

**Background note on Regulatory Developments  
concerning Due Diligence for Responsible Business Conduct**

# Implications for OECD National Contact Points

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This document is part of a series of notes considering issues related to the design and implementation of mandatory environmental and social due diligence legislation related to OECD standards on responsible business conduct (RBC).

It contributes to the OECD Due Diligence Policy Hub which presents technical papers, event information, tools and other resources to help policy makers improve the design of legislation and regulation on due diligence for RBC. The hub is managed by the OECD Centre for RBC with a view to helping governments leverage the wide-ranging policy measures at their disposal to promote RBC.

Find out more at <http://mneguidelines.oecd.org/due-diligence-policy-hub.htm>

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# Foreword

This document is part of a series of background notes considering issues related to the design and implementation of mandatory environmental and social due diligence legislation related to the OECD Guidelines for Multinational Enterprises and OECD Due Diligence Guidance for Responsible Business Conduct (RBC). It considers key principles and elements of the risk-based approach under the OECD RBC due diligence standards and presents options for translating these into mandatory requirements, based on examples from existing risk-based legislation in other contexts.

The document contributes to OECD work on Due Diligence Policy which aims to support policy makers to improve the design and implementation of legislation and regulation on due diligence for RBC.

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# 1 Introduction

A number of legislations introducing mandatory obligations for companies regarding environmental and social due diligence have been adopted or proposed in recent years. Many of these legislations contain provisions regarding their implementation by a dedicated authority. Such implementing authorities may be mandated to play different roles, such as informing, promoting and training companies regarding the obligations of legislation, but also as supervising or enforcing companies' compliance with such obligations (hereafter collectively referred to as "implementation authorities" or "implementing authorities").

National Contact Points for Responsible Business Conduct (NCPs) under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the MNE Guidelines), are agencies established by governments with the mandate of promoting the Guidelines and related due diligence guidance, and handling cases (referred to as "specific instances") related to the Guidelines as a non-judicial grievance mechanism. As a large share of due diligence legislation in force or under discussion implicitly or explicitly reflects due diligence expectations enshrined in OECD instruments on responsible business conduct (RBC), the mandate of NCPs may in some cases be closely related to that of authorities tasked with promoting, supervising or enforcing implementation of these laws. As such, the relationship between the role of NCPs and such implementing authorities merits consideration.

The purpose of this brief is to:

- Present an overview of the relationship of NCPs to implementation authorities associated with due diligence legislation.
- Reflect on how to enhance synergies and mitigate any risks associated with convergence between the duties of implementing authorities under those legislations and the role of NCPs.
- Explore potential models for cooperation between NCPs and implementation authorities associated with due diligence legislation.

# 2 Overview of relationship of NCPs to implementation authorities associated with due diligence legislation

## Implementation authorities under due diligence regulation

In recent years, a large number of RBC due diligence-related legislations have been adopted or proposed. These legislations can roughly be divided into three categories with respect to the types of obligations they place on companies:

- Disclosure or corporate reporting laws, which require companies to publish information related to their due diligence processes and/or outcomes.
- Due diligence conduct requirements, which require companies to take a number of actions to implement due diligence.
- Trade bans or product withdrawal mechanisms, which prohibit the import or presence of products that are associated with certain risks or impacts and under which demonstration of effective due diligence can establish a presumption of an absence of such risks or impacts.

These legislations may either be cross-sectoral or only target a specific sector. Virtually all relevant legislation adopted or currently under discussion contains some provisions for a government agency to play a role in support of the implementation, enforcement, or remediation of obligations placed on companies. Such agencies are either existing authorities being assigned this additional role, or new ones, to be established or designated by the executive. 4Annex A provides an overview of the legislations currently adopted or in discussion and their implementation authorities.

The roles assigned to those authorities include:

- Providing guidance to companies on how best to comply with the set-out obligations.
- Actively monitoring compliance by companies with the obligations, often on the basis of reports submitted by companies, sometimes with a requirement that these reports be independently audited.
- Issuing recommendations or orders to companies to redress any instance of non-compliance that the implementation authority notes during the monitoring.
- Imposing fines and other penalties.
- Handling complaints submitted by interested persons regarding non-compliance with the obligations under the legislation.

