



# Stocktaking report on the OECD Guidelines for Multinational Enterprises





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**Please cite as:** OECD (2022), *Stocktaking Report on the OECD Guidelines for Multinational Enterprises*,  
<https://mneguidelines.oecd.org/stocktaking-exercise-on-the-oecd-guidelines-for-multinational-enterprises.htm>

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# Foreword

OECD countries are united in a vision to build strong, sustainable and inclusive societies with open markets based on democracy, the rule of law, human rights, and environmental sustainability. Responsible business conduct is essential to achieving these aspirations.

The OECD Guidelines for Multinational Enterprises reflect the expectation by governments that businesses align their operations and supply chains with sustainable development outcomes for people, the planet and society. Introduced in 1976, the Guidelines is the leading government-backed standard on responsible business conduct, covering human rights, labour rights, environment, bribery, consumer interests, as well as information disclosure, science and technology, competition, and taxation. The reach of the Guidelines goes well beyond the OECD economies. The Guidelines are adhered to by 50 governments representing two-thirds of global trade, and their provisions are widely implemented by companies in all sectors across global supply chains and financial markets.

Reflecting the commitment by the OECD to keep its standards fit for purpose, the Guidelines have been updated several times. In 1984, the Guidelines became the only international standard on responsible business conduct to set up a national implementation mechanism: the National Contact Points for Responsible Business Conduct. The National Contacts Points are state agencies tasked with promoting responsible business conduct. Following an additional update of the Guidelines in 2000, the National Contact Points were tasked with facilitating access to remedy in cases where the Guidelines are not being upheld. To date the National Contact Points have handled more than 600 such cases in more than 110 countries and territories. Finally, in their most recent update in 2011, the Guidelines were expanded with a new human rights chapter, closely aligned with the UN Guiding Principles on Business and Human Rights introduced in the same year. In addition, the concept of risk-based due diligence for responsible business conduct was introduced and subsequently further elaborated in authoritative OECD Guidance to companies across and within sectors.

In 2020, the OECD initiated a stocktaking of the MNE Guidelines. The purpose of the stocktaking is to enable the OECD Investment Committee and its Working Party on Responsible Business Conduct to obtain a clearer picture as to whether the MNE Guidelines remain fit for purpose and to provide a basis for exploring options moving forward. The present stocktaking report provides a comprehensive overview of key developments, achievements and challenges since 2011 related to the Guidelines. The report has been developed based on inputs from the National Contact Points for Responsible Business Conduct; inputs by the Institutional Stakeholders Business at the OECD, TUAC and OECD Watch; consultations within the OECD secretariat and OECD Committees; and inputs received during a 3-month public consultation period.

The report was developed by the OECD Centre for Responsible Business Conduct under the leadership of Allan Jorgensen and an editorial team consisting of Froukje Boele, Juliet Lawal, Nicolas Hachez, Pauline Alexandrov, Tihana Bule and Tyler Gillard with contributions by Barbara Bijelic, Benjamin Katz, Benjamin Michel, Benjamin Rutledge, Carissa Munro, Coralie Martin, Frederic Wehrle, German Zarama, Hannah Koep-Andrieu, Jean-Francois Leruste, Jingjing Chen, Jorge Galvez Mendez, Luca Maiotti, Maria Xernou, Marie Bouchard, Marjoleine Hennis, Rashad Abelson, Shivani Kannabhiran, and Stephanie Venuti with communications support by Roxana Glavanov. The Authors would like to express their gratitude to all who contributed input during the development of the report and in particular for the support and advice of Mathilde Mesnard, Deputy Director, OECD Directorate for Financial and Enterprises Affairs and Ana Novik, Head of the OECD Investment Division, and OECD Legal Advisor, Lawrence Pacewicz.

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# Acronyms and abbreviations

**BIAC** [Business at OECD](#)

**CRS** [Common Reporting Standard](#)

**GFRBC** [Global Forum on Responsible Business Conduct](#)

**IC** [Investment Committee](#)

**MNE** Multinational Enterprise

**NCP** [National Contact points for Responsible Business Conduct](#)

**RBC** Responsible business conduct

**TUAC** [Trade Union Advisory Committee](#)

**WPRBC** [Working Party on Responsible Business Conduct](#)



# Executive summary

The purpose of the stocktaking exercise is to i) obtain a clearer picture as to **whether the OECD Guidelines for Multinational Enterprises remain fit for purpose**; and ii) provide a basis upon which to discuss **potential options for moving forward**. Throughout the stocktaking exercise, **fit for purpose** has been treated as a wide concept encapsulating the relevance and effectiveness of the Guidelines and the ecosystem surrounding them in **addressing business impacts today** as well as their ability to ‘**lead from the future**’ by **shaping business conduct to suit future needs**.

The stocktaking report provides an account of **achievements, developments and challenges observed since 2011**, the most recent update of the Guidelines. The report has been developed by the OECD Secretariat based on inputs from **National Contact Points for Responsible Business Conduct**; inputs from the Institutional Stakeholders **BIAC, TUAC and OECD Watch**; consultations with **OECD Committees**; and inputs received during a **public consultation**.

The observations emerging from the stocktaking exercise can be summarised under **three broad criteria** focusing on the fitness of the Guidelines in relation to **issues, implementation and institutions**:

**Fit for the issues: Do the Guidelines adequately address contemporary substantive RBC issues? Are they likely to remain relevant in the future?**

The stocktaking shows that the concepts, principles and thematic issues covered by the Guidelines are seen as highly relevant in today’s business context. The Guidelines and their application have been able to adapt to changing business models and impacts. The development of authoritative yet practical guidance on risk-based due diligence in specific sectors and on specific themes has contributed to the continued relevance of the Guidelines as well as the increasing role of RBC standards globally. The strong alignment of the Guidelines with key instruments such as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration is considered a key quality. At the same time, the stocktaking exercise identifies a number of areas where greater clarity and effectiveness might be needed in light of developments since 2011:

1. **Environmental impacts** of business activities including **climate change, biodiversity, and animal welfare**. In particular, the Guidelines are seen to lack clear expectations on climate mitigation, adaptation or just transition principles.
2. **Risks related to digitalisation and technology**, which impact on a range of thematic areas including human rights, employment, competition and consumer interests.
3. A range of issues **related to human rights** and employment and industrial relations such as gender discrimination, children’s rights, the rights of indigenous peoples, protection of human rights and environmental defenders, impacts on specific at-risk groups, land rights, the right to a living wage and the right to freedom of association and collective bargaining.
4. Clarity in relation to the application of the Guidelines to a diverse **range of businesses and business models** including local companies within cross-border supply chains, platform companies, complex financial structures, multistakeholder initiatives, and economic activities of state actors.

5. **Interlinkages between business-related impacts** on people, planet and society - particularly potential human rights consequences of environmental impacts; digital products and services; corruption; and aggressive tax practices.
6. Consistency with frameworks and instruments that have significantly developed since 2011 - including **OECD Recommendations on due diligence**; OECD standards on **taxation, consumer protection, corporate governance** and **integrity**; and policy and standards developments regarding **sustainability disclosure**.
7. **Alignment with multilateral frameworks** such as the Paris Agreement on climate change and the 2030 Agenda for Sustainable Development, and **reinforcement of linkages** with the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

**Fit for implementation: Are the Guidelines, and their ecosystem fit to drive global uptake and implementation of responsible business conduct?**

The Guidelines have contributed to embedding responsible business conduct in global value chains, financial markets and public policies. Notable developments include uptake and implementation of **OECD RBC due diligence standards in market based mechanisms** and certification schemes; **mandating of RBC due diligence** by a number of regulators and an increase of RBC policy initiatives, including the uptake of RBC standards in regional and multilateral fora (including G7, G20, APEC, ASEAN and EU); and **expansion of the number of countries Adhering to the Guidelines** and progress in **engaging with non-Adherent countries**. For this purpose, the strong alignment of the Guidelines with the UN Guiding Principles and the ILO Tripartite Declaration is seen as a key quality, including in the context of the development of practical guidance on risk-based due diligence by the OECD. The stocktaking exercise has identified a number of opportunities for further increasing uptake and promoting RBC by strengthening the Guidelines' ecosystem:

1. The stocktaking confirms the high importance placed by all stakeholders on **levelling the global playing field for RBC**. Engagement with non-Adherents has increased since 2011 and NCPs frequently deal with specific instances related to or in non-Adherent countries or territories. Since 2011, there has also been increased action from non-Adherent countries on RBC including in the context of **G20, APEC and ASEAN**. Engagement and coordination on RBC among international organisations is also seen as a key opportunity.
2. Since 2011, there has been increasing emphasis on the **role of governments in promoting and enabling RBC**: the stocktaking confirms the potential for achieving scale by ensuring that **industry and multistakeholder initiatives** and **evolving regulatory and policy initiatives** are aligned with the Guidelines to ensure consistency and effectiveness while **reducing cost and complexity for businesses**, in particularly for SMEs.
3. The stocktaking notes an **increasing need for RBC data** considering developments in the **regulatory** space, **financial markets** as well as **tracking of progress** in achievement of sustainable development goals. The stocktaking points to the need for developing a simple and uniform set of **metrics for market actors and regulators** to assess RBC due diligence in line with OECD standards.
4. Stakeholders welcome the **practical approach** of the due diligence guidances as well as **efforts by NCPs to promote awareness** of the Guidelines. However, at a global level opportunities exist for **making RBC more visible** and accessible by introducing **'plain language' in the title of the Guidelines and the name of the NCPs**.

**Institutionally fit: Is the NCP system as currently designed and operated fit to deliver on its mandate to further the effectiveness of the Guidelines?**

The Guidelines are unique in that they include a **national institutional mechanism** to further their effectiveness. The stocktaking highlights important strengths and achievements by NCPs through their **dual mandate to promote the Guidelines and facilitate access to remedy**. Since 2011, the NCP system has seen a steady rise in the number of specific instances received by some NCPs and a number of NCPs have played a growing role in promoting the Guidelines and facilitating policy coherence. NCP peer reviews have led to concrete improvements in the reviewed institutions. However, the stocktaking identifies a number of opportunities for further leveraging the unique capabilities of the NCP system, and has also confirmed a number of challenges that risk undermining the effectiveness and credibility of the system:

1. **Functional equivalence:** the stocktaking confirms that significant gaps exist in the functional equivalence of NCPs in the areas of **visibility, accessibility, transparency and accountability** resulting in a lack of consistency. These gaps often result from **under-resourcing, insufficient government support and/or inadequate structures**. Achieving functional equivalence is made challenging by the **vague and open-ended language of the Implementation Procedures** combined with **weak monitoring and oversight mechanisms**.
2. **Support during and after adherence:** the stocktaking finds that, as the **number of Adherents grows**, so does the need to build and support functional equivalence **of NCPs across Adherents** in order to avoid further fragmentation.
3. **Role and clarity regarding specific instances:** there is significant divergence in how NCPs interpret their role in **accepting and handling cases**. **The Implementation Procedures often fail to provide clear guidance**, which in turn leads to **diverging practices and disagreements across the network** and among users.
4. **Remedy landscape:** since 2011, the **regulatory and judicial landscape related to RBC** has changed significantly. The stocktaking notes the opportunity to consider the strategic role of **NCPs as national authorities, agents of policy coherence, and as remedy mechanisms** in this changing landscape.

# 1. Introduction

## 1.1. The OECD Guidelines for Multinational Enterprises

In 1976, the OECD endeavoured to develop one of the world's most authoritative international instruments for responsible and sustainable business, the OECD Guidelines for Multinational Enterprises (hereafter the "MNE Guidelines" or "Guidelines").<sup>1</sup> The Declaration reflected a commitment to keep markets open and transparent while encouraging multinationals to ensure responsible and sustainable business practices in their operations.

The MNE Guidelines originally comprised seven chapters dealing with general policies, disclosure of information, competition, financing, taxation, employment and industrial relations, and science and technology. Since then, the scope of the MNE Guidelines' application has broadened. In 1984, the Guidelines became the only international standard on responsible business conduct (RBC) to set up a national implementation mechanism: the National Contact Points for RBC (NCPs). Originally, NCPs had a predominantly promotional and informational mandate, though this was complemented in 2000 with a mandate for NCPs to also act as non-judicial grievance mechanisms. Subsequent updates of the Guidelines led to the addition of chapters on human rights, consumer interests, environment and bribery. Importantly, the 2011 update also introduced the concept of risk-based due diligence for responsible business conduct on most matters covered by the Guidelines.

The Guidelines, as part of the OECD Declaration on International Investment and Multinational Enterprises, together with a package of related instruments, are open to adherence by non-OECD Members. As of April 2021, 50 countries have adhered to the Declaration (hereafter, "Adherents"). Since 2011, the number of Adherents has grown by ten countries: Colombia, Latvia, Lithuania, Costa Rica, Croatia, Jordan, Kazakhstan, Tunisia, Ukraine, and Uruguay (non-OECD Members in italics).

## 1.2. Stocktaking exercise on the MNE Guidelines

At its meeting of 2-3 November 2020, the OECD Working Party on Responsible Business Conduct (WPRBC) discussed carrying out a stocktaking of the MNE Guidelines. The purpose of the stocktaking is to enable the WPRBC and the OECD Investment Committee to obtain a clearer picture as to whether the MNE Guidelines remain fit for purpose and to provide a basis upon which to discuss any issues they deem merit further attention and explore options for moving forward. Fit for purpose has been treated as a wide concept encapsulating the relevance and effectiveness of the Guidelines and the ecosystem surrounding them in addressing business impacts today as well as their ability to 'lead from the future' by shaping business conduct to suit future needs.

In accordance with the roadmap for a stocktaking of the MNE Guidelines developed and discussed by the WPRBC at its ad-hoc meeting on 8 December 2020 (hereafter, “Stocktaking Roadmap”), a zero draft stocktaking report was submitted for discussion at the WPRBC’s March 2021 meeting and for information to the Investment Committee.

In May 2021, the WPRBC discussed the first draft stocktaking report on the Guidelines. The report focuses on key developments, achievements and challenges related to the global context for Responsible Business Conduct (RBC); the content of the MNE Guidelines; the National Contact Points for RBC; and the ecosystem through which the MNE Guidelines are implemented.

