored as appropriate to an enterprises’ circumstances, including its size, but also the context of its operations, its business model, positions in supply chains, and the nature of its products or services. (See Due Diligence Guidance, Key Characteristics).

2. Supporting SME Responsible Business Conduct Practices through legislation: key considerations

The extent to which SMEs should be subject to due diligence expectations, and how to ensure proportionality and reasonableness in application, are two of the most discussed issues surrounding the design of due diligence legislation. In the current context, policy makers should consider how to avoid unnecessary costs for hard hit SMEs navigating the impacts of COVID-19, and ensure that recovery programmes to ‘build back better’ include tangible support for SMEs. This could include measures related to international trade, such as support for SMEs in finding new markets, improving resilience, or adjusting to changes in the configurations of global value chains whilst respecting existing standards on sustainability and RBC.



Policy makers can take steps to factor in the specific needs and interests of SMEs throughout the policy making process, for example by organizing specific consultations and impact assessments for SMEs.²³ In the context of designing legislation, it is particularly important therefore to consider: 1) the potential positive and negative effects of an exclusionary approach to due diligence rules; 2) building proportionality into the design of legislation; and 3) effective, efficient and coherent SME support measures.

2.1. Exclusion of SMEs from mandatory due diligence laws

Many existing pieces of legislation related to RBC due diligence include a size threshold determining application, excluding SMEs from these expectations.²⁴ This approach can serve to eliminate some of the disproportionate costs and challenges for SMEs discussed above. However, excluding SMEs from mandatory expectations may also have potentially undesirable impacts.

First, although data on SMEs and RBC performance is scarce, given the collective weight of SMEs in the economy, particularly with respect to trade in sectors with potentially high RBC impacts, excluding SMEs *en bloc* will likely reduce the effectiveness of RBC due diligence regulation.

Second, although exemptions on paper may avoid costs to SMEs, in practice, the execution of due diligence is in some cases already demanded by the market. SMEs report that they are increasingly faced with demands from larger companies to ensure that their supply chains are “compliant” with environmental, anti-bribery, social or human rights regulations, industry initiatives and other standards. In this respect, SMEs already appear to be significantly affected by the lack of harmonisation of standards, as they face parallel, overlapping and in some cases higher demands with respect to implementation of customer RBC policies, particularly in relation to environmental and social auditing and certifications. These challenges are even more pronounced when SMEs sell to more than one buyer. This has been reported as a major obstacle to meaningful and effective due diligence, which in turn increases the costs of SME compliance.²⁵ An exclusionary approach to mandatory due diligence means that SMEs may continue to be faced with these demands without a regulatory framework to define expectations or to support them in responding.


Exclusion of SMEs may also create challenges for the companies that do fall under the scope of RBC regulations, as they may have more limited access to necessary information from SMEs. It may also limit opportunities to undertake collaborative or complementary approaches.

Generic or partial exclusions of enterprises below certain size thresholds in legislation can have significant disadvantages. Unqualified exclusion may present a risk of “growth traps”, whereby enterprises stop growing (or disguise their growth by remaining/turning to the informal

²³ See for example recommendations of the European Commission on “*Considering SME interests in policy-making including the application of an ‘SME Test’*” <https://ec.europa.eu/docsroom/documents/10038/attachments/1/translations/en/renditions/native>

²⁴ These mandatory due diligence laws either include a turnover threshold or an employee threshold. Among these are the French Duty of Vigilance Law (over 5,000 employees in France or 10,000 worldwide, including in the company’s subsidiaries), the UK Modern Slavery Act (>\$50 million turnover), the EU Non-Financial Reporting Directive (>500 employees), and current legislative proposals such as the Dutch Parliamentary RBC bill (>250 employees), the German Supply Chain Bill (>3,000 employees; from 2024, >1,000 employees).