Interestingly, very few of these legislations entrust these authorities with a remedy role whereby affected persons could seek access to remedy for harm suffered as a result of non-compliance by a company with its obligations under the legislation. While some authorities have the capacity to handle complaints such processes are primarily designed to investigate potential non-compliance with the law. Remedy in the form of damages to groups of individuals to compensate for harm resulting from such non-compliance (where provided) must generally be sought through civil actions before regular courts or via the grievance mechanism that companies have to set up as part of their obligations under the legislation. A few legislations also provide that companies that fail to comply with the obligations can face criminal liability.

## OECD National Contact Points for Responsible Business Conduct

All 51 governments adhering to the Guidelines have the legal obligation to set up an NCP with the role of “furthering the effectiveness of the Guidelines”. NCPs make up a network and a community of practitioners, dealing with a wide array of impacts involving companies either through their operations or their supply chains. To deliver on this broad mandate, governments have the flexibility to organise their NCP in the form and structure they deem most appropriate. While there is no prescribed model, NCPs must operate in accordance with a number of “core effectiveness criteria”, namely visibility, accessibility, transparency, accountability, predictability, impartiality and equitability, and compatibility with the Guidelines.

NCPs have two main responsibilities. The first relates to the promotion of the MNE Guidelines and policy coherence. In order for companies and stakeholders to be aware of what the expectations of adhering governments are as set out in the Guidelines, NCPs are required to promote the Guidelines, along with the sector-specific and general due diligence guidance.

The second role relates to handling grievances – called “specific instances” – related to the MNE Guidelines. NCPs provide access to non-adversarial means to facilitate the resolution of issues related to the implementation of the Guidelines by companies and where relevant facilitate access to remedy for corporate impacts. To this day, NCPs have collectively handled over 650 cases addressing a wide variety of business impacts. The specific instance process is governed by a “Procedural Guidance” attached to the MNE Guidelines and is designed to be simple and flexible. Since 2011 over half the specific instances at least partly concern due diligence expectations and necessitate that NCPs consider and make recommendations with respect to how companies should carry out due diligence in an effective and credible manner. In that sense, NCPs have together built a vast amount of expertise around the notion of due diligence and the implementation of due diligence in relation to a broad array of risks.

In addition to these two main responsibilities, NCPs may also support the efforts of their government to develop, implement and ensure coherence of policies to promote RBC, so as to ensure that the Guidelines are considered and supported by relevant domestic policy developments. In this regard, some NCPs have increasingly taken on a more prominent role in terms of their involvement in the development and implementation of National Action Plans on Business and Human Rights or due diligence legislations, but also in handling enquiries on various regulatory developments relevant to RBC. As such, NCPs are encouraged to share their expertise, insights, data and other statements in specific instances with relevant agencies.

## Possible relationship and points of intersection between NCPs and implementing authorities

Given that a number of due diligence legislations expressly or implicitly rely on the OECD Guidelines or OECD Due Diligence Guidance, and generally seek to attain objectives that are similar to those

instruments, it will be important to consider the relationship of these implementing authorities to NCPs and the points of intersection between their respective mandates.

NCPs may share common objectives and mandates with some implementing authorities. However, there are likely also important distinctions between the roles of the two. For example, some legislation may envision a promotional or technical support role for implementing authorities charging them with providing information or guidance on due diligence expectations to business. Such a role may be very similar to the promotional mandate of NCPs. On the other hand, implementing authorities will in many instances have an enforcement or compliance oversight role (See Annex A for examples). Such a role is likely to reflect important distinctions from the role of NCPs in handling instances of potential non-observance of the Guidelines. Notably, supervisory authorities would have a compliance focus and be equipped with prerogatives of a binding nature such as investigative powers and the ability to take binding measures against non-compliant companies. On the contrary, the role of NCPs as a non-judicial grievance mechanism is voluntary, non-adversarial and orientated towards resolving grievances and encouraging companies to implement the Guidelines. Parties choose to participate in the process and NCPs cannot compel them to engage nor mandate specific remedies or courses of action through the process.

This does not mean there would be no relationship at all between these two roles, in particular as both supervisory authorities and NCPs might handle the same issues under their respective roles. For example, failure to perform due diligence could both be viewed as the subject of a specific instance, and as a potential failure to comply with a regulation regarding due diligence (depending on the nature of the issue and the regulation). In such cases, one would need to consider how to make sure that the two bodies could play their role in a way that both fosters potential synergies and avoids interference (for instance, how to manage possible transfers of information between the two bodies, in particular information submitted confidentially by a company or the submitter).