On the basis of the first draft report, the WPRBC invited the Secretariat to undertake a public and OECD committee consultation on the stocktaking exercise. From 15 June–14 September 2021, a public consultation took place to solicit input for the stocktaking exercise from all interested stakeholders. A report summarising the consultation inputs was discussed by the WPRBC at its meeting of 18 October 2021.

The present second draft stocktaking report on the MNE Guidelines incorporates inputs from the stakeholder consultation process. An overview of the consultation process and inputs is provided in section 1.4 below, and relevant inputs are further reflected in the substantive sections of the report.

The report focuses on the MNE Guidelines, the Commentaries on their chapters, the Decision of the Council on the OECD Guidelines for Multinational Enterprises (hereafter “Decision on the Guidelines” or “Decision”) and Procedural Guidance [\[OECD/LEGAL/0307\]](#) (hereafter together, the “Implementation Procedures”), as well as the Commentaries on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises. It equally considers complementary procedures developed by the WPRBC and Investment Committee over the last decade where relevant.

Within this scope, the report focuses on key developments, achievements and challenges related to: the ecosystem in which the MNE Guidelines are implemented (section 2); the chapters of the MNE Guidelines (section 3 and 4); and the National Contact Points for RBC (section 5).

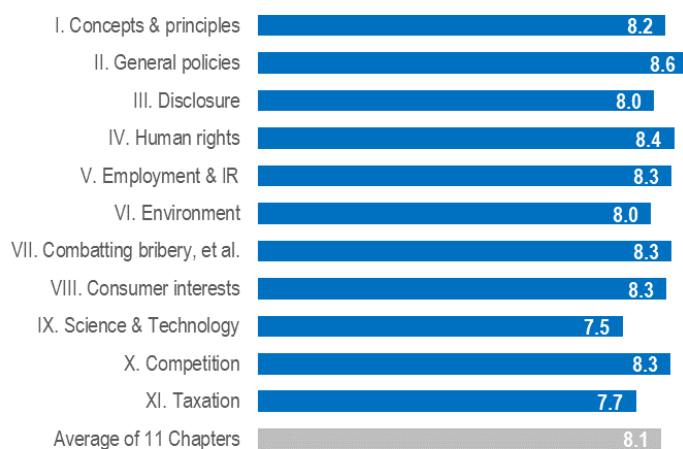
This draft report has been produced on the basis of:

- a. Desk research of key trends and developments, drawing in particular on existing OECD materials and reports and inputs from RBC events.
- b. Consultation across the OECD Secretariat.<sup>2</sup>
- c. A survey among NCPs. The survey received responses from 38 out of 50 NCPs. The responses were provided by NCPs solely in their capacity as experts on the MNE Guidelines, and their input is reflected as such in the draft report (see section 1.3).
- d. Data on NCP cases from the [OECD Database of Specific Instances](#).
- e. Input from the Institutional Stakeholders (BIAC, TUAC and OECD Watch) throughout the stocktaking exercise (see section 1.4).
- f. A public stakeholder consultation and an OECD committee consultation held from 15 June to 14 September 2021.
- g. Comments by delegates at meetings of the WPRBC, and subsequent written comments by WPRBC and Investment Committee delegates.

### 1.3. Survey of National Contact Points

As part of the input for the stocktaking exercise a survey was conducted among the NCPs. The survey collected responses from 38 out of 50 NCPs and asked NCPs to rate the relevance and suitability of the Guidelines. The full survey responses received are [available online](#).

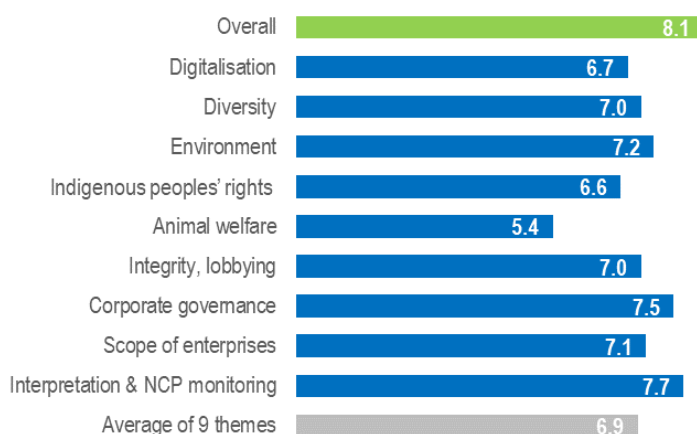
**Figure 1.1. Relevance of the provisions across the 11 Chapters of the Guidelines**



Note: N= [31-36]. Q = How does your country evaluate the continued relevance of the provisions in this Chapter? [Scale 1=lowest relevance; 10=highest relevance]

NCPs were asked to evaluate the continued relevance of the provisions across the 11 Chapters of the Guidelines. The 36 NCPs who responded to this part of the survey indicated that the relevance of the chapters is generally very high (8.1). The chapters rated highest were Chapter II (General Policies) (8.6) and Chapter IV (Human Rights) (8.4). The Chapters rated lowest were Chapter XI (Taxation) (7.7) and IX (Science & Technology) (7.5).

**Figure 1.2. Overall suitability of the Guidelines across 9 themes**



Note: N= [34-38]. Q= Overall: "How does your country evaluate the overall suitability of the Guidelines to meet the challenges for RBC in the future?" List of themes: "How does your country evaluate the suitability of the Guidelines for the following theme?"

NCPs were also asked to evaluate the overall suitability of the Guidelines to meet future RBC challenges across nine themes. The 38 NCPs who responded provided an average rating of 8.1 for overall suitability (on a scale from 1 to 10, where 1 is the lowest suitability and 10 is the highest suitability). This overall suitability rating of 8.1 is higher than the suitability ratings provided for all nine themes, where NCPs responded on average with a 6.9 rating. The three themes with the highest suitability rating were Interpretation and NCP monitoring (7.7), Corporate Governance (7.5) and Environment (7.2). The three themes with the lowest suitability rating were Digitalisation (6.7), Indigenous peoples' rights (6.6) and Animal Welfare (5.4).

## 1.4. Input from Institutional Stakeholders

The perspectives of the institutional stakeholders and their active involvement has been an integral part of the stocktaking process. The three Institutional Stakeholders, Business at the OECD (BIAC), the Trade Union Advisory Committee to the OECD (TUAC) and OECD Watch represent the formal voice of business, trade unions and civil society in the OECD Working Party on Responsible Business Conduct.

Business at the OECD, as an advisory body to the OECD, is an international business network with a global membership representing over 7 million companies of all sizes across industry sectors. BIAC convenes an international network of 2800+ business experts meeting regularly with OECD governments for consultations on governance and economic policy. TUAC, as an advisory body to the OECD, has 59 affiliated trade union centres representing approximately 60 million workers in OECD countries and a number of non-OECD countries. OECD Watch is a global network of civil society organisations with more than 100 members in 55 countries spanning human rights, environmental and development organisations, from grassroots groups to large, international NGOs.

The institutional stakeholders provided substantive input and submissions throughout the stocktaking exercise, including submissions on each draft of the stocktaking report. Their full written submissions are [available online](#). Key points raised by the Institutional Stakeholders are summarised below.

### 1.4.1. *Achievements and strengths of the Guidelines*

Institutional Stakeholders point to the increased implementation of RBC practices among businesses, inclusion of RBC in government policies and awareness of RBC issues and engagement among workers and civil society over the past ten years. The inclusion of human rights considerations in the last revision of the Guidelines and alignment with other international instruments, notably the UN Guiding Principles on Business and Human Rights (hereafter “the UN Guiding Principles”) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (hereafter “the ILO Tripartite Declaration”), have contributed to increased impact and visibility. The introduction of due diligence principles and guidance over the past years have further enhanced the uptake of RBC standards, policies, practices and dialogue.

Albeit to different extents, the Institutional Stakeholders also point to improvements in the rules that govern the functioning of the NCPs over the past ten years. Those comprise the inclusion of indicative timescales for the completion of cases and stronger co-operation and peer learning between NCPs. Furthermore, the stakeholders note the role of outreach efforts undertaken through regional RBC programmes and work beyond OECD Members and Adherents to the Guidelines.

### 1.4.2. *The continued relevance of the Guidelines*

The Institutional Stakeholders stress the importance of the comprehensiveness of the Guidelines, which cover several RBC policy dimensions (human and labour rights, disclosure, environment, consumer interests, etc.). They point to the importance that the Guidelines are applied effectively in the face of the

evolving nature of RBC challenges. In this regard, BIAC expresses its view that a review of the Guidelines is not needed and that the focus should be on implementation. OECD Watch, on the other hand, notes that the Guidelines have not kept pace with developments and need revision in a number of areas, notably human rights, technology, climate change, environment, taxation, animal welfare, and disclosure.

### 1.4.3. *Opportunities to enhance implementation of the Guidelines*

The effectiveness of the system of NCPs is a shared area of concern for the Institutional Stakeholders. The three stakeholders are united in their support for the system. They are concerned that the system lacks functional equivalence and that too many NCPs are not fulfilling their mandates. They call for decisive measures to further strengthen the system.

Beyond this, the Institutional Stakeholders point to a number of concrete areas to improve the visibility of the Guidelines among businesses and among non-Adherents through increased promotional activity, targeted information material, and outreach to policymakers to promote policy coherence.

## 1.5. Stakeholder consultation

From 15 June – 14 September 2021, a public consultation, as well as an OECD committee consultation process,<sup>3</sup> was conducted to solicit input for the stocktaking exercise from all interested stakeholders. This section provides an overview of the consultation process and of the inputs received. Further, in sections 2-5 of the present report, relevant input from the stakeholder consultation has been summarised at the end of each section in a sub-section entitled “Input from stakeholder consultations”. A comprehensive summary of the public consultation was presented to the WPRBC on 18 October 2021 and is available online at the [Stocktaking report website](#).

The public consultation was open to all stakeholders from all countries, including businesses, industry groups, civil society organisations, trade unions, as well as academia, interested citizens, international organisations and governmental experts (including from non-Adherent countries). Stakeholders were offered the option of responding to an online survey, and/or making a written submission of no more than 500 words. For both options, stakeholders had the option to respond in English, French or Spanish. Written submissions and survey responses received during the public consultation are publicly available via the [OECD consultation website](#).

The public consultation received a total of 148 inputs consisting of 69 responses to the online survey and 79 written submissions (including 71 public submissions, 3 submissions from Institutional Stakeholders, 5 submissions from International Organisations) from a total of 134 unique submitters (14 submitters responded to the online survey and provided written submissions).

The majority of inputs received came from civil society and trade unions, with civil society organisations as the predominant source. For the online survey, these two groups comprised two-thirds of responses received. For the written submissions the majority again came from civil society organisations (69%) and trade unions (14%). Business stakeholders provided fewer submissions in the public consultation.

### 1.5.1. *Responses to the online survey*

The online survey asked respondents to cite the main achievements and challenges of the Guidelines (and subsequently of the NCP system – see section on NCPs), to evaluate the relevance of fifteen topics for implementing RBC globally, and to share the main opportunities for strengthening the OECD’s standards and work on RBC.



### 1.5.2. *Achievements related to the OECD Guidelines for Multinational Enterprises*

Out of 69 survey responses, 58 listed at least one achievement of the Guidelines. Almost half of the respondents that cite at least one achievement point to the NCP system as a unique achievement, with the system still representing the only avenue for raising grievances and seeking remedy for business related impacts for many stakeholders. Respondents also highlight progress made in the gradual strengthening of individual NCPs and point to specific instances that have helped interpret the Guidelines in the context of contemporary RBC issues (45%). Over a third of respondents noted that a major achievement of the Guidelines, alongside other international instruments, is the establishment of RBC as a strong international norm, based on a government backed standard, which has been widely consulted with and endorsed by all stakeholders (36%). Figure 1.3 provides an overview of the achievements listed by respondents.

**Figure 1.3. Overview of achievements related to the Guidelines**



How to read: 45% of respondents that cited at least one achievement consider that the NCP system and improved access to remedy is one of the main achievements of the OECD Guidelines for MNEs and their implementation in advancing RBC since 2011

Note: Expressed as % of responses that cited at least one achievement. The list of achievements was developed by the OECD Secretariat based on common trends and patterns expressed in the qualitative data provided by responses to the question “In your view, what are the three main achievements of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011?”.

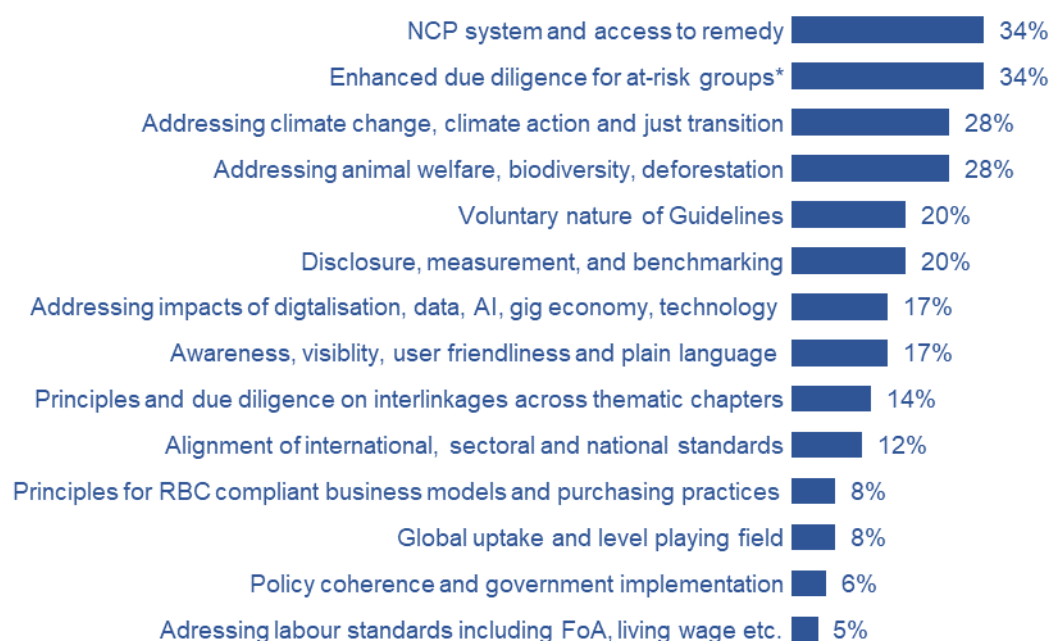
Source: OECD Survey “Online public consultation – Stocktaking exercise on the OECD Guidelines for Multinational Enterprises”.