²⁵ Global Partnership for Financial Inclusion, World Bank Group, Federal Ministry for Economic Cooperation and Development (2017), *Financing SMEs in Sustainable Global Value Chains*, G20 Germany 2017, https://www.gpfi.org/sites/gpfi/files/documents/GVC%20paper_highres_0.pdf



sector) in order to avoid passing a size threshold.²⁶ Such exclusions can also generate incentives for enterprises above the threshold to split into multiple units, and can result in unfair competition between enterprises within and outside the scope of the law. On the other hand, parallel labour law regimes with lower labour standards keep SMEs segregated from the mainstream economy, thereby reducing opportunity for greater integration in supply chains.

Finally, exclusion may prevent the manifestation of potential positive impacts associated with due diligence. These include positive contributions to society, improved risk-management and stakeholder relationships and reputational gains. Embedding RBC performance should also lead to better management of financially material ESG risks and build long term value. As discussed above, clear and proportionate expectations can help SMEs strengthen their position in and integrate into higher value-added segments of GVCs. Instead of excluding SMEs in the first instance, governments could consider how the benefits of SMEs adhering to RBC standards can be enhanced.

2.2. Building proportionality in legislation design

In order to avoid expectations that are unduly burdensome for SMEs, policy makers should consider how to build in proportionality into the design of legislation. In this respect the following considerations will be important:

Taking into account the heterogeneity and risk exposure of SMEs

Taking into account the broad range of relevant factors and recognising the diversity of SMEs in the economy will help policymakers tailor RBC policy and due diligence regulations for SMEs.

SMEs may represent a dynamic and evolving proportion of the economy, and will likely be diverse in terms of age, size, business model and performance. Their composition varies widely across countries and sectors, with implications for their contributions to innovation, productivity, quality job creation and growth.²⁷


In this respect, it is likely that the risk of negative impacts is higher for some SMEs in certain contexts than others. This may for instance relate to the sector in which they operate, their involvement in trade, the countries with whom trade takes place, their position in the supply chain, or their business models etc.

OECD RBC due diligence standards recognize that due diligence should be risk-based and tailored to context and circumstances (see Box 1 above). In this respect, SMEs with lower risk-exposure should be subject to less rigorous due diligence expectations relative to those with higher RBC risk exposure. Governments can play a role in identifying risk exposure associated with SMEs by taking into account factors related to geography, business models, and sourcing models and tailor expectations as appropriate.

For example, in other regulatory spaces such as customs, governments have established mechanisms to screen companies for risk and provide some form of certification for those

²⁶ See ILO Business environment, labour law and micro and small enterprises, Document for Debate and Guidance from the Committee on Employment and Social Policy, 2006 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_297_esp_1_en.pdf

²⁷ See generally SME Ministerial Conference Key Issues (2018) <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Key-Issues.pdf>



firms for whom risks in the future are deemed low. Firms that demonstrate they are responsible over time may also benefit from lighter documentation and inspection requirements.²⁸ Such arrangements can also contribute to effective risk-based supervision and enforcement.

Scaling expectations

Due diligence laws can adapt and scale expectations related to due diligence by taking into account the relative ability of enterprises to respond to them. For example, this could take the form of tailored reporting obligations by company size, with less detailed reporting requirements required for SMEs. The degree of leverage SMEs have over their business relationships (or lack thereof) should also be considered in determining how they can appropriately react to real or potential adverse impacts. For instance, SMEs can use leverage in a different way to MNEs through contractual arrangements, pre-qualification requirements, voting trusts, license or franchise agreements, and also through collaborative efforts to pool leverage in industry associations or cross-sectoral arrangements. Furthermore, mandatory due diligence rules could recognize that SMEs may have more limited priorities and less ambitious targets related to RBC issues relative to larger companies, as a function of their different level of resources.

This may also mean that more responsibility is allocated to larger business, or those with the ability to shoulder higher costs related to implementation. For example, larger businesses may be expected to take on more responsibility in the mapping and traceability of their supply chain and to share this information with SMEs, or in ensuring purchasing and costing takes into account costs associated with compliance with RBC policies.

Allowing longer transition times for SMEs to implement due diligence processes


Regulations may go into effect at a later date for SMEs or include scaled overtime to provide them with additional time for preparation. In this respect, SMEs could be expected to fulfil select components of the regulation or tailored priorities in the process of transition to full compliance with due diligence rules. For instance, legal requirements can call on SMEs to start embedding RBC into the company policy, supply chain mapping and reporting in the first year of compliance, and move on to risk management in subsequent years. While such an approach should afford some flexibility to SMEs, government's should ensure it does not result in weak due diligence implementation overall.