While there is no complete overlap between the role of implementing authorities and the mandate of NCPs, in many cases there would be value in considering the relationship between the two, particularly in respect of:

- Promotion: Opportunities for using resources efficiently for similar mandates and activities, promoting coherence and avoiding risks of duplication.
- Policy support: Collaboration with regard to providing guidance and information to companies on due diligence or exchanges of good practices regarding the operation of networks of implementation authorities to build on the experience of NCPs and ensure consistent and high-quality support.
- Grievance resolution: Fostering cooperation and synergies between the respective grievance and complaints handling functions, as well as administrative enforcement functions of NCPs and implementation bodies, so as to ensure effective use of public resources, but also an optimal remedy landscape whereby affected persons have clear and complementary routes to remedy.

These issues are explored further below.

## Benefiting from existing mechanisms and enhancing synergies

As discussed above, the close relationship between several aspects of the NCP's mandate and the role of implementation authorities of due diligence legislation can allow various opportunities for synergies between the two. In this respect, NCPs have several unique attributes that could support or contribute to the mandate of implementation authorities.



## **Promotion and information**

Through their promotional mandate, NCPs have developed a wealth of resources and experience in conducting outreach, training, and responding to enquiries of business and other stakeholders with respect to international standards on responsible business conduct, in particular the notion of RBC due diligence. Existing expertise of NCPs can be leveraged in the context of promotional activities of implementing agencies. There can also be opportunities for cooperation and resource sharing. In this regard, many NCPs develop promotional plans or strategies to guide their outreach activities. Such plans can be shared or co-developed with relevant implementation authorities to identify opportunities for collaboration and avoid duplication.

## **Interpretation of due diligence standards and guidance**

Additionally, NCPs have over two decades of experience interpreting the MNE Guidelines, considering instances of non-observance of the recommendations of the Guidelines as well as outlining good practice on due diligence and other aspects of responsible business conduct in specific instances.

To date, NCPs have handled over 650 cases related to addressing social and environmental impacts from business operations in over 105 countries and territories. In the context of these cases, NCPs have frequently confronted and sought to address challenging conceptual issues related to due diligence responsibilities of companies (see Box 2.1 for one example).

### **Box 2.1. Responsibilities of companies performing due diligence through industry or multi-stakeholder schemes**

A number of NCP cases have concerned the question of the responsibilities of companies (partly) entrusting some due diligence functions to industry or multi-stakeholder schemes. In examining these cases, NCPs have been able to derive a number of principles, including (i) that membership in these schemes does not relieve a company from discharging its own due diligence responsibilities where challenges to the scheme would require it, and (ii) that companies should ensure that the scheme performed meaningful stakeholder engagement.

In 2020, the OECD's Investment Committee was able to rely on NCP cases to issue a clarification regarding good practice with respect to engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives.

Source: OECD (2021<sup>[1]</sup>)

NCPs' contributions to the interpretation of the notion of due diligence are documented in over 400 statements published by NCPs since 2011 on the cases they have handled, and which are available on a public database maintained by the OECD.<sup>1</sup> These statements now form a large body of analysis concerning how due diligence as recommended by OECD instruments can be implemented in specific real-life situations. Such experience could be highly relevant for supervisory authorities tasked with assessing whether companies effectively carried out due diligence enshrined in law.

## **Model structures**

Furthermore, NCPs also have an established infrastructure for executing their role. In this respect, NCPs have various structures which have been refined according to their specific operating and legislative context with the objective of integrating the necessary range of perspectives and expertise and ensuring

visibility, accessibility, transparency and accountability in the context of their activities (see ). Inspiration and lessons can be drawn from how NCPs have structured themselves to better inform governments on the types of expertise and arrangements that could be relevant for supervisory authorities established to oversee or enforce due diligence obligations in law.

Figure 2.1. Main NCP structures



Note: Countries with an asterisk (\*) have an advisory body including other government departments or stakeholder representatives in an advisory capacity.

Source: Adapted from OECD (2020<sup>[2]</sup>)

### ***Networking, coordination and peer learning***

Furthermore, the OECD NCP Network convenes all NCPs from 51 countries to exchange their experiences with the purpose of promoting peer learning as well as coherence and coordination across the network. This allows to provide a platform for consultation, sharing expertise and resources and developing joint activities. It also provides the basis for coordination and ensuring consistency of interpretation and application of the Guidelines across a broad range of geographies and contexts. Lastly, the OECD NCP has the benefit of drawing directly on the OECD Secretariat for expertise on the Guidelines and issues that arise in the context of specific instances. This existing platform could be drawn on or learned from in promoting coordination across implementation authorities across jurisdictions.