### 1.5.3. *Challenges related to the OECD Guidelines for Multinational Enterprises*

Out of 69 survey responses, 65 (94%) listed at least one challenge for the Guidelines. A third of respondents cite the urgency of addressing business related impacts on at-risk groups. Here respondents point out that principles and expectations concerning gender discrimination, impacts on women and on children are not adequately addressed in the Guidelines. Many respondents also point out that the Guidelines do not adequately address concerns regarding shrinking civic space and protection of human

rights and environmental defenders, and do not set out expectations as to actions or omissions by enterprises in this regard. Similarly, respondents also note that the Guidelines should more clearly address and outline the need for enhanced due diligence in relation to at-risk, marginalised or disadvantaged groups such as indigenous peoples, people of low-caste, migrant and informal workers, and LGBTQI+ minorities (34%). Figure 1.4 provides an overview of the challenges listed by respondents.

**Figure 1.4. Overview of challenges related to the Guidelines**



\* e.g. gender, women, children, indigenous peoples, LGBTQ+, caste, migrant workers, informal sector workers

How to read: 34% of respondents that cited at least one challenge consider that the NCP system and access to remedy is one of the main challenges of the OECD Guidelines for MNEs and their implementation in advancing RBC since 2011.

Note: Expressed as % of responses that cited at least one challenge. The list of challenges was developed by the OECD Secretariat based on common trends and patterns expressed in the qualitative data provided by responses to the question “In your view, what are the three main challenges of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011?”.

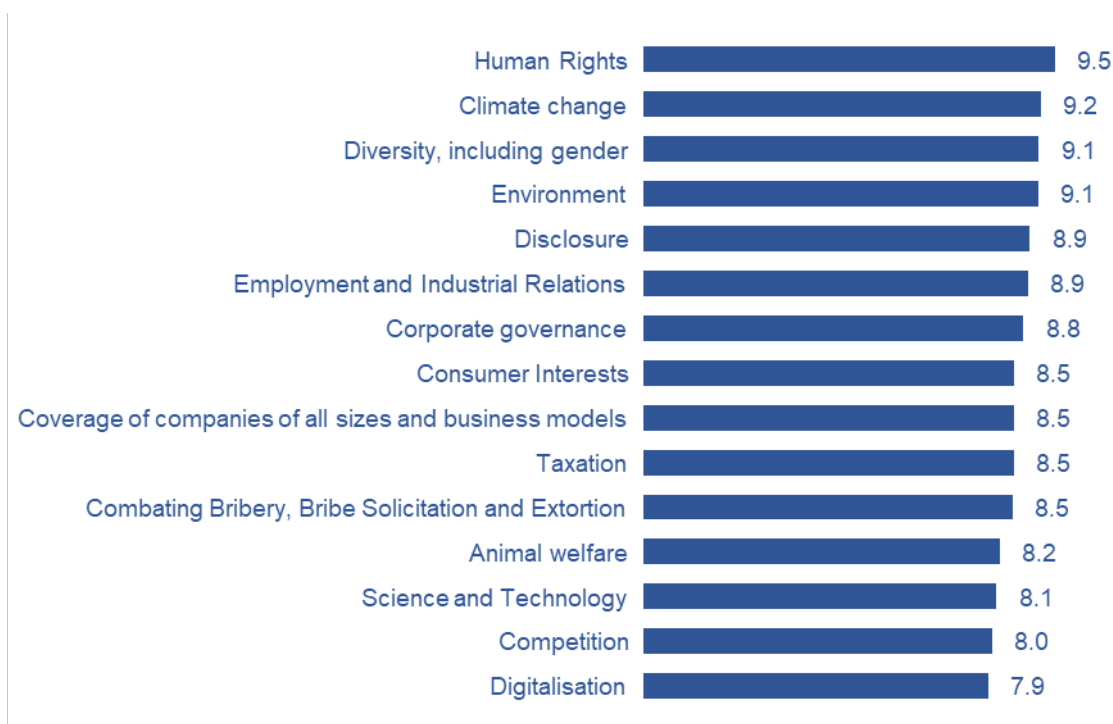
Source: OECD Survey “Online public consultation – Stocktaking exercise on the OECD Guidelines for Multinational Enterprises”. A third of the respondents that cite at least one challenge point to a lack of accountability and access to remedy as a key challenge to the Guidelines. Respondents point to the need for strengthening the NCP system and for development of additional non-judicial and judicial remedy mechanisms (34%). The NCP system and access to remedy is thereby at the same time the most frequently cited achievement and the most frequently cited challenge for the OECD Guidelines. Survey responses regarding specific NCP related challenges are further described in section 2.8.

#### **1.5.4. Relevance of topics for implementing responsible business conduct globally**

Out of 69 survey responses, between 42 and 57 respondents rated the relevance of 15 topics for implementing RBC globally. Ratings were provided on a 10 point scale, where 10 represented the highest relevance. On average, all fifteen topics are considered very relevant for implementing RBC globally, as they all received an average relevance rating equal or above 7.9. The topics considered the most relevant, receiving an average rating above 9 are human rights (9.5), followed by climate change (9.2) diversity including gender (9.1), and environment (9.1). Comparatively, the topics considered the least relevant for implementing RBC globally are competition (8.0) and digitalisation (7.9). Respondents were more aligned

in their ratings of diversity including gender and human rights (with a sample variance of respectively 1.4 and 1.5), compared to their ratings of animal welfare and taxation (with a sample variance of respectively 4.3 and 5.8). Figure 1.5 provides an overview of the relevance ratings expressed by respondents.

**Figure 1.5. Relevance of topics for implementing RBC globally**



How to read: Respondents provided an average 9.5 rating for the relevance of Human Rights to implement RBC globally on a 1-10 scale, where 1 indicates the lowest relevance and 10 the highest relevance.

Note: Expressed as average ratings based on responses to the question “How relevant are the following topics for implementing responsible businesses conduct globally? [Please rate on a scale from 1 to 10, where 1 indicates the lowest relevance and 10 the highest relevance]”. The topics were rated by the following number of respondents: Disclosure: 55; Human Rights: 57; Employment and Industrial Relations: 55; Environment: 52; Combating Bribery, Bribe Solicitation and Extortion: 50; Consumer Interests: 52; Science and Technology: 44; Competition: 42; Taxation: 49; Coverage of companies of all sizes and business models: 52; Corporate governance: 50; Digitalisation: 46; Climate change: 53; Diversity, including gender: 51; Animal welfare: 50.

Source: OECD Survey “Online public consultation – Stocktaking exercise on the OECD Guidelines for Multinational Enterprises”.

### 1.5.5. Opportunities related to the OECD Guidelines for Multinational Enterprises

Out of 69 survey responses, 60 listed at least one opportunity for the Guidelines.<sup>4</sup> The opportunities cited tend to echo and build on the challenges described above. Hence, many respondents call for further strengthening of the NCP system. Many call for the development of further mandatory measures based on the Guidelines and due diligence principles.

Respondents also call for the strengthening of the Guidelines in thematic areas, including on digitalisation and in the environmental areas of climate change, biodiversity, deforestation and animal welfare. They call for more robust protection in the Guidelines of at-risk groups and for principles addressing interlinkages between the thematic areas of the Guidelines, in order to leverage the unique holistic potential of the Guidelines as the only comprehensive instrument on responsible business.

Some also note that the Guidelines should be updated to reflect OECD and other international standards and best practice in the tax area and in the area of disclosure and non-financial reporting. Others note that

the OECD principles on risk-based due diligence should be further included into the Guidelines themselves, for example in the form of a chapter dedicated to supply chain responsibility. In this context the continued alignment of national policy and industry standards with the OECD Guidelines and the principles of risk-based due diligence is seen as a priority. Opportunities cited include non-financial reporting, mandatory and voluntary due diligence standards, access to information laws, and development of taxonomies for sustainable investment.

### 1.5.6. *Input from public submissions*

Out of a total of 71 public submissions, 70 commented at least on one area or topic of the Guidelines. A number of submitters point to the need for updating the Concepts and Principles Chapter of the Guidelines to reflect the risk-based due diligence principles developed since the last revision of the Guidelines (19%). Many submitters raise that it should be clearer in the text of the Guidelines that the Guidelines pertain to enterprises of all sizes and business models and not only to traditional multinationals (23%). Figure 1.6. below provides an overview of the share of submitters commenting on the thematic areas of the Guidelines and on other topics raised in the draft stocktaking report.

**Figure 1.6. Overview of the share of themes and topics raised in public submissions**



How to read: 55% of public submissions commented on themes related to Human Rights including diversity and gender.

Note: Expressed as % of total public submissions that commented on at least one theme. The list of themes was developed by the OECD Secretariat based on common trends and patterns expressed in the qualitative data provided by written submissions to the public consultation on the stocktaking of OECD Guidelines for MNEs.

Source: Written submissions to the public consultation on the stocktaking of OECD Guidelines for MNEs

### 1.5.7. *Input from international organisations*

As part of the public consultation, the Secretariat made calls for input to key international partners (including international organisations). This included 23 organisations who are key actors in supply chains. Eight written inputs were received from international organisations (FAO, GANRHI, ILO, OHCHR, UNDP B+HR team, UNFCCC, UN Working Group on Business and Human Rights and WTO) and one response (UNEP) was received through the online survey. The main points raised by international organisations can

be grouped into comments about the content of the OECD RBC standards themselves; how they are implemented, including the important role of NCPs; and the importance of increased and continued cooperation among those international organisations setting RBC standards or otherwise active in RBC.

All submissions point to the significant role the MNE Guidelines and the instruments related to them have played in raising the visibility of RBC over the last decade, clarifying responsibilities of business and providing authoritative standards on what is expected (especially on due diligence and supply chain expectations), and driving policy coherence at both national and international levels.

## 2. Global ecosystem for implementation of the MNE Guidelines

This section describes and recalls key trends and developments since 2011 related to the ecosystem in which the MNE Guidelines are implemented, which has evolved significantly over the last decade. It encompasses core legal instruments adopted by the OECD Council, procedures developed in the Investment Committee and the WPRBC, and the implementation plans and strategies that reinforce and complement both. It also includes an institutional framework, both at the OECD itself but also at the national level with the NCPs as a unique implementation mechanism. Governments and regional organisations are also increasingly integrating the MNE Guidelines through public policies and regulatory initiatives, including also in their implementation mechanisms. Furthermore, the institutional stakeholders BIAC, TUAC and OECD Watch play an integral role in this ecosystem, which is specifically addressed in the Decision on the Guidelines.

### 2.1. Global trends shaping the context for responsible business conduct

The MNE Guidelines have been a core part of the OECD's investment acquis since 1976. Already then Adherents recognised the need to **balance investment liberalisation with investor responsibilities**. With each of the five revisions of the Guidelines since 1976, Adherents have sought to ensure the continued relevance and effectiveness of the Guidelines.

The last **update of the MNE Guidelines in 2011** in particular represented an important paradigm shift and evolution of the MNE Guidelines, also in light of the emergence of **new and complex patterns of production and consumption** and **increasing importance of global supply chains**. This led to several new elements, notably a new human rights chapter aligned with the **UN Guiding Principles**; a new and comprehensive approach to **risk-based due diligence and responsible supply chain management**; important changes in many specialised chapters; clearer and reinforced **procedural guidance related to NCPs**; and a **proactive agenda** to assist enterprises in meeting their responsibilities as new challenges arise.<sup>5</sup>

The 2030 Agenda calls for a robust involvement of the private sector in global development efforts and the implementation of RBC standards is recognised as essential for the private sector's contribution to the SDGs.<sup>6</sup> The past decade has continued to see **important progress in areas such as poverty reduction, health, primary education and job creation**. The **2030 Agenda for Sustainable Development** and the 17 Sustainable Development Goals (SDGs) adopted in 2015 have brought renewed focus on the need for **comprehensive development that leaves no one behind**, also reflecting mounting concern over **economic and other forms of inequality**. There is growing awareness in many countries around the issues of **multidimensional and structural discrimination** related to gender, ethnicity, race and sexual orientation.

**Continued progress in human development is increasingly circumscribed by the climate and biodiversity crisis**. The 2015 Paris Agreement affirms the science-based need to limit global warming by the year 2100 to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit

warming to 1.5 degrees Celsius<sup>7</sup>. Today, average temperatures are already at more than 1 degree Celsius above preindustrial levels, while current policies are projected to be associated with increases in the 3 degree range by the year 2100.<sup>8</sup>

**Trust in leaders and societal institutions** including government, business, NGOs and media has been in decline,<sup>9</sup> while at the same time sustainability has been established as a mainstream business agenda.<sup>10</sup> This has most recently been driven by the financial sector's push to address physical and transition risks related to climate change.<sup>11</sup> **Sustainable business practices** are increasingly seen as a precondition for long-term value creation, and action on climate change mitigation and adaptation is increasingly framed as a business opportunity. This has also been reflected in the **rise of ESG investment** strategies and disclosure. Climate risk is a complex financial topic with risk characteristics different from other financial risks to businesses. Frameworks such as the Task Force on Climate-related Financial Disclosures have been developed to help companies address climate-related financial risk through strategy, governance, risk management and disclosure. There is growing discussion including by business leaders on the role of regulation in creating a **level playing field**<sup>12</sup> incentivising sustainable business and investment.