2.3. Complementary measures and support for SMEs with respect to RBC and inclusive internationalisation

In addition to appropriately designing due diligence rules that take into account the unique characteristics of SMEs, policy makers may also consider introducing complementary measures to assist SMEs in responding to RBC expectations. These measures should be in line with, and can be reinforced by, policies that support the internationalisation of SMEs in an inclusive and sustainable way.

Potential complementary measures are discussed below.

²⁸ See for example EU Guidance on Approved Exporters https://ec.europa.eu/taxation_customs/sites/default/files/guidance-on-approved-exporters.pdf; See also example of French Customs Clearance measures to support business https://ec.europa.eu/taxation_customs/sites/default/files/guidance-on-approved-exporters.pdf



Providing support to help with capacity building, information collection and management

Studies have demonstrated that SMEs need and broadly welcome additional information and training about what is expected of them and the potential benefits of due diligence implementation. Some governments have already developed guidance to increase SMEs' due diligence awareness and understanding as well as their technical capacity to implement it²⁹. In addition to tailored guidance, providing information on supply chains, traceability and risk may be useful to support SME supply chain mapping and prioritisation of risks. This may include consolidation of existing trade and custom data on the origin of raw materials, intermediate products or services, which may significantly reduce the costs for each company to collect and obtain such information independently. Additionally, providing thematic or country-specific risk-based information to companies may advance and support RBC due diligence. For example the U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor supports companies in pinpointing areas where the risk of child labour or forced labour is high. The EU's own list of conflict-affected and high-risk area,³⁰ as well as the planned "white list" of smelters and refiners, are good illustrative examples.

Providing support in financing and fostering collaboration

Providing financial support may include special financing instruments for SMEs, with preferable rates for delivering supply chain improvements, finance to help offset costs of implementation, or other forms of financial support such as tax credits or subsidies.

In this respect, several governments have put in place different mechanisms to address the financial challenges faced by SMEs in their due diligence implementation.³¹ Policy tools have been used to incentivize SMEs to invest in the reduction of their environmental impact and to improve their environmental performance.³² Tax exemptions and incentives have been introduced in many OECD countries to lessen the short-term costs of investing in environmental technologies and green practices.³³


²⁹ European Commission, Internal Market, Industry, Entrepreneurship and SMEs, Due diligence ready! <https://ec.europa.eu/growth/sectors/raw-materials/due-diligence-ready>; Change in Context, commissioned by Ministry of Foreign Affairs of the Netherlands (2018), *Government policy to stimulate international responsible business conduct*, <https://media.business-humanrights.org/media/documents/files/government-policy-to-stimulate-international-responsible-business-conduct.pdf>; Government of Canada, SME Sustainability Roadmap, https://www.ic.gc.ca/eic/site/csr-rse.nsf/eng/h_rs00174.html

³⁰ Indicative, non-exhaustive, and regularly updated list of conflict-affected and high-risk areas (CAHRAs) (as defined under Regulation 2017/821) <https://www.cahraslist.net/> (last accessed 9 February 2021).

³¹ For example, the EU Next Generation EU is a €750 billion temporary recovery instrument to help repair the immediate economic and social damage brought about by the coronavirus pandemic, the [Recovery and Resilience Facility](#) of Next Generation EU with €672.5 billion in loans and grants available to support reforms and investments undertaken by EU countries, aligned with priorities ensuring in the long-term a sustainable and inclusive recovery that promotes the green and digital transitions. https://ec.europa.eu/info/strategy/recovery-plan-europe_en#nextgenerationeu

³² For example in France, the OSEO public investment bank offers loans at favourable rates and without collateral for SMEs who adopt environmentally friendly technologies or develop new ones; in the USA, a co-operative agreement between the Department of Environmental Quality and the Department of Business Assistance has allowed SMEs to obtain loans to finance the purchase of equipment to implement voluntary pollution prevention measures or to introduce agricultural best management practices, OECD (2018), *Environmental Policy Toolkit for SME Greening in EU Eastern Partnership Countries*, OECD Green Growth Studies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264293199-en>.