### ***Flexible and accessible proceedings***

Importantly NCPs are mandated to operate in an accessible manner. NCPs do not charge a submission fee for complaints filing or handling of cases and they are obliged to ensure that requirements to file a case are not unnecessarily burdensome. In this respect, evidentiary thresholds for submissions of cases to NCPs should not be unduly high and where there are opportunities to contribute to the resolution of issues, NCPs are encouraged to pursue them to the fullest extent possible (OECD, 2019<sup>[3]</sup>). Moreover there are no statutes of limitations to complaints filed to NCPs.

NCPs can also provide impartial and equitable assistance to parties involved in a case. Such assistance may include, for example, the use of multiple languages and translation assistance, guidance on presenting an admissible submission and engaging in mediation, allowing flexibility regarding deadlines, or providing affordable options for participation in the process, such as remote meeting facilities (OECD, 2023<sup>[4]</sup>).<sup>2</sup>

NCPs also have jurisdictional flexibility, which means they can consider issues that arise outside of the country they are based in and can also make decisions on which NCP should lead on a case. As such any individual or organisation with an interest in the matter can submit a case to an NCP regarding a company operating in or from the country of the NCP. To date, NCPs have considered issues arising in over 105 countries and territories on all continents, 34 of which are low or lower-middle-income countries. Moreover, as NCPs are mandated to consider potential issues of non-observance of the Guidelines they can treat cases related to a broad range of issues and expectations – generally this scope will be broader than that of related regulatory expectations.

As such, NCPs can provide a cheaper, faster, and more accessible alternative to legal proceedings, which are often associated with complex jurisdictional or procedural requirements, significant expenses, and long timelines, and thereby enhance access to justice for those harmed by corporate misconduct.

## **Considering and mitigating potential risks**

### ***Confusion resulting from partly overlapping mandates***

Where mandates of implementing authorities intersect or partly overlap with those of NCPs there may be a risk of duplication of activities which can represent an inefficient use of government resources as well as lead to confusion amongst business and other stakeholders. In considering and mitigating these risks, it may be useful in the first instance to clearly understand commonalities and differences related to these mandates. For example, obligations for companies deriving from due diligence legislations will in many cases be more specific or narrow than the broad and voluntary recommendations of the Guidelines, which often go beyond the requirements of national law and seek to encourage best practices. Such differences in scope will have implications for how promotional activities and trainings are designed, and will be reflected in the scope of issues that can be considered by an implementing authority in their investigative

or complaints handling function, as compared to the mandate of NCPs as non-judicial grievance mechanisms. Furthermore, these differences will have significant implications for the procedures and methodologies followed by supervisory authorities and NCPs in considering instances of non-compliance with a regulation or, respectively, non-observance of the Guidelines.

To mitigate these risks, it will be important for the implementation authorities and NCPs to be set up and to operate in a way that allows them to fulfil their respective mandates with minimal interference to one another. Additionally, developing clear communication material to explain these distinctions will be important to ensure they are properly understood by external actors. Messaging about the relationship of the NCP to regulatory expectations or between NCPs and an implementing authority could be agreed on between the two bodies and used in regular outreach and communication.

### ***Undermining NCPs' role as non-judicial grievance mechanisms and access to remedy in general***

One perceived risk associated with the introduction of mandatory due diligence rules, along with legal channels to enforce them, is that this will undermine the role of NCPs in the context of their dispute-resolution functions by redirecting resources and attention to the supervisory authority, or leading to reduced cases with NCPs which follow a voluntary, dialogue-based approach. The introduction of mandatory due diligence legislation could, on the other hand, enhance visibility and awareness of RBC and due diligence expectations and lead to increased use of the NCP system, regardless of alternative legal channels.

The specific instance process is voluntary and cannot compel any course of action on a company or sanction wrongdoing. However, it remains an important avenue to foster access to remedy for corporate impacts. As noted above, under existing or proposed due diligence legislation implementing authorities generally play a limited role in the provision of remedy. Remedy (where provided) will generally still be sought through civil actions before regular courts. Thus, persons affected by corporate impacts, and in particular vulnerable groups, may continue to face significant barriers in accessing remedy through courts and NCPs can play an important role in overcoming many of these barriers. As such the NCP mechanism can help bolster access to justice through serving as a complement or alternative to judicial proceedings.