Many countries have witnessed **trends towards a weakening of labour**, with a decline in trade union and worker freedoms,<sup>12</sup> a declining labour share of income,<sup>13</sup> and persistent high levels of informality. More than 400 million workers in OECD countries are not covered by **collective bargaining**, with the collective bargaining coverage ratio declining from 35% to 32% equating to 19 million fewer workers covered by bargaining agreements in 2018 compared to 2011.<sup>14</sup> Wage growth has been outpaced by economic growth as measured by GDP, with global labour income share declining significantly between 2004 and 2017, and with an estimated further decline of 8.3% in 2020 relative to 2019.<sup>15</sup>

The **fourth industrial revolution** has accelerated and brought new opportunities and challenges for RBC related to platform business models, future of work, surveillance, artificial intelligence, cybersecurity, and access to information, privacy and freedom of speech. The **digital economy** is challenging the core understanding of what a "business" actually is. While new technologies have increased transparency and empowered whistle blowers and investigative reporters, the non-regulated aspect of big data has also enabled misinformation and information misuse. Meanwhile, **universal human rights standards** have come under increasing pressure and **civic space** for speaking out against corrupt business practice and adverse business impacts on human rights, labour standards, or the environment remains curtailed.<sup>16</sup>

The **geopolitical context has continued towards regionalisation**, with China, Europe and the United States as the key global actors, with their relationship defined by a mix of co-operation, competition and systemic rivalry. Sustained macroeconomic growth in emerging economies, coupled with stagnation in mature markets, has accelerated **convergence between emerging and developed economies**. Emerging economies comprise a growing share of global GDP and global trade.<sup>17</sup> **Trade in global value chains** remains the most prominent form of business internationalisation<sup>18</sup> as compared to foreign direct investment (FDI), but has been curtailed by increasing protectionism since the 2009 global financial crisis.<sup>19</sup> Combined with increased regionalisation, **decoupling of some supply chains**, near-shoring trends, and additive manufacturing, the supply chains of the future present a rapidly changing context for RBC.

The **Covid-19 pandemic** together with conflicts and climate change has led to an **increase in extreme poverty for the first time in decades**<sup>20</sup> and highlighted the importance of resilience, dialogue and social protection in global supply chains and local markets. As such the pandemic has led to a renewed focus on the role of RBC in establishing trust and building back a sustainable, open and inclusive global economy.



## 2.2. Key developments since 2011 on the MNE Guidelines

The MNE Guidelines are one of four elements that make up the *OECD Declaration on International Investment and Multinational Enterprises* (the Declaration) [OECD/LEGAL/0144].<sup>21</sup> Each element of the Declaration is reinforced by a separate OECD legal instrument. The Decision on the Guidelines [OECD/LEGAL/0307] is the procedural complement to the Guidelines themselves and deals specifically with their implementation. The 2011 Decision sets out the activities to be undertaken by the Investment Committee with regard to the MNE Guidelines and the NCP process and requires each Adherent to set up an NCP to further the effectiveness of the MNE Guidelines and requires them to make available human and financial resources to their NCP so that they can effectively fulfil their responsibilities.

Since 2011, a range of instruments, procedures and actions as described below have also reinforced these core instruments, notably:

- Creating a **dedicated Working Party on RBC** (WPRBC) with a strong Chair and mandate
- Establishing the **OECD Centre for Responsible Business Conduct**;
- Developing **five OECD Council Recommendations** on due diligence and setting out extensive implementation plans in this regard, as well as addressing emerging issues (e.g. digitalization);
- **Strengthening NCPs** through various means (see Section 5. );
- Establishing the **Global Forum on RBC** as well as sector-specific fora, and introducing the Roundtable for Policy Makers on RBC;
- Reinforcing how the Guidelines and RBC are addressed in **formal processes for Adherence** to the Declaration and Accession to the OECD Convention;
- Integrating the Guidelines into **domestic commitments, initiatives, and legal expectations**.

To better respond to the increased expectations of the 2011 update, the Investment Committee created the **Working Party on Responsible Business Conduct** (WPRBC) in December 2012 [CE(2013)5]. The main purpose of the WPRBC is “to assist the Investment Committee in implementing section I of the Investment Declaration with respect to its responsibilities in relation to the Guidelines and the related Decision and Recommendations in order to promote RBC world-wide and to enhance the contribution to sustainable development made by multinational enterprises”. Additionally, in 2019, a dedicated *Centre for RBC* was created in the OECD Secretariat in order to give RBC more visibility within and outside the Organisation. The Centre serves as the Secretariat to the WPRBC and supports the network of NCPs.

The last decade has also seen **increased collaboration between international organisations** to reinforce policy coherence and implementation of the global agenda on RBC and supply chains. This includes OECD collaboration with the **International Labour Organisation** (ILO), the **United Nations Development Programme** (UNDP), the **UN Office of the High Commissioner for Human Rights** (UNOHCHR), the **UN Environment Programme** (UNEP), the **European Union**, and the **World Bank**. This coordination contributes to international policy coherence which increases collective impact and avoids duplication. The WPRBC continues to support work with other international organisations through regional programmes on RBC and responsible supply chains carried out in Asia and Latin America in collaboration with ILO and UNOHCHR and funded by the EU; joint reports on critical issues such as child labour in global supply chains (OECD-ILO-IOM-UNICEF under Alliance 8.7), shared messages on the alignment of respective RBC instruments between OECD, ILO and OHCHR;<sup>22</sup> as well as ongoing collaboration with other UN agencies such as the International Organization for Migration (IOM) and the Food and Agriculture Organization (FAO).<sup>23</sup>

The section below describes the key developments since 2011.



### 2.3. Proactive agenda

The 2011 Decision charged the Investment Committee, in co-operation with the NCPs, with pursuing a **proactive agenda** that promotes the effective observance by enterprises of the principles and standards contained in the MNE Guidelines. This has led to the development of a range of **due diligence guidance**, which have become leading international standards on RBC. These include sector specific due diligence recommendations in the extractives, garment and footwear, agriculture, and finance sectors, as well as an overarching guidance highlighting the key principles of due diligence across sectors. The guidances clarify how business can operationalise **risk-based due diligence** into management systems and global supply chains, and have been developed in alignment with international RBC standards from other international organisations. The OECD guidance on due diligence are typically complemented by **global implementation programmes overseen by the WPRBC**. As described in Section 3 these have seen significant uptake by the private sector and have informed policy making and regulatory decisions by governments. Additionally, the WPRBC has developed additional papers to help address emerging issues (e.g. on digitalisation, environment, public procurement, SDGs) and has supported initiatives that strengthen collaborative approaches.

The OECD has also sought to promote alignment of industry or multi-stakeholder certifications, frameworks and initiatives with the Guidelines and related guidance. The OECD Alignment Assessments seek to determine whether key essential characteristics of the OECD due diligence approach have been incorporated into the written standards and implementation of an initiative and whether an initiative's requirements for companies and the activities it undertakes itself are aligned with the specific recommendations of the OECD due diligence framework. These tools help promote concrete implementation of the Guidelines and help support the comparability and quality of these initiatives, in order to reduce inefficiencies and costs and strengthen positive outcomes.

Several NCPs highlight the **proactive agenda as being among the top 3 achievements of the MNE Guidelines over the past decade**. They value the accompanying implementation programmes in the various sectors and the strong multi-stakeholder nature of these processes. NCPs also noted, however, that there is a further need to **help businesses implement due diligence in practice; expand reach to different groups and countries; develop additional guidance** (e.g. promoting decent work, environmental protection; SDGs; digitalisation and technology; fisheries; maritime sector; construction sector); **and continuing to focus on successful implementation of existing guidance** (e.g. developing further tools or practical actions to complement existing sector-specific guidance; aligning existing frameworks; promoting coordination between different OECD areas; and continuing to advance dialogue among stakeholders).

Adherents also reflected on the vagueness of the term 'proactive agenda', noting in particular that it could be adapted to better capture the nature of the work. The need for plain and clear language was also raised in relation to the name of the Guidelines themselves and of the NCPs. Finally, Adherents noted that the proactive agenda is an integral part of the NCP mandate on promotion and that a strong role for the NCPs had been envisioned in the 2011 Decision. NCPs have already provided their expertise and practical experience on the Guidelines in this context in several ways, including in the development of various due diligence guidance. For example, 12 NCPs have participated in advisory groups supporting sector projects.<sup>24</sup>

### 2.4. Engagement with non-Adherents

Another element foreseen in the 2011 Decision as well as the Procedural Guidance is **engagement and co-operation with non-Adherents on matters covered by the MNE Guidelines**, in recognition that the effectiveness of the Guidelines is directly impacted by how widespread their implementation is.<sup>25</sup> This is

explicitly mentioned in the Guidelines<sup>26</sup> and is equally foreseen in the Council Recommendations, and in the work plans adopted by the WPRBC and the Investment Committee related to the implementation of the various due diligence guidance.<sup>27</sup> Engagement with non-Adherents was also **a key consideration in the creation of the WPRBC, the GFRBC and sector fora.**<sup>28</sup> **Engagement takes place in various ways**, e.g. at the country-level; as part of regional, country or sector-specific implementation programmes; through GFRBC or sector-specific fora and roundtables; and in the context of co-operation with international organisations or processes. Adherents have generally **favoured a practical approach to engagement with non-Adherents**, focusing on promotion and awareness raising; capacity building and trainings; policy advocacy; and research. **Institutional stakeholders** have also continuously emphasised its importance.

Overall, **engagement with non-Adherents has increased since 2011**. Several NCPs highlighted outreach as one of the top 3 achievements of the MNE Guidelines.<sup>29</sup> NCPs frequently deal with specific instances related to or in non-Adherent countries or territories. From 2000-2021, 45% of specific instances concern non-Adherent countries or territories. Some NCPs have signalled in particular for example that the effectiveness of Chapter VII is **dependent on practices in non-Adhering countries** and the **complexity** of dealing with specific instances where respect of **domestic law issues** come up (see also Section 3. ).<sup>30</sup>

Since 2011, there has also been **increased action from non-Adherent countries on RBC**. The G20 also underlined the importance of RBC notably in the context of investment, supply chains, quality infrastructure and ending child labour, forced labour and human trafficking. There is also increased recognition of RBC at APEC and ASEAN.<sup>31</sup> Regional programmes on RBC and responsible supply chains carried out in Asia and Latin America in collaboration with ILO and UNOHCHR and funded by the EU contribute to the increased uptake of RBC

During 2020 the WPRBC evaluated how its approach to engaging with non-Adherents could be **more strategically oriented to ensure continued global relevance and visibility of the MNE Guidelines**. This included considerations for how to promote the NCP network widely, collaboration with international organisations, as well as resource constraints. In particular, Adherents considered engagement by the WPRBC itself (including for example the option to proactively invite non-Adherents to attend WPRBC meetings), support that the Secretariat can provide to non-Adherents, the role of the GFRBC; and links with other pillars of the WPRBC mandate and Adherents' own bilateral engagement priorities on RBC.

## 2.5. Adherence to the MNE Guidelines

Non-OECD Member country Adherence to the Declaration (Adherence)<sup>32</sup> and Accession to the OECD Convention (Accession) are important **processes which directly concern the MNE Guidelines and the NCP system**.

The procedures that support the Adherence process focus on assessing the country's policies and practices in relation to all of the Declaration's instruments. The Investment Committee forms its opinion and recommendation to the OECD Council based on an in-depth review of the country's policies. Since 2016, the **WPRBC has played a stronger role in this process**. In particular, the WPRBC is now asked to provide a technical opinion on whether a candidate country has demonstrated: 1) willingness and ability to set up and maintain an effectively functioning NCP that operates in accordance with the Decision and the provisions set out in the Guidelines, and 2) commitment to various RBC principles and standards reflected in the Guidelines and the international instruments cited in the Guidelines.

The WPRBC engages with candidate countries in several ways in order to ensure they have a full understanding of their obligations and the capacity to fulfil them, notably through tools like questionnaires, capacity-building and information workshops/consultations; as well as involvement of NCPs themselves

as well as the institutional stakeholders.<sup>33</sup> The **OECD Council has reinforced the importance of RBC policy frameworks and the establishment and functioning of NCPs by asking candidate countries to report back** to the Investment Committee and the WPRBC within twelve months, e.g. to report on their progress toward implementing RBC policy recommendations, the establishment of an effectively functioning NCP, as well as specific activities such as the organisation of capacity building exercises for NCPs.

While the **implementation of the Guidelines generally benefits from new Adherents** - notably when it comes to promotion of the Guidelines and regional cooperation - **challenges have nevertheless been observed**, including with the capacity and functioning of new NCPs, resource constraints in the Secretariat for supporting new Adherents, and limited implementation of RBC policy recommendations. Delegates have noted in this regard that the WPRBC does not have a formal role in the choice of countries that could be targeted or invited to start the adherence process. Additionally, limited options exist for the Investment Committee and the WPRBC once the adherence process is complete in case commitments made prior to adherence are not implemented or sustained. Given that future adhering countries are likely to have less developed institutions and policies and/or fewer resources than existing adherents, these challenges can be expected to grow in significance and it will be important to identify ways in which the WPRBC and Investment Committee can **follow up on the implementation of adherence commitments**.

In 2015, Ministers reaffirmed the importance of the OECD Declaration on International Investment and of non-Members adhering to it. They also encouraged efforts to **widen adherence to the MNE Guidelines** and invited the OECD to study options in that regard. In response to this mandate, the WPRBC and the Investment Committee considered options for encouraging wider adherence including options which would allow countries the possibility of adhering to the MNE Guidelines, and the related Decision on the MNE Guidelines, without adhering to the other elements of the Declaration and related instruments at the same time. Delegates were generally supportive of the objective of widening adherence to the Guidelines and pursuing strategies for making the Guidelines well-known globally, while reiterating their support for the current adherence process and the Declaration as a whole

## 2.6. Global Forum on RBC and sector-specific fora

The OECD RBC fora are **primary tools for involving a wide range of stakeholders in substantive RBC work**. The Global Forum on RBC (GFRBC), as well as the Forum on Due Diligence in the Garment and Footwear Sector and the Forum on Responsible Mineral Supply Chains, have become leading events on RBC globally.