³³ Examples of these include the Netherlands, where the MIA enables companies to deduct environmental investments up to 36% of the investment cost and the Japanese government, which provides industry with tax preferences (e.g. reductions in the local corporate tax) for cleaner and climate-friendly technologies. OECD (2018), *Environmental Policy Toolkit for SME Greening in EU Eastern Partnership Countries*, OECD Green Growth Studies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264293199-en>.



Support may also involve providing training or expertise on the implementation of due diligence processes. For example, SMEs might need to engage external expertise or organise extra-training of staff to comply with new obligations, since they might lack information or in-house expertise.

Governments can also support the activities of multi-stakeholder or industry initiatives that assist SMEs in implementing due diligence. Collaboration on due diligence can be beneficial in pooling knowledge on sector risks and solutions, increasing leverage, and making due diligence more efficient, for example through scaling up of effective and proven processes, recognition of existing assessments of business relationships, and through common reporting frameworks for business relationships. SMEs in particular can benefit from collaboration with industry schemes and multi-stakeholder initiatives to address resource, capacity and leverage constraints.

Industry schemes may be fragmented and can sometimes difficult for SMEs to navigate. Governments can stimulate SME participation, for example through supporting MSIs in the development of tools and trainings for SMEs,³⁴ facilitating a transparent dialogue between peer companies, avoiding audit fatigue or enhancing synergies in remediation. They can also play a role in the recognition of credible due diligence schemes. The OECD's Alignment Assessment methodologies and tools may provide support in this respect.³⁵

Promoting alignment

Governments also have an important role to play in simplifying and streamlining RBC expectations. This can help in alleviating the burden of complying with RBC expectations, particularly for SMEs. This may involve promoting the convergence of standards and certification requirements, developing mutual recognition agreements and schemes, as well as development and alignment of national certification schemes aligned with international RBC standards. Governments could also consider the option of nationally accredited conformity assessment bodies or other accredited bodies to assist with the monitoring and assessment of due diligence processes and development of common reporting frameworks.

Promoting RBC through existing SME internationalisation support and post COVID-19 recovery packages

The adoption of RBC practices may also be supported by their inclusion in existing and newly developed policies to support SME internationalisation. Such considerations could be part of SME chapters in Free Trade Agreements (FTAs), but may also be included in existing instruments such as commercial diplomacy, trade missions and fairs, export credits, and financial support, intelligence and advice for SME internationalisation.

³⁴As an example the German Federal Ministry for Economic Cooperation developed a tool on Assessing and Enhancing the Contribution of Small and Medium-scale Enterprises to Due Diligence for Responsible Mineral Supply Chains. See https://www.bgr.bund.de/DE/Themen/Min_rohstoffe/Downloads/Assessing_enhancing_due_diligence_supply_chains.pdf;jsessionid=4856B9FB00A6AC11A8D3C897F4255D6C.1_cid284?_blob=publicationFile&v=5

³⁵ To help support a common understanding of due diligence while also enabling cross-recognition between programs, the OECD has launched a voluntary process to assess the alignment of these initiatives with OECD due diligence guidance. This process, called the OECD Alignment Assessment process, is voluntary and was first piloted in 2016. For more information see: <https://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>



Conclusion and further issues for consideration

In developing due diligence regulations, it is important to carefully consider the impacts on and perspectives of SMEs impacted by or associated with potential regulation. Governments should carefully consider issues specific to SMEs, including proportionality and complementary support in the design of regulation.

Beyond developments related to mandatory due diligence rules, the relationship between RBC and other SME policy objectives such as promoting SME participation in global value chains and harnessing SMEs to drive inclusiveness and sustainability also merit further discussion and inquiry. In this respect cross policy dialogue could be useful to identify how to realise “win-wins” between instruments supporting inclusive and sustainable SME participation in GVCs and those fostering of RBC. In the current context, considering how “build back better” COVID recovery packages can be used to support these related but varied policy goals will also be important.