In addition to clear communication regarding the differences and comparative advantages (as discussed above) of NCPs to supervisory authorities, effective signposting taking into account potential advantages and disadvantages of various remedy mechanisms or processes will be important to maintaining the visibility and relevance of NCPs in countries where mandatory due diligence regulations exist.

Governments could also address some of these risks by establishing incentives for enterprises to participate in NCP specific instances in good faith. In this respect, several governments have already introduced policies to promote good faith engagement in the NCP-specific instance proceedings.<sup>3</sup> For example, Clause 9.5 of the Canadian NCP's rules of procedure states that "If Canadian companies do not participate in the NCP process, or if the NCP determines that they do not engage in good faith or constructively in the course of or follow-up to the review process, the NCP can recommend the withdrawal of all Trade Commissioner Service support and that Export Development Canada and the Canadian Commercial Corporation also withdraw future support" (Canadian National Contact Point, 2022<sup>[5]</sup>). Such incentives have been effective in enhancing participation in NCP-specific instance proceedings, which, due to their voluntary nature, often do not proceed to mediation due to the unwillingness of one of the parties (in the vast majority of cases the enterprise) to participate.<sup>4</sup> Positive incentives could also be conceived of to enable the companies to avoid scrutiny by courts or supervisory authorities and save the associated costs where they can demonstrate good faith engagement and positive resolutions through NCP proceedings.

### ***Changing the nature of specific instances***

NCPs favour a dialogue-based approach, based on mediation, joint-dispute resolution and focused on forward-looking solutions. Such approaches are increasingly being adopted in other fields, such as anti-corruption.<sup>5</sup> Obligations related to due diligence in legislation, particularly conduct expectations that can be enforced through administrative sanctions and civil liability, may create a risk that parties to cases handled by NCPs approach them like legal proceedings, which in turn could make the process adversarial, less timely and less likely to conclude with an agreement between the parties.

Companies involved in specific instances may also be wary of any porosity between the specific instance mechanism and judicial or supervisory processes, namely that an NCP could "refer" a case to a supervisory authority, or that the latter could decide to begin proceedings based on a specific instance. Companies may also fear that submitters of complaints to NCPs use the specific instance proceeding to strengthen or build a legal case against them. Such concerns may be augmented in situations where NCPs issue determinations that the company has not observed the Guidelines,<sup>6</sup> or where the NCP has a formal



relationship with a supervisory authority. In order to ensure trust and maintain open engagement in NCP-specific instance processes, it will be important to establish safeguards around the process particularly with respect to confidentiality of certain aspects of the proceedings where necessary.

NCPs, to some degree, already are exposed to and manage some of the implications associated with alternative venues for dispute resolution. Nearly half of the cases handled by NCPs since 2000 implicated parallel proceedings – either legal proceedings, or those related to labour disputes, arbitrations or other non-judicial grievance mechanisms. While some NCPs have cited parallel proceedings as a challenge in handling cases, many have also noted that specific instances can nevertheless contribute to reaching resolution amongst the parties or otherwise positively contribute to other ongoing dispute resolution processes. Some of the same approaches NCPs currently use to mitigate against the risk of creating prejudice in parallel proceedings could likewise be employed in this context (OECD, 2023<sup>[4]</sup>).<sup>7</sup>

# 3 Potential models for cooperation between NCPs and implementation authorities

Similar to how different countries have pursued different structures with respect to their NCPs, countries with mandatory due diligence rules may likewise choose different approaches with respect to how NCPs may interact with implementing authorities.

## Partial integration

Some countries may consider a formal role for NCPs in the context of implementation of legislation, for example through expanding the mandate of their NCPs or integrating NCPs into the structure of an implementing authority. Such an approach would most directly allow countries to draw on the expertise and experience of their NCPs towards the objective of implementing mandatory expectations related to due diligence. This would allow for economies of scale and pooling of resources, as well as close coordination between the NCP and the implementing authority, notably as regards interpretation of due diligence expectations. It would also avoid having two separate agencies with potentially overlapping mandates. However, in light of the distinctions in mandates (notably with respect to NCPs providing a voluntary non-judicial grievance mechanism vs. an enforcement or sanctioning role) such an arrangement would have to be structured in such a way as to enable synergies where relevant while providing clear separation between distinct functions. This could potentially be achieved by establishing joint structures for promotional and informational activities while separating the role of handling specific instances and enforcement of legislation between separate structures or teams.