The GFRBC was established in 2012 and has been held annually since 2013. In December 2017, after its 5<sup>th</sup> edition, the WPRBC took stock of whether the GFRBC had met its intended objectives.<sup>34</sup> Overall, Adherents **confirmed the GFRBC's strategic importance and key strengths**, including providing a consistent opportunity for engagement, providing a platform for highlighting achievements of the WPRBC and receiving feedback on its priorities, promoting policy coherence, addressing next-generation issues, and reinforcing OECD leadership. In 2016, the OECD **Policy Makers Roundtable for RBC was introduced** as part of the GFRBC to provide a platform to discuss connections between RBC and related policies (e.g. regulatory initiatives, competition, tax, development assistance, public procurement, economic diplomacy, SOEs), as well as to more recently discuss regulatory developments on RBC. The Policy Makers Roundtable has also provided a platform for **collaboration with the UN Working Group on Business and Human Rights** on promotion of National Action Plans (NAPs) on RBC and or Business and Human Rights. Additionally, on the occasion of the 2<sup>nd</sup> GFRBC in 2014, the OECD convened an informal Ministerial meeting on RBC in order to give more visibility to the Guidelines and RBC, which resulted in the first-ever ministerial communiqué dedicated to RBC.<sup>35</sup>

Several **challenges have also emerged**, including capacity of delegates and the Secretariat to manage an increasing number and magnitude of RBC events; establishing a stable funding source for the GFRBC; and reaching a wider network of stakeholders, especially to involve industry and users of the Guidelines.

**OECD sector-specific fora** have also enjoyed success across the board. Launched in 2011, the OECD Minerals Forum is jointly organised by the OECD, the International Conference on the Great Lakes Region and UN Group of Experts on the Democratic Republic of Congo. The **Forum on Responsible Mineral Supply Chains** is one of OECD's largest events. For example in 2019 it gathered over 1400 participants. It is also the main global event bringing together key stakeholders to exchange on issues related to responsible mineral supply chains. Likewise, the **OECD Garment and Footwear Forum**, first launched as a Roundtable in 2014 has evolved as a key event for governments, business, trade unions and civil society. The 2021 forum, held in virtual format owing to the ongoing Covid-19 pandemic, brought together over 1000 representatives from government, business, trade unions and civil society globally to address emerging risks and to share learnings on implementing labour, human rights, environmental and integrity due diligence in the sector. Since 2019 a Garment and Footwear sector-specific **Policy Makers Roundtable** has been held annually in the lead-up to the Forum convening policy makers from across key economies engaged in the garment and footwear sector and its supply chain to discuss policy options for enabling and promoting vibrant and responsible supply chains in the sector.

## 2.7. Role of governments in promoting and enabling RBC

Since 2011, there has been **increasing emphasis on the role of governments in promoting and enabling RBC. Adherents have led by example in several ways** in this regard, including also by making binding commitments relevant to the implementation of the MNE Guidelines in accordance with the Council Decision. The establishment of the WPRBC itself also signals the common commitment by Adherents to ensure effective implementation of the MNE Guidelines. In 2015, Adherents also **reinforced RBC in the update of the Policy Framework for Investment** and the related policy reviews. The WPRBC has also included consideration of government policies for RBC in its work through country specific reviews and advice, as well as by providing a platform for exchange via the Policy Makers Roundtable.

Adherents have also increasingly developed overarching policies and plans on RBC, such as **National Action Plans on RBC or Business and Human Rights (NAP)**. It is worth noting that, prior to the development of NAPs by Thailand and Kenya in 2019, only Adherents to the MNE Guidelines had developed and adopted such plans.<sup>36</sup>

In many cases, **NCPs have been an integral part of these processes**, in recognition also of the work NCPs do as part of their mandate to promote the Guidelines and promote access to remedy, as well as inform relevant government agencies of their statements and reports when relevant. For example, all NAPs from Adherent countries reference the NCP; and/or include a commitment to strengthen the NCP; and/or include a mandate to the NCP to deliver NAP-related actions. Generally, this includes:

- Commitment to strengthen the NCP, including a reference to envisaged reforms (e.g. addition of an advisory body, creation of an inter-ministerial committee, commitment to do a peer review);
- Strong reference to the role of the NCP in promoting the Guidelines and its non-judicial grievance mechanism;
- Reference and/or specific action for the NCP on promoting policy coherence (e.g. creating structural links with other government agencies working on RBC-related issues or mandating NCP to circulate statements to other government agencies);
- Reference to requirements for other government agencies to raise awareness of the NCP or to consider the statements of the NCP in their activities.

At the same time, the focus on due diligence as a means to implement normative expectations on RBC has coincided with a rise in **RBC policies and regulation** among Adherents. These initiatives include trade and investment agreements; mandatory due diligence laws; mandatory disclosure regulations; public procurement rules; trade advocacy and export credit requirements; sustainable corporate governance initiatives; sustainable and green finance; climate change; circular economy; and initiatives related to responsible lobbying and political donations. **National regulation on RBC** has accelerated in the last 10 years, including specific regulations requiring companies to carry out supply chain due diligence or to report on actions to address adverse human rights and environmental impacts through their supply chains such as France's Duty of Vigilance law (2017), the UK Modern Slavery Act, child labour regulation in Australia and the Netherlands, the German Act on Corporate Due Diligence Obligations in Supply Chains (2021), the Norwegian Act on Business Transparency and Work on Basic Human Rights and Decent Working Condition (2021), and sub-national legislation such as the California Transparency in Supply Chains Act (2010). Recent EU initiatives on **sustainable finance, mandatory due diligence**, corporate sustainability reporting, deforestation, and minerals, which cite and refer to OECD recommendations on due diligence, will be a significant step in promoting uptake of due diligence globally. The EU has also adopted a range of initiatives, e.g. guidance on forced labour or initiatives under the Green Deal action plan, which apply the Guidelines and due diligence guidance.

Governments have also used their leverage to **incentivise RBC**, either by leading by example on RBC or by including RBC considerations across economic policies and instruments that have a bearing on business conduct. For example, several Adherents have sought to include RBC considerations, through provisions on labour, the environment, and/or anticorruption, in **trade and investment agreements**. Another example is efforts to leverage RBC issues, such as abolition of child labour, forced labour or human trafficking, or improvement of labour conditions more generally, through **public procurement**.

Nevertheless, Adherents have recognised the need to **establish and enforce policy frameworks that support RBC in a coherent fashion**. The **proliferation of policy measures** at the domestic level can create challenges for business operating globally and potentially undermine the effects of government action on RBC. Moreover, many governments may lack the resources and capacity to effectively integrate RBC across various policies and legislation that deal with business conduct. A further challenge is for governments to **coordinate internal efforts in the promotion and implementation of different international standards on RBC**, which are often the responsibility of different Ministries.

## 2.8. Role of institutional stakeholders

The 2011 Decision also instructed the Investment Committee to seek opportunities to collaborate with institutional and other stakeholders. Over the past ten years, the **institutional stakeholders of the WPRBC and the Investment Committee – BIAC, TUAC, and OECD Watch – have been key actors in the ecosystem of the Guidelines**. They provide advocacy and advice on behalf of their members and engage with the WPRBC and the Investment Committee both in the context of formal processes, e.g. as part of NCP peer reviews and adherence reviews, but also on practical and emerging issues such as implementation of the sector due diligence guidances or contributing insights on the various topics on the WPRBC agenda, including also this stocktaking exercise.<sup>37</sup> In 2015, the institutional stakeholders issued a joint statement calling for an effective peer review programme and resources for NCPs.<sup>38</sup> They also systematically contribute their views in the Annual Reports on the Guidelines. Finally, institutional stakeholders regularly advise and support parties to specific instances.

**The institutional stakeholders play an important role in the promotion of the Guidelines**. They provide resources for their members on RBC, organise trainings and capacity building, and support the NCP system. They are also consistently involved in the organisation of the GFRBC and sector fora, including by suggesting topics to be included on the agenda relevant for their membership, as well as



speakers, participating in promotional efforts and disseminating widely the relevant materials, and organising side events and campaigns. Institutional stakeholders are also key for the success of the regional RBC programmes in Asia and Latin America, which include numerous activities to promote the uptake of due diligence and the role of government in promoting RBC.

## 2.9. Strengthening evidence-based analysis and RBC data

**The coming decade is likely to see increasing needs for RBC data** considering developments in the regulatory space, financial markets as well as tracking of SDG progress. The current lack of relevant and quality data significantly limits the understanding of policy makers of **the uptake and effectiveness of RBC policies, and may lead to confusion and unnecessary cost** for businesses. It further limits the coherence and effectiveness of strategies and frameworks relying on such data, including responsible sourcing, non-financial reporting, and **ESG investment** (environment, social and governance). In the past decade, there has been a sharp **increase in ESG data**, from ratings to disclosures and individual metrics. However, these currently present a **fragmented and inconsistent view of ESG risks and performance** and a limited understanding of how this links to **value creation**.<sup>39</sup> Adherents have in this context called for the development of a simple and uniform set of **metrics to assess company uptake of RBC due diligence** in line with OECD standards.

The **WPRBC has taken steps to fill this new need**, notably feeding into various data collection efforts and publications at the OECD that are relevant to RBC or through sector-specific and thematic work. This includes development of **sector specific guidance for the financial sector**, project on measuring and monitoring the **uptake and impact of implementing due diligence by companies**, as well as efforts to understand **RBC impacts at a macro-level and in the supply chain**. In 2019, the OECD, in collaboration with the global Alliance 8.7, provided the **first-ever estimates of child labour and human trafficking in global supply chains**.<sup>40</sup>

Furthermore, **Adherents also play an important role in building relevant datasets themselves**, for example the [NCP specific instances database](#), which provides case data on how the Guidelines have been applied in concrete specific instances, which can potentially be used to inform guidance, policy or case law. Additionally, all OECD Recommendations on due diligence instruct the Investment Committee to report to Council on how Adherents actively promote, support and monitor the implementation of the due diligence guidance. The WPRBC is currently working to develop and test methodological approaches for Adherents to **monitor implementation of due diligence guidance by companies** and report back to the OECD in line with these commitments. Similar steps are being taken in the context of the OECD Due Diligence Guidance for the minerals sector in order to enable implementation and monitoring of regulation on responsible sourcing of minerals.

### 2.9.1. Input from stakeholder consultations

The stakeholder consultations confirmed that the Guidelines and the related instruments have played an instrumental role in shaping the global RBC ecosystem in the last decade, in particular in raising the visibility of RBC, clarifying responsibilities of business and providing authoritative standards on what is expected (especially on due diligence and supply chain expectations), and driving policy coherence at both national and international levels.

### 2.9.2. Achievements

More than one third of respondents to the online survey cite that the establishment of RBC principles and standards as a government-backed international instrument which was consulted with all stakeholders is one of the main achievements of the Guidelines since 2011 (36% of online survey responses). Some

stakeholders also note that the Guidelines create space for stakeholder dialogue and contribute to global uptake on RBC (36% of online survey responses, input from international organisations and input from institutional stakeholders). According to international organisations and the institutional stakeholders, the significant uptake is especially linked with the strong **alignment of the three main international instruments on RBC by the OECD, UN, and ILO**, and to the introduction of **due diligence principles and guidance** in key RBC topics. The institutional stakeholders also noted that the Guidelines have contributed to stronger engagement among workers and civil society since 2011.

The value of **authoritative, practical and sector guidance** was especially highlighted. One third of respondents point to the elaboration of the risk-based due diligence concept and its associated steps and principles as a major achievement. Alongside this, one in five respondents highlight the value of the Guidelines and related guidances as a **reference point for policy initiatives** in adhering countries, including legislative processes. A number of respondents also highlight the role of the Guidelines in **raising awareness among businesses and governments** about the significance of RBC and the expectations for companies in both adhering and non-adhering countries. Notably, all submissions by international organisations point to the significant role of the Guidelines in raising the visibility of RBC.

### Selected statements by stakeholders related to achievements of the MNE Guidelines ecosystem.

**United Nations Environment Programme:** “The OECD Guidelines are the most comprehensive government-backed instrument on RBC, representing international consensus on the responsibility of companies regarding impacts on people and the planet.”

**Confederation of Norwegian Enterprise, NHO:** “*The OECD MNE Guidelines have contributed to a more level playing field, both nationally and internationally.*”

**Danish Institute for Human Rights:** “The OECD has been important in driving states across the world wishing to join the OECD, to adhere to the OECD Guidelines or improve RBC to align with the Guidelines through for example RBC policy reviews.”

### 2.9.3. Challenges

Stakeholders note a number of challenges with ensuring the continued leading role for the Guidelines globally and in ensuring their implementation. One in five respondents to the online survey see **limitations of the MNE Guidelines as a voluntary standard** and emphasise the need for the Guidelines to be accompanied by **stronger policy measures** (including regulation). One in five respondents also highlight the need to make sure the Guidelines remain relevant in the context of increasing policy action so that they are not superseded or made redundant. A number of comments from international organisations also highlight that maintaining a **strong link between international instruments on RBC is critical**, particularly in light of an acceleration of regulatory developments on RBC. They call for any future action be mindful that OECD concepts have been integrated in key international instruments (e.g. 2017 update of the ILO Tripartite Declaration) and their related mandates and work programmes. Additionally, the need for a clear understanding of the various roles different actors, both within and outside the OECD, play in light of these developments (e.g. between Investment Committee/WPRBC, NCPs, and other related mechanisms) was raised.

More than one in ten respondents note the importance of continuously ensuring alignment of international, sectoral and national standards on RBC and related fields such as environmental, social and governance

(ESG). In their written submissions, stakeholders stressed that the strategic role and leadership of the MNE Guidelines could be drawn into question in the current ecosystem of voluntary and binding standards.

Nearly a fifth of respondents also pointed to challenges regarding the **complexity, length, academic style and convoluted name of the Guidelines** as undermining their visibility and accessibility. A number of submissions, including from the institutional stakeholders, stressed the need to **increase visibility of the Guidelines and due diligence guidance**, including also among businesses and non-adhering countries.

#### 2.9.4. *Opportunities*

Comments received also addressed implementation, where stakeholders saw important opportunities for ensuring the Guidelines remain a leading standard globally. This included a **more robust role for governments** and ensuring **policy coherence** and implementation of RBC standards also by governments, including in the **development of regulatory measures**, and as a way to help address practical challenges for businesses operating across different jurisdictions. This also includes support for NCPs, e.g. when it comes to practical resources for how the Guidelines relate to UN Guiding Principles or the landscape of related mechanisms relevant for their work. The important role for the OECD to monitor developments, assist with peer learning and featuring best practices on RBC policies was also raised. International organisations notably called for more joint work, including **joint implementation of projects, policy advice and technical assistance related to RBC policy coherence and alignment at country level** and in relation to development of regulatory measures. Overall, opportunities for being clearer when it comes to SMEs, more practical and accessible language in the Guidelines, **alignment with the Sustainable Development Goals**, links with key global agendas such as **decent work** and **climate change**, as well as the role of **collective initiatives** were all highlighted. Finally, opportunities around **increased engagement with non-Adherents** were also clear, both in terms of visibility and promoting a level playing field, as well as strengthening and expanding regional projects.



## Selected statements by stakeholders related to OECD Guidelines ecosystem.

**BIAC:** “In our view, implementation and institutions are key to ensure that the Guidelines remain fit for purpose. [...] In order to promote a broad-based paradigm shift and foster a global level playing field, regional outreach and capacity building efforts are key.”

**Save the Children:** “The OECD Guidelines are normative, but as norms are not aligning, it is time for the Guidelines to take the next step.”

**Greenpeace International:** “...we saw recently how soft law, specifically the UNGPs, informed the Shell verdict in the Netherlands in May 2021. This shows that if Guidelines are done well, they can also bring about meaningful change.”

**Confederation of Norwegian Enterprise NHO:** “A focus going forward must be to strengthen accountability of governments. [...] Too often business is regarded as the easiest way to fix problems whose causes are far beyond what individual companies can resolve.”

**Office of the United Nations High Commissioner for Human Rights (OHCHR):** “*Going forward, it will be crucial to build on the alignment between the UN Guiding Principles and the OECD Guidelines achieved to date and to strengthen alignment and coherence in other relevant standards and initiatives (including emerging due diligence legislation and sustainability disclosure regulation) as well as in the implementation efforts that need to increase both in breadth and depth.*”

## 3. General concepts, principles and policies under the MNE Guidelines

This section addresses key achievements, challenges and developments related to the general concepts, principles and policies in Chapters I and II of the MNE Guidelines.

### 3.1. Chapter overviews

Chapter I – entitled ‘Concepts and Principles’ sets out the nature of the MNE Guidelines, their potential scope of application, their relationship to domestic law and potential avenues for promoting the implementation of the recommendations to enterprises they set out, including through the network of NCPs and ongoing review and consultation by Adherents.

Chapter II – entitled “General Policies” – is the first chapter in the MNE Guidelines to contain specific recommendations to enterprises. It establishes common fundamental principles that underline the specific recommendations of subsequent chapters. It outlines positive responsibilities (e.g. that businesses contribute to economic, environmental and social progress (para A.1); local capacity building (para A. 3) and human capital formation (para A. 4), etc.) as well as negative ones (e.g. that business should avoid causing or contributing to adverse impacts (para A.11), and abstain from improper involvement in local political activities (para A. 15) etc.). Importantly, the General Policies Chapter also introduces the recommendation that businesses carry out due diligence (with respect to their own activities and business relationships) and engage with relevant stakeholders in a meaningful manner.

### 3.2. NCP Survey Responses

Overall, NCPs ranked Chapters I and II high in terms of continued relevance (8.2 out of 10<sup>41</sup> and 8.7 out of 10<sup>42</sup> respectively). However when asked about overall suitability of certain themes of relevance to Chapters I and II, ratings are slightly lower in particular for: scope of enterprises (7.2 out of 10), digitalisation (6.7 out of 10), animal welfare (5.4 out of 10), integrity/ lobbying (7.1 out of 10), and corporate governance (7.7 out of 10).

**NCPs highlighted the following strengths:** the non-binding nature of the MNE Guidelines and the emphasis on compliance with domestic legal frameworks; flexible interpretation of which type of enterprises the MNE Guidelines apply to; the overall expectations that businesses contribute to sustainable development, respect human rights and avoid and address adverse impacts. The importance and relevance of due diligence expectations across business relationships was particularly stressed by NCPs.

**NCPs highlighted the following challenges:** several NCPs suggested that while the broad **definition of “Multinational Enterprises”** in the MNE Guidelines enables flexibility for different national contexts, it could be clarified or redefined to better support a level playing field. Others noted it should remain broad to allow for evolving interpretations. Some NCPs also noted that it would be useful to explain how the MNE Guidelines relate to **other international standards and instruments**. Delegates and NCPs noted that the

Chapter would benefit from **incorporating the due diligence guidance** developed since the last update of the MNE Guidelines. NCPs also noted that additional due diligence guidance on specific topics and risk areas such as deforestation and living wage would be welcome. Additionally, NCPs raised the following points: the need for broader protections for **whistle blowers/human rights defenders**; further guidance on **SMEs**; **internet governance**; the lack of any reference to or recommendations on **animal welfare**; and positive responsibilities for **climate** and **gender** issues. NCPs have also called for additional clarity on **responsibility across complex corporate structures**, specifically with respect to headquarters, subsidiaries, franchise companies and holding companies. NCPs noted a lack of specificity on issues such as **lobbying**, **conflict of interest** and the definition of **improper political engagement**. Finally, NCPs noted that **stronger and explicit anchoring with the Sustainable Development Goals (SDGs)**, could improve policy coherence and clarity of the MNE Guidelines recommendations on sustainable development.

### 3.3. Specific instances

**Since 2011, Chapter I has been raised in 11% of cases submitted to NCPs.**<sup>43</sup> In recent years NCPs have handled various specific instances concerning non-traditional multinational enterprises including non-profit organisations; trade unions; government or government-sponsored agencies; and companies with domestic operations and headquarters. NCPs have also accepted specific instances related to government policy in areas such as fossil fuel development; environmental assessments; arms exports; export control; and migration and asylum seekers. The Investment Committee has clarified that the role of NCPs is to address the corporate responsibility to respect human rights and not the broader State duty to protect human rights.<sup>44</sup>

**Since 2011, Chapter II has been raised in 53% of cases submitted to NCPs** making it the second most referenced chapter after Human Rights. This can be partly attributed to the fact that the Chapter describes general policies such as due diligence and stakeholder engagement expectations, which cut across various adverse environmental and social issues.

As Chapters I and II include a broad range of substantive and interpretive issues, more information on relevant specific instances is included in the context of Key Developments below.

### 3.4. Key developments since 2011

**With the 2011 update, the scope of business activities covered by the MNE Guidelines goes well beyond FDI** and includes own operations in home and host countries, as well as supply chains and other business relationships. This recognises that supply chains have surpassed FDI as the primary conduit of international business and that business structures and operations have grown more complex involving international investment, trade and arm's length strategic relationships in different combinations depending on sectors and countries. While RBC continues to be a key component of a healthy investment environment, it is recognised that the relevance of the MNE Guidelines goes well beyond investment policy.

**The MNE Guidelines emphasise that the concept of a multinational enterprise should be broadly interpreted.** In recent years, specific instances involving negative impacts associated with entities that would not traditionally have been considered multinational enterprises have become increasingly common.<sup>45</sup> These include specific instances involving:

- Non-profit organisations:
  - [World Wide Fund for Nature and Survival International Charitable Trust](#) (Swiss NCP, 2016)

- [International Ice Hockey Federation and Stowarzyszenie Zawodników Hokeja na Lodzie \(Polish Ice Hockey Players Association\)](#) (Swiss NCP 2019);
- [FIFA and Building and Wood Workers' International \(BWI\)](#) (Swiss NCP, 2015)
- Trade unions:
  - [Dewan Pengurus Pusat \(Konfederasi\) and Serikat Buruh Sejahtera Indonesia](#) (Dutch NCP, 2020);
  - [ITUC/ACV and \(K\)SBSI](#) (Belgian NCP, 2020)
- Government or government-sponsored agencies:
  - [Norwegian Bank Investment Management \(NBIM\) and consortium of NGOs](#) (Norwegian NCP, 2012);
  - [Atradius Dutch State Business \(ADSB\) and coalition of NGOs](#) (Dutch NCP, 2015);
  - [UK Export Finance and Global Witness](#) (2020) UK NCP; [Latvia's legal system and public institutions and JSC Norvik Bank](#) (Latvian NCP, 2016);
  - [Export-Import Bank of Korea \(KEXIM\) and Jalaur River for the People's Movement and Korean Transnational Corporation Watch \(KNTC Watch\)](#) (Korean NCP 2018);
  - [Danish Ministry of Defence concerning the Lauge Koch vessel](#) (Danish NCP 2018) (initiated on NCP's own initiative)
- Companies with domestic operations and headquarters:
  - [Korea Import Export Bank and NGO coalition](#) (Korean NCP, 2020);
  - [Miru Systems and Samy Badibanga Ntita](#) (Korean NCP, 2018);
  - [Dae Kwang Chemical and Bahrain Watch and ADHRB](#) (Korean NCP, 2013)

While the concept of an MNE is broad and flexible, NCPs have dealt with these issues somewhat differently. **NCPs have not accepted all the specific instances listed above**, in some cases precisely because they considered respondents not to be MNEs for purposes of the Guidelines. Some delegates have expressed that the broad and flexible approach should be retained, while others have also emphasised the need for further guidance and specificity to ensure uniform practice, including in relation to SMEs. Authoritative interpretations regarding this issue have not been agreed to date.

There is increasing attention to the challenges and opportunities for **including SMEs in RBC policies, regulations and initiatives**. The OECD Guidelines are clear that SMEs are expected, like other businesses, to act responsibly and carry out due diligence to identify and respond to adverse environmental and social impacts they may be involved in. The Guidelines are also clear that the nature and extent of the processes may be affected by the size of an enterprise.<sup>46</sup> For example, in carrying out due diligence, SMEs may rely on **collaborative initiatives**, have more limited priorities or less ambitious performance targets relative to larger companies depending on **resource constraints**.

NCPs have handled various specific instances involving SMEs and to date have not rejected a submission due to the size of an enterprise or found that SMEs are exempt from RBC expectations. For example, in a specific instance involving a small company, the Dutch NCP recalled that while “small and medium-sized enterprises may not have the same capacities as larger enterprises, [...] SMEs should be encouraged to observe the Guidelines’ recommendations to the fullest extent possible” (Bresser and FS Fivas, NCP of the Netherlands, 2017). NCPs have also on occasion received specific instance submissions from SMEs.

On average more than nine out of ten companies are SMEs; accounting for two-thirds of all jobs; and more than half of economic output. The potential **contribution of SMEs to RBC**, and the corresponding effects that RBC may have on SMEs faced with requirements from policymakers or business partners, is significant. This issue has been elevated in importance as mandatory due diligence rules are increasingly being introduced. The extent to which SMEs should be subject to due diligence expectations and how to

ensure proportionality and reasonableness is one of the most debated issues surrounding legislation design. In introducing due diligence expectations through mandatory regulations some policymakers have excluded SMEs due to perceived implementation and resource challenges. However, certain regulations may have indirect impacts on SMEs by cascading due diligence requirements, even beyond direct business relationships. In the context of these discussions, it is important to consider: 1) the potential benefits and risks of adapting due diligence regulation to SMEs, 2) how to scale and build proportionality into the design of legislation and 3) what relevant complementary measures can facilitate implementation of RBC expectations by SMEs. Considering SMEs should take place from the start, with the aim that well-designed policies and regulations can benefit smaller players – by remedying market failures and information asymmetries; levelling the playing field and ensuring **inclusive growth**.

**The Guidelines are clear that obeying domestic laws is the first obligation of enterprises** and that where a conflict exists between domestic law and the recommendations of the Guidelines, enterprises should seek ways to honour the Guidelines to the fullest extent possible while not violating domestic law. Further guidance on this issue was provided in the OECD Stakeholder Engagement Guidance for the Extractive Sector, which notes that where local law contradicts enterprise standards and policy, needs and expectations should be clearly communicated and negotiated upfront, prior to the commencement of operations and enterprises should consider either not entering or withdrawing from contexts where human rights cannot be respected.<sup>47</sup> Adherents have called for additional guidance for NCPs on **how to address the relationship between international standards and domestic laws**, including in the context of continued development of mandatory requirements for RBC due diligence.