## Cooperation

Another model may involve establishing a mechanism for exchange of information and experiences between the implementing authorities and NCPs. In the context of the European proposal for mandatory due diligence rules, the European Parliament's resolution noted that "[t]he national authorities are encouraged to cooperate and share information with the OECD National Contact Points (NCP) and national human rights institutions available in their country" (European Parliament, 2021<sup>[6]</sup>). Such cooperation could take a variety of forms. For example, it could involve establishing a cooperation framework for sharing tools and resources and meeting regularly to share information (e.g. on relevant issues arising in the NCP network, or in the context of outreach to business and other stakeholders). It could also involve informing implementing authorities about the outcomes of specific instances handled by NCPs. In this respect, several NCPs have a process established whereby the NCP will inform other branches of government (such as their public procurement department or trade services) of their statements in specific instances.

In addition to sharing information, NCPs can play a role in helping implementing authorities build their capacity in monitoring and enforcing expectations under due diligence laws. For example, the NCP of Norway was formally involved in training the Norwegian Consumer Protection Authority, the implementing authority for the Norway Transparency Act, about due diligence expectations under OECD instruments (Norwegian Consumer Authority, 2023<sup>[7]</sup>). On its webpage related to the Transparency Act, the Norwegian Consumer Protection Authority states “We have a close dialogue with National Contact Point Norway (NCP Norway), which is responsible for following up the OECD Guidelines for multinational companies upon which the Transparency Act is largely based. Our close contact with NCP Norway is important with respect to a uniform practice in this field” (Norwegian Consumer Authority, 2023<sup>[7]</sup>). NCPs could also potentially serve an advisory role to implementing authorities in considering instances of potential non-compliance with legislations or explaining the position of relevant international instruments on due diligence expectations and their application in specific sectors.

A model of cooperation and exchange, whether formal or informal could help implementing authorities take advantage of experience and resources of the NCPs without changing the mandate or structure of existing NCPs. However, as many NCPs already grapple with resource constraints, such a role would have to be supported with sufficient funding and staff time. Furthermore, where the information exchanged in specific instances, or the outcomes thereof, may have bearing on investigations of implementing authorities, the nature of NCP procedures may be impacted. As discussed above, on the one hand, this might encourage more engagement from businesses and efforts to achieve a positive resolution if this can avoid “escalation” to a court or a supervisory authority. On the other hand, it may result in the processes becoming more legalistic and prevent parties openly engaging in a joint resolution process based on a fear that it could lead to legal consequences down the line.

## Coexistence

As a last model, NCPs might not be called on to play any role in the context of implementation of due diligence regulation. This has been the situation for various existing pieces of due diligence regulation already in force today. In these situations, the NCPs maintain their mandate for promoting the MNE Guidelines and handling cases related to their non-observance but do not interact with agencies charged with supervising the implementation or enforcement of specific laws. Such a model allows an NCP to focus on their core mandate and does not pose additional resource pressure on the NCP. Such a model also clearly separates responsibility for overseeing legal due diligence expectations from those of the recommendations of the MNE Guidelines, which may be different in terms of scope, ambition and precision. However, if not designed in a way that limits interference between the mandates of the two bodies, such a model can risk undermining the visibility of NCPs and their use as a venue for resolving issues and confuse external stakeholders. Regardless of whether NCPs engage with or share information regarding cases with implementing authorities, parties to cases may nevertheless have concerns about the implications of such cases for legal enforcement. Furthermore, where legal expectations are based on or inspired by OECD RBC Instruments, the expertise of NCPs would not be available to supervisory authorities, heightening the risk of misinterpretation of international standards and potentially exposing businesses to inconsistent obligations.

# 4 Conclusion

The close relationship between NCPs and implementing authorities associated with due diligence regulation merits reflection by policy makers on how to ensure synergies between the two bodies and build on the experience and expertise of the NCPs while mitigating potential risks and unintended consequences to their mandate and position.