NCPs have handled a variety of **specific instances touching on or directly related to state policy and domestic law**. For example, these have included specific instances involving:

- land tenure issues, information, consultation and the role of customary and indigenous land rights, [EDF/EDF Renewables and Prodesc et al](#), French NCP (2018)
- government policy of allowing oil sands development, [Statoil ASA and Norwegian Climate Network](#), Norwegian NCP (2011)
- government sanctioned export of arms, [Boeing Company and Lockheed Martin and the European Centre for Democracy and Human Rights](#), US NCP (2016)
- the conditions and alleged abuse of detainees at a processing centre for asylum seekers, G4S and Human Rights Law Centre (HRLC, an Australian NGO) and Rights and Accountability in Development, Australian NCP (2014)
- the export of and use of security products subject to export regulations whose subsequent misuse may have led to human rights violations, [Etienne Lacroix group and ADHRB](#), French NCP (2015)

Such specific instances have raised challenges for NCPs where the instance touch on state policy, law or court decisions. One such specific instance<sup>48</sup> was subject to a substantiated submission filed by OECD Watch in 2017, in which one of the issues raised was the NCP's decision to not accept the case (in part) because it touched on state policy. In its response to the submission, the Investment Committee clarified that "it is important that NCPs carefully distinguish the enterprise responsibility to respect human rights and the due diligence requirements that accompany that, from the broader State duty to protect human rights. The role of NCP is to address the former but not to address the latter."<sup>49</sup>

**The MNE Guidelines are increasingly applied to service sectors and sell-side risks.** The current language of the Guidelines appears derived primarily from business models of product-oriented sectors, explaining expectations in the context of "suppliers" and "supply chains". Generally, due diligence expectations in the context of "value-chains" and service-oriented sectors or towards downstream business relationships are less well described. NCPs have handled various specific instances involving due diligence expectations of service providers including:

- Surveillance and telecommunications companies:
  - [Gamma International and Privacy International](#) (UK NCP, 2013);
  - [Italtel S.p.A. and FIDH, REDRESS and JFI](#) (Italian NCP, 2017)
- Accommodation and tourism
  - [Ahtop and Airbnb](#) (French NCP, 2020)
- Internet companies:
  - [Grupa OLX and Frank Bold Foundation](#) (Polish NCP, 2018)
- Social auditors and certification organisations:
  - [TÜV Rheinland AG et al. and European Centre for Constitutional and Human Rights, ECCHR et al.](#) (German NCP, 2018);
  - [Roundtable on Sustainable Palm Oil \(RSPO\) and TUK Indonesia](#) (Swiss NCP, 2018)
  - [Bonsucro](#) (UK NCP, 2019)
- Banks:
  - [Australian and New Zealand Banking Group Limited \(ANZ Group\) and Equitable Cambodia \(EC\) and Inclusive Development International \(IDI\)](#) (Australian NCP, 2014);
  - [Natixis – Natixis Global Assets Management and Unite Here](#) (French NCP, 2016)
  - [Credit Suisse and Society for Threatened Peoples](#) (Swiss NCP, 2017);
  - [ING bank and NGOs](#) (Dutch NCP, 2017)

Specific instances handled by NCP's have also helped to clarify **due diligence expectations of enterprises with respect to buyers** (vs. suppliers) of a product or service. In this respect, NCPs have handled due diligence-related cases involving:

- the sale of drugs used in lethal injections in prisons ([Mylan and Bart Stapert](#), Dutch NCP, 2015)
- surveillance equipment used to perpetuate human rights abuses ([Gamma International and Privacy International](#), UK NCP, 2013); ([Italtel S.p.A. and FIDH, REDRESS and JFI](#), Italian NCP, 2017)
- hydro-power turbines used in the construction of a dam associated with environmental and social impacts ([Andritz Hydro GmbH and Finance and Trade Watch Austria](#), Austrian NCP, 2014)

**The SDGs are increasingly driving private sector engagement in RBC issues**, and many substantive aspects of RBC are reflected in the global goals and targets. Chapter II of the MNE Guidelines opens with a call to enterprises to contribute to economic, environmental and social progress to achieve sustainable development. NCPs and Adherents noted that stronger and more explicit anchoring of this provision with the SDGs, which are a common purpose of Adherents and non-Adherents, could improve policy coherence and the clarity of the MNE Guidelines recommendations on sustainable development.

**Due diligence has become the key process for operationalising the expectations of the MNE Guidelines towards businesses.** Since 2011, seven additional guidances have been published to clarify due diligence expectations.<sup>50</sup> These have become global benchmarks for policy makers, businesses and other stakeholders. By extending the concept of RBC due diligence to a more comprehensive range of responsible business issues (e.g. to include adverse impacts on chapters covering Environment and Anti-Bribery) the MNE Guidelines have become a key reference point for sustainable business.

**Regulatory initiatives related to RBC have accelerated**, in many cases referencing the MNE Guidelines and the associated due diligence guidance.<sup>51</sup> These initiatives include trade and investment agreements; mandatory due diligence laws; mandatory disclosure regulations; public procurement rules; trade advocacy and export credit requirements; sustainable corporate governance initiatives; and initiatives related to



responsible lobbying and political donations. There is a growing need to position the MNE Guidelines and associated due diligence guidance within these developments to support coherence and help foster a level playing field while avoiding conflicting requirements and unnecessary compliance costs for business. Specifically, the translation of due diligence into legal requirements has created additional demand for clarity on the due diligence provisions of the MNE Guidelines themselves, particularly on the scope of business relationships; the risk-based approach and prioritisation; dealing with leverage limitations; implications for SMEs; and the role of stakeholder engagement in the due diligence processes. Many of these issues are well-described in subsequent due diligence guidance, but not in the MNE Guidelines themselves. Legislation or rulemaking processes frequently refer to the OECD due diligence concept in their substantive provisions.

**The relationship between corporate governance, responsible business conduct and sustainability** has received significant attention from policy makers, practitioners, stakeholders and academic experts.<sup>52</sup> New initiatives on sustainable corporate governance are broadly aimed at promoting corporate governance models which move away from short-termism, shareholder primacy, and understandings of corporate purpose and fiduciary duties, which focus narrowly on profit maximization. Instead, they seek to promote models, which take into account broad stakeholder (and societal) interests, integration of social and environmental objectives in addition to profit considerations into business models and strategy, and assigning responsibility for environmental and social risk management to boards and senior management. The OECD Principles of Corporate Governance were updated in 2015.<sup>53</sup>

NCPs have addressed RBC expectations across **different corporate arrangements** in the context of several specific instances. Some of these cases have raised questions about how expectations of the Guidelines should be interpreted in the context of different corporate arrangements, including with respect to:

- Parent companies vis-à-vis wholly and partially owned subsidiaries: [Shell Petroleum Development Company of Nigeria Limited \(SPDC\) and Royal Dutch Shell \(RDS\) and Obelle Concern Citizens \(OCC\)](#) (Dutch NCP, 2018)
- Franchisees of multinational enterprises: [Starbucks and Trade Unions](#) (Chilean NCP2014)
- Holding companies: [Pharmakina SA, Pharmeg SA, and a group of individuals](#) (Luxembourg NCP, 2019); [Socfin Group/Socapalm and Sherpa concerning operations in Cameroon](#) (NCPs of France, Belgium and Luxembourg, 2010)

**The need for plain language to help build awareness of the Guidelines and the NCPs has become more apparent.** In particular many Adherents have raised questions on whether the title of the Guidelines clearly communicates their actual aims and objectives relating to responsible business conduct (see also section 5. ). Adherents have also stressed the importance of using plain, concise and contemporary language in this respect.

**The understanding of meaningful stakeholder engagement has evolved** and some NCPs have noted that further clarity on stakeholder engagement would be useful. Clarity could be beneficial, for example, on how to meaningfully engage marginalised and disadvantaged groups such as women, indigenous peoples, people of low caste, and children in identification of risks, development of prevention and mitigation steps, and determination of appropriate remedies. To support practitioners in the mining, oil and gas industry, the OECD published guidance for meaningful stakeholder engagement in the extractive sector. This guidance defines meaningful engagement as “ongoing engagement with stakeholders that is two-way, conducted in good faith and responsive”<sup>54</sup> and notes that prioritisation of stakeholders for engagement should be based on those most impacted or at risk of being impacted (rather than based on their influence), distinguishing it from other widely recognised guidance on stakeholder engagement published to date. The OECD Due Diligence Guidance for Responsible Business Conduct (2018) outlines at which stages of the due diligence process stakeholder engagement may be most needed. Sector specific due diligence guidance also include expectations around stakeholder engagement; for example

the garment guidance underscores the importance of engagement with workers in carrying out due diligence. In 2021, a substantiated submission by TUAC led to a clarification by the Investment Committee that meaningful engagement with bona fide trade unions is a key aspect of due diligence on labour related issues; and that industry-led or multi-stakeholder due diligence processes on such issues should include engagement with worker representatives.<sup>55</sup>

Specific instances have served to further consider expectations of stakeholder engagement including in the context of:

- Engaging workers:
  - [Teck-Quebrada Blanca Mining Company and Mineworkers Union](#) (Chilean NCP, 2017);
  - [MAERSK Container Industry and Trade Union Number 1 of MAERSK Container Industry](#) (Chilean NCP, 2018);
  - [British American Tobacco \(BAT\) and IUF](#) (UK NCP, 2016)
  - [DIAM and Birlesik Metal Is](#) (French NCP, 2017)
- Engaging indigenous peoples and the expectation of Free, Prior and Informed Consent of Indigenous Peoples (FPIC):
  - [Statkraft AS and the Sami reindeer herding collective in Jijnjevaerie Sami Village](#) (Swedish and Norwegian NCPs, 2012);
  - [Credit Suisse and Society for Threatened Peoples](#) (Swiss NCP, 2018)
- Articulating recommendations of meaningful stakeholder engagement:
  - [Banro Corporation and group of former employees](#) (Canadian NCP, 2016);
  - [Imperial Metals Corporation and the Southeast Alaskan Conservation Council](#) (Canadian NCP, 2016)

**Increasing attention on animal welfare in business conduct.** A number of Adherents have recognised animal sentience and how business conduct related to animals can adversely impact on animal welfare, public health, consumer interests and the environment (see also section 4.4.4). The COVID-19 pandemic has also significantly increased public awareness and concern for the linkages between animal welfare, illicit wildlife trade and zoonotic diseases. The standards of the World Organisation for Animal Health (OIE) are often referred to in this context. The EU has also developed specific regulations and standards on animal welfare (see further in section 4. ).

**A multitude of initiatives have evolved on the use of digital technologies.** Although these are often aligned with the principles of RBC, the MNE Guidelines are not a driving force behind them.<sup>56</sup> The impacts of social media, in particular, have generated new challenges regarding the balance between freedom of speech and public security.<sup>57</sup> At the OECD there are at least 20 relevant legal instruments related to internet freedom in areas such as internet policy making; consumer protection; and digital security. To date, 14 specific instances have been filed with NCPs involving some connection with digitalisation, including protection of personal data; moderation of harmful online content; censoring telecommunication content; payment of taxes by a digital platform; and a financial institution's business relationship with a surveillance equipment firm allegedly involved in human rights abuses (see Section on Science and Technology chapter below for overview of these specific instances).

### 3.5. Input from stakeholder consultations

The relevance of these Chapters is confirmed by the fact that around one out of three submissions across all sources of feedback (public submissions, responses to survey, international organisations and institutional stakeholders) referred to issues relevant to Chapters I and II.



## Achievements

Close to a third of respondents to the online survey emphasise the concept of risk-based due diligence as a key achievement of the Guidelines, and the establishment of this concept as an authoritative standard for RBC in global supply chains. Respondents making this point note that this has allowed the Guidelines to be effective in **leveraging and influencing trade in global value chains as the primary form of economic globalisation**, thereby moving the Guidelines beyond the more narrow investment nexus. This is echoed in written submissions from international organisations (IO) and institutional stakeholders. Many respondents also highlight the **important role of the sectoral Due Diligence Guidances, as well as the OECD Guidance for Responsible Business Conduct**, in enabling clearer understanding of due diligence principles, concepts and processes and providing a reference for regulatory initiatives on RBC.

A fifth of survey respondents also highlight the **comprehensive thematic scope of the Guidelines and corresponding due diligence provision** as a key achievement, making the Guidelines relevant to the full range of business related impacts on people, planet and society, and enabling the Guidelines to address linkages across the different thematic areas. A similar share of respondents note that the Guidelines have led to an increase of awareness in both business and government about the significance of RBC and the expectations for companies.

## Challenges

As set out in Chapter I, the observance of the Guidelines by enterprises is voluntary and not legally enforceable. **One in five survey respondents see the voluntary nature of the observance of the Guidelines as a limitation.** They either emphasise the need for the Guidelines to be accompanied by stronger regulation, and/or emphasise the risk that the Guidelines may be superseded and made redundant by increased regulatory action and standards development. **Alignment across different international standards is also seen as key to advance global sustainability goals and avoid overlapping requirements** for companies.

Nearly a fifth of survey respondents highlight low awareness of RBC and of the Guidelines among mainstream companies, in particular SMEs and companies in both OECD and non-OECD economies. Respondents point to challenges regarding the **complexity, length, academic style and convoluted name of the Guidelines as undermining their visibility and accessibility.**

**The Guidelines refrain from precisely defining “multinational enterprises”**, but highlight these are not limited to one specific sector, can have private, state or mixed ownership and clarify that the Guidelines expectations cover all the entities within multinational enterprises (parent companies and local or domestic entities). Some stakeholders **find the lack of specificity problematic** as this may create an **uneven playing field** between multinational enterprises and multi-stakeholder initiatives, or financial institutions and export credit agencies, leading to conflicting interpretation by NCPs, forum-shopping and **allowing governments to exempt themselves, when acting as economic actors**, from the standards they apply to multinational enterprises.

Also in relation to the definition of multinational enterprises, a number of survey respondents comment that the Guidelines have not kept pace with the development of **business impacts in the area of digitalisation, data, AI and technology**, and that as a result companies in all sectors lack authoritative international standards and guidance on these risks. This issue is addressed in more detail in the Science and Technology section of this report.

Some stakeholders call for greater clarity in the general principles of the Guidelines on due diligence expectations regarding **interlinked business impacts under the Guidelines**. Examples given particularly highlight the interlinked nature of human rights, environment, tax, corruption and technology and that the Guidelines as the only comprehensive instrument on corporate conduct should set out holistic principles and due diligence standards to avoid a siloed approach to impacts that cut across different thematic areas.

A third of survey respondents cite the **urgency of addressing business related impacts on at-risk groups**. Here respondents point out that principles and expectations concerning gender discrimination, impacts on **women and on children** are not adequately addressed in the Guidelines, as well as the need for companies to understand how social identities within at-risk groups may overlap and intersect. Many respondents also point out that the Guidelines do not adequately address concerns regarding shrinking civic space and protection of **human rights and environmental defenders**, and do not set out expectations as to actions or omissions by enterprises in this regard. These issues are discussed in more detail in the Human Rights section of this report.

### **Opportunities**

In order to address new forms of work and the definition of an enterprise, some stakeholders have proposed to **extend the application of the Guidelines** to all entities engaging in or facilitating commercial activities, **to include non-traditional entities**, (public and private, for profit and not-for-profit, government-sponsored and multi-stakeholder) when they engage in commercial activities.

**SMEs in both OECD and non-OECD countries are cited as a key priority**, including better dissemination of the Guidelines and focus on more practical and accessible language. Survey respondents also suggest opportunities around increased engagement with non-OECD countries, to ensure benefits for impacted people in producing countries, while also promoting a level playing field and further establishing responsible business conduct as part of public policy making and as part of the rules based trade and investment system.

Over a third of survey respondents call for more robust protection in the Guidelines of at-risk, marginalised or disadvantaged groups such as indigenous peoples, people of low-caste, migrant and informal workers, children, women and LGBTQI+ people. Principles addressing interlinkages between the thematic areas of the Guidelines can be made more explicit in order to leverage the unique holistic potential of the Guidelines as the only comprehensive instrument on responsible business.

**The definition of due diligence can be updated to include the remediation phase** to better reflect and align with the six steps of the due diligence process as outlined in the OECD Due Diligence Guidance for Responsible Business Conduct and, reinforcing that **meaningful engagement with relevant stakeholders**, especially with those marginalised and at risk, is important throughout the due diligence process. Including relevant sectoral Due Diligence Guidances as a reference in the Guidelines commentary would help to improve the clarity and strengthen consensus around due diligence concepts and principles.

Many stakeholders, including almost all the individual companies and national or sectoral business associations that responded, have called on the **OECD to play an active role in supporting greater cooperation in harmonising emerging legislative requirements related to responsible business conduct and in line with the Guidelines and associated Due Diligence Guidance** in order to advance global sustainability goals and avoid overlapping requirements for companies.

## Selected statements by stakeholders related to CHAPTER I and II – General concepts, principles and policies

**Trade Union Advisory Committee (TUAC):** *“The global nature of the Guidelines has helped companies and CSOs to acknowledge that the cross-border nature of businesses’ impacts requires an approach that goes beyond mere compliance with state-level legislation”*

**Business at OECD (BIAC):** *“Smaller businesses, many of which are MNEs, often face particular challenges in implementing due diligence programs given resource constraints and limited leverage to influence suppliers and business partners. The Guidelines provide the needed flexibility, recognizing that expectations for the practical implementation of the provisions towards small and medium sized enterprises (SMEs) may differ from those towards large MNEs.”*

**Responsible Business Alliance (RBA):** *“Leading standards such as the OECD Guidelines for Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Business Conduct as well as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (along with others such as the United Nations Guiding Principles on Human Rights and Business), have become the “source code” helping RBA structure tools and programs. [...] Specifically, we believe the exercise should aim to: Work with governments to ensure that future regulatory and/or legislative standards on responsible business conduct are based on existing international frameworks – i.e., the UNGPs and OECD Guidance. [...]; Address inconsistencies between domestic laws and international standards [...]; Encourage harmonizing disclosure and (growing due diligence) requirements.”*

**The Danish Chamber of Commerce:** *“The Danish Chamber of Commerce concurs that the regulatory eco-system of responsible business conduct is rapidly changing. Multiple new and revised pieces of European legislation target some of the same provisions as the MNE guidelines. [...] The result is a highly complex landscape of international guidelines and legislative requirements. The situation is detrimental to international trade and may lead to confusion and unnecessary cost for businesses. Even worse, it may inhibit responsible business conduct because of lack of transparency and clarity of expectations. The Danish Chamber of Commerce therefore recommends that the WPRBC seeks to enable a harmonised understanding of what risk-based due diligence on human rights and environment in international operations should look like across the international, European and national level. [...]”*

## 4. The thematic chapters of the MNE Guidelines

This section addresses key achievements, challenges and developments related to the nine thematic chapters of the MNE Guidelines.

### 4.1. Disclosure

#### 4.1.1. *Chapter overview*

Chapter III of the Guidelines outlines public reporting expectations for enterprises. It includes two distinct reporting expectations. The first being that enterprises should publicly report information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. The second being that enterprises are encouraged to supplement these disclosures with additional information on their social and environmental policies and their performance in relation to these.

#### 4.1.2. *NCP survey responses*

Overall, NCPs ranked Chapter III high in terms of continued relevance (8.0 out of 10<sup>58</sup>).

**NCPs highlighted the following strengths:** the Chapter is widely seen as valuable in promoting transparency and disclosure of non-financial information. Some also noted its use in mandating reporting on due diligence processes.

**NCPs highlighted the following challenges:** the Chapter could better reflect the **significant developments in sustainability disclosure** since 2011. This would include better descriptions of disclosure concepts and categories such as: **double materiality, due diligence reporting, diversity, climate performance, and business relationships**. Further, NCPs expressed a need for clarity on whether and how to apply **disclosure obligations for SMEs**, as well as disclosure relating to whistleblowing channels and that information related to environmental and social policies should be expected rather than encouraged.

#### 4.1.3. *Specific instances*

Since 2011, the Disclosure Chapter has been referenced in 24% of specific instances handled by NCPs to date, making it the 5<sup>th</sup> most referenced chapter for specific instance submissions. Several specific instances have dealt with transparency issues specifically: transparency with respect to business relationships; reporting on environmental impacts and climate-related matters; good practice in consultation with stakeholders; and failure to provide financial and shareholder information.

#### 4.1.4. **Key developments since 2011**

Expectations regarding sustainability disclosure have expanded significantly since 2011, driven by investor demand and a variety of voluntary and mandatory frameworks. A key regulatory development was the introduction of the EU Non-Financial Reporting Directive in 2014.<sup>59</sup> An area of particular advancement has been the heightened demand for company-level disclosure of climate-related information, such as greenhouse gas emissions, targets and policies to reduce emissions and exposure to physical and transition risks (see section 4.4 on Environment for more information).<sup>60</sup> Other transparency initiatives have focused on encouraging disclosure of corporations' structures and beneficial ownership, country-by-country reporting of tax-related data, disclosure of supply chain partners, and other information relevant to environmental and social impacts.

The relevance, quality and consistency of disclosures nevertheless remains poor<sup>61</sup> and the vast range of reporting frameworks have created challenges in developing standardised, comparable data. As a result, in recent years attempts have been made to move towards convergence in sustainability disclosure frameworks. Most recently, the International Financial Reporting Standards (IFRS) Foundation launched a consultation on whether there is a need for a global sustainability standard to which the OECD secretariat submitted a response underscoring the need for more standardisation.<sup>62</sup> The European Commission has also recently adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD). The proposal seeks to address issues of reporting quality and consistency by updating the existing rules under the NFRD and by creating a European sustainability reporting standard, taking into account existing international reporting standards, including the OECD Guidelines.

**Understandings of “materiality” are evolving.** While sustainability disclosure based on financial materiality (where companies report on how environmental, social and governance (ESG) issues influence enterprise value) continues to be the approach of various reporting rules and frameworks, some sustainability disclosure regulations<sup>63</sup> have adopted the concept of “double materiality” which requires companies to disclose not just how ESG factors affect the company but also how the company's operations affect the environment and society. Likewise some sustainability disclosure frameworks have recognised the concept of “dynamic materiality” – that the financial materiality of ESG issues can change over time. In this respect it is recognised that relevant RBC instruments and frameworks should remain responsive to the dynamic and evolving nature of materiality.<sup>64</sup>

**OECD instruments developed since 2011 have clarified reporting expectations in the context of due diligence processes.** OECD due diligence guidance clarify the expectation on enterprises to publicly report on their due diligence policies, processes, and activities, including findings, actions and outcomes.<sup>65</sup> Some sustainability disclosure frameworks and regulations are integrating the reporting expectations of OECD due diligence standards. For example, GRI, one of the world's leading sustainability reporting framework used by over 5,000 companies and the majority of S&P 500 companies, recently modified its universal reporting standards to integrate and align with recommendations of the OECD (2018) Due Diligence Guidance for Responsible Business Conduct.<sup>66</sup> The OECD Principles for Corporate Governance note that “in addition to their commercial objectives, companies are encouraged to disclose policies *and performance* relating to business ethics, the environment *and, where material to the company, social issues, human rights* and other public policy commitments.”

#### 4.1.5. **Input from stakeholder consultations**

Stakeholders note that Chapter III contributes to improved corporate disclosure and transparency on non-financial information. The overall structure of the MNE Guidelines often serve as a coherent framework for companies to report on sustainability activities, risks and impacts. Several contributions also highlight that the MNE Guidelines has been the reference point for a number of disclosure regulations, most notably in Europe. Stakeholders also note that improved disclosure practices benefit a wide range of stakeholders, including shareholders and ESG investors, which are increasingly integrating RBC data in their investment

decisions. Some stakeholders specifically point out that Chapter III is applicable to all enterprises including State-owned Enterprises, SMEs or other non-traditional corporate structures. Alignment with the UNGPs was also mentioned as facilitating reporting practices against other international standards.

However, a fifth of the respondents to the online survey pointed out that Chapter III is outdated and is **setting disclosure standards sometimes below the minimum legal requirements** in many jurisdictions. Similarly, language recommending MNEs to disclose “foreseeable risk factors” is deemed by some stakeholders to **inadequately align with disclosure recommendations embedded in other OECD RBC instruments** (i.e. the OECD Due Diligence Guidance for RBC). Stakeholders also note that consistency and quality of disclosed data should be improved, in particular by promoting better access to detailed **data on topics such as corporate structure, supply chain data, workforce composition, gender impacts, greenhouse gas emissions or beneficial ownership**.

Furthermore, a fifth of the respondents to the online survey expressed the need to update the Chapter to better reflect OECD and other international standards and best practice and **drive better alignment between existing standards and legal requirements (including current developments at EU and international level (i.e. G20, IFRS Foundation, GRI))**.

## Selected statements by stakeholders related to CHAPTER III – Disclosure

**ENEL Group:** *“The OECD Guidelines offer a coherent framework on responsible business conduct that promoted Responsible Business Conduct in the financial sector, spreading the need to report on sustainability activities. The Guidelines set a virtuous circle, so that investors and banks are increasingly integrating environmental and social considerations in their investment and financing decisions, and financial products with environmental and social objectives have seen a huge growth”.*

**World Benchmarking Alliance:** *“Disclosures enable different stakeholder groups, including investors, governments and civil society, but also businesses themselves, to understand and compare company performance, to create accountability, and to drive the necessary change in the private sector to achieve sustainable development. Greater alignment between the Guidelines and developments at the EU and international level (such as the G20 and IFRS Foundation) would be welcome.”*

**Clean Clothes Campaign:** *“Traceability, supply chain mapping and transparency are necessary for responsible business conduct and facilitates access to remedies and justice. Disclosure requirements should be improved. At a minimum, companies should be expected to disclose the names, locations, workforce number, type of products made and parent company of their suppliers, in a searchable format.”*

**OECD Watch:** *“The chapter is out of synch with the Guidelines’ own due diligence expectations added in 2011, clarified by the 2018 OECD Due Diligence Guidance for Responsible Business Conduct as requiring “communication” with stakeholders, including the public, about each step of due diligence [...]”*

**Norges Bank Investment Management:** *“The report highlights new trends since the last update of the Guidelines which are not necessarily reflected in the current standards. For instance, we agree that there could be further clarity on responsibilities across complex corporate structures and value chains and see the benefits of further guidance from the OECD. We also note the significant developments in sustainability reporting and lack of uniform metrics to assess company performance on responsible business conduct.”*

## 4.2. Human rights

### 4.2.1. Chapter overview

Chapter IV was introduced at the time of the 2011 update of the MNE Guidelines. It is aligned with the expectations on enterprises established by the UN Guiding Principles. Specifically, the Chapter establishes that enterprises should respect human rights and conduct due diligence to avoid causing, or contributing to, adverse human rights impacts in their own activities, and to seek to prevent or mitigate impacts to which they are directly linked through their supply chains and business relationships. This also forms the basis for the general due diligence expectation included in Chapter II of the MNE Guidelines on General Policies.

### 4.2.2. NCP survey responses

Overall, NCPs ranked Chapter IV high in terms of continued relevance (8.6 out of 10).<sup>67</sup> However, there is a notable difference when asked to evaluate suitability of the Guidelines for the following themes of relevance to this Chapter, in particular: digitalisation (6.7 out of 10), diversity (6.9 out of 10) and indigenous peoples' rights (6.6 out of 10).

**NCPs highlighted the following strengths:** close alignment with the UNGPs; the provisions on human rights due diligence and on operational level grievance mechanisms have been particularly useful. The Chapter is well-adapted to the fact that enterprises can impact on the entire spectrum of internationally recognised human rights.

**NCPs highlighted the following challenges:** NCPs point out that the breadth of the Chapter has posed challenges for interpretation, and express need for more focused guidance addressing issues such as **indigenous peoples' rights; gender, diversity and inclusion; LGBTI; children's rights; the environment; conflict; forced displacement; human trafficking and undue pressure against stakeholders.**

During the stocktaking exercise, Adherents have emphasised the need to further clarify of the relationship between i) the human rights chapter and other thematic issues covered by the Guidelines such as industrial relations and the environment.

### 4.2.3. Specific instances

Since its addition in 2011, Chapter IV is the most cited chapter in specific instances, accounting for 58% of all cases received by NCPs since 2011.<sup>68</sup> These specific instances have resulted in changes to companies' policies and due diligence processes; the establishment of dedicated grievance mechanisms; renewed impetus for stakeholder engagement; and concrete remedial outcomes, including compensation.

A number of NCP cases have concerned Chapter IV and addressed a range of issues, including:

- Conducting due diligence in the context of volatile and conflict-affected areas:
  - Committee Seeking Justice for Alethanyaw (CSJA) & Telenor, ([Norwegian NCP, 2019](#))
  - Norwegian Support Committee for Western Sahara & Sjovik, ([Norwegian NCP, 2011](#))
  - Heineken, Bralima and former employees of Bralima, ([Dutch NCP, 2019](#))
- Human rights due diligence in the financial sector:
  - [Credit Suisse and Society for Threatened Peoples](#), (Swiss NCP, 2017)
  - [Australian and New Zealand Banking Group Limited \(ANZ Group\) and Equitable Cambodia \(EC\)](#) and [Inclusive Development International \(IDI\)](#), (Australian NCP, 2014)



- [Consortium of NGOs regarding the activities of POSCO India operating in India, and two of its investors, the Dutch Pension Fund ABP and its pension administrator APG, and the Norwegian Bank Investment Management \(NBIM\)](#), (Korean NCP, 2012)
- RBC and human rights in the context of large sporting events:
  - [Formula One and ADHRB](#), (UK NCP, 2014)
  - [Fédération Internationale de Football Association \(FIFA\) and Building and Wood Workers' International \(BWW\)](#), (Swiss NCP, 2015)
- Human rights due diligence in the security sector:
  - [