The structure that implementing authorities related to due diligence regulation take as well as their formal relationship (or lack thereof) to local NCPs will likely vary and respond to the unique contexts associated with their respective jurisdictions. However, across jurisdictions, clearly reflecting and communicating on the relationship between these bodies will be important to avoid confusion amongst external stakeholders, including business, and to protect the integrity of both bodies. With decades of experience considering the implementation of RBC due diligence expectations in real-life situations, NCPs serve as an important resource for authorities charged with oversight of compliance with regulatory expectations related to due diligence. Finally, policy makers take care to protect the role of NCPs as a non-judicial grievance mechanism which can complement other venues for providing access to remedy.

## Annex A. Overview of role of implementation authorities in context of RBC legislations adopted or in discussion

Cross-sectoral	
Corporate reporting law	Implementation/supervision/remedy mechanism
California Transparency in Supply Chains Act (2012)	California Attorney General's office maintains dialogue with companies and stakeholders on implementation of the Act, and can seek injunctive relief (California Civil Code section 1714.43, (d))
EU Non-Financial Reporting Directive (2014)*	Statutory auditor or audit firm expresses opinion as to whether the required information has been provided (Art. 20 3. of Directive 2013/34/EU) Commission issued guidelines on reporting.
UK Modern Slavery Act (2015)*	Court penalties or prevention orders. + Independent Anti-slavery Commissioner to support implementation (advising authorities, providing training, supporting research, see Art. 41 3 of the Act)
Australian Modern Slavery Act (2018)*	Modern Slavery Statements Register maintained by the Minister, who may publish information about failure to comply by a company (Part 3 of the Act).
Swiss due diligence law (2021)*	Audit firm will issue opinion on delivery of information. Criminal fine possible for non-compliance.
Under discussion: EU Corporate Sustainability Reporting Directive (CSRD)*	Extension of audit and assurance requirement under 2014 NFRD (Arts. 9a and 10 of amended proposal)
Due diligence laws	Implementation/supervision/remedy mechanism
French Duty of Vigilance Law (2017)*	Civil liability regime before civil courts
Dutch Child Labour Law (2019)*	Dutch consumer and market authority acts as supervisory body, may review statements of companies, make recommendations in case of non compliance and receive complaints (Art. 3 of the law)
Swiss due diligence law (2021)*	Audit firm will issue opinion on delivery of information. Criminal fine possible for non-compliance.
Norway Transparency Act (2021)*	Norwegian Consumer Authority may issue guidance and advice on implementation and monitor individual companies compliance (Arts. 8 and 9 of the Act)
German Supply Chain Due Diligence Act (2021)*	Competent authority to be created in Federal Ministry of Labour and Social Affairs will monitor compliance with obligations and handle complaints (Section 19, 13 and 14 of the Act).
Under discussion: EU Corporate Sustainability Due Diligence Directive (CSDD)*	EU Member States to take implementing measures whereby companies falling under the scope of the directive would receive proper information and support (Art. 14 of draft Directive) EU Member States to designate supervisory authorities to monitor compliance with the directive, including through investigation, redress measures and fines (Arts. 17-20 of draft Directive), including by handling complaints by interested persons (Art. 19 of draft Directive). A civil liability regime is also foreseen for remedy (Art. 22 of draft Directive)
Under discussion: Dutch due diligence legislation (govt. commitment)*	[No text available yet]
Under discussion: Finnish due diligence legislation (govt. commitment)*	No text available yet but the preparatory memorandum (drafted by NCP members) considers the possibility of a supervisory authority, remedial actions and a system of criminal and civil liability. The NCP is mentioned as an example of non-judicial remedy mechanism.



Under discussion: Spanish due diligence legislation (govt. commitment)*	No text available but the pre-project for public consultation mentions the appointment of a public and independent competent authority to supervise the implementation of the law, as well as an access to justice system for persons affected by non-compliance with the law.
Under discussion: Belgian Vigilance proposal*	Competent authority to be designated to monitor compliance by companies with the law and evaluate its impact, notably through publication of guidance and instructions, publication of reports, etc. (Art. 13 of the draft law) and system of judicial remedies (Arts. 17-27)
<b>Trade &amp; other product bans</b>	<b>Implementation/supervision/remedy mechanism</b>
U.S. Trade Facilitation and Trade Enforcement Act (2015)*	Creation of US Customs and Border Protection, with wide implementation, supervision and enforcement powers (Section 802 of the Act)
U.S. Uyghur Forced Labour Prevention Act (2021)*	The Commissioner for US Customs and Border Protection (CBP) is in charge of monitoring the implementation of the Act. It has also issued Guidance to importers on how to implement the bill.
Under discussion: Canada Modern Slavery Bill S-211	Designated persons foreseen for administration of the bill, with supervision and investigation powers. The Minister may then take corrective measures on the basis of information obtained by designated person (sections 14-20 of the draft bill). Criminal liability system foreseen (sections 19-21 of the draft bill)
<b>Sector-specific</b>	
<b>Corporate reporting law</b>	<b>Implementation/supervision/remedy mechanism</b>
U.S. Dodd Frank Act s1502 (2010)*	Secretary of State to issue Guidance for private sector on due diligence Securities and Exchange Commission in charge of receiving reports from companies using conflict minerals (Section 13 p. 1.A of the Securities Exchange Act)
EU FSDR & Green Taxonomy (2019)*	Competent authority (financial markets regulators) in charge of supervising compliance with EU FSDR (Art. 14) Delegated authority granted to the EU Commission to define modalities of reporting on sustainable economic activities (Art. 8.4 of Taxonomy Regulation) and technical screening criteria for the contribution of economic activities to the objectives of the regulation (Arts 10-17 of Taxonomy Regulation). Competent authority under EU FSDR also in charge of monitoring obligations of financial market actors with obligations under Taxonomy Regulation.
Under discussion: New York Fashion Sustainability & Social Accountability Act*	Compliance monitored by Attorney General, who may bring legal action (Section 5 of draft Act)
<b>Due diligence laws</b>	<b>Implementation/supervision/remedy mechanism</b>
EU Conflict Minerals Regulation (2017)*	EU Member States to designate competent authorities responsible for ensuring the application of the regulation, notably through ex-post checks with companies (Arts. 10-12 of the Regulation) Commission to issue non-binding Guidelines on how best to implement the criteria for identifying conflict-affected and high-risk areas (Art. 14 of the Regulation)
Under discussion: EU Batteries Regulation*	EU Member States to designate national authorities for surveillance of market actors compliance with obligations under regulation (Art. 2 (51) of draft Regulation) and competent authorities to monitor compliance with provisions related to end of life of batteries (Art. 5 of draft Regulation)
<b>Trade &amp; other product bans</b>	<b>Implementation/supervision/remedy mechanism</b>
UK Environment Bill (2020)	Relevant national authorities may make regulations, enforce regulations and monitor compliance with such regulations in respect of producer responsibilities for waste (Part. 3 of the Bill and Schedule 4)
Under discussion: EU regulation on deforestation-free products	EU Member States to designate “Competent authorities” to perform a number of tasks related to implementation of the regulation, in particular to perform checks of compliance of companies falling under the scope of the directive (Arts. 13-14 of draft Regulation), and require that an operator comply with the regulation if it finds that it is not the case (Art. 22 of draft Regulation). Competent authorities could also handle “substantiated concerns” from interested persons or organisations, who would then have access to justice to review handling of submission by the authority (Arts. 29-30 of draft Regulation) A system of penalties is also foreseen (Art. 23 of draft Regulation).

Note: Asterisk (\*) denotes OECD RBC instruments used directly in the text of the law or official legislative guidance.

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# Notes

<sup>1</sup> The OECD database of specific instances is available via <https://mneguidelines.oecd.org/database/>.

<sup>2</sup> See Commentary on the Procedures for NCPs para. 10.b (OECD, 2023<sup>[4]</sup>).

<sup>3</sup> See Procedures, Commentary para. 44 (OECD, 2023<sup>[4]</sup>).

<sup>4</sup> In 2022, that proportion was 44% (OECD, 2023, p. 10<sup>[8]</sup>).

<sup>5</sup> See for instance the case of the high-level reporting mechanisms in OECD (2022<sup>[9]</sup>).

<sup>6</sup> Determinations are statements by NCPs setting out their views on whether the company observed the Guidelines. Determinations are not explicitly described or called for in the Procedural Guidance of the OECD Guidelines for Multinational Enterprises, rather the issuance of determinations is a practice carried out by some NCPs, and as such they are optional.

<sup>7</sup> Para. 35 of the Commentary to the Procedures states that “[i]n making such an evaluation [of whether examining a specific instance could contribute to resolution], NCPs could take into account practice among other NCPs, consider the possibility to partially accept the specific instance or to suspend its examination while the parallel proceedings are ongoing and, where appropriate, consult with the institutions in which the parallel proceedings are being or could be conducted” (OECD, 2023<sup>[4]</sup>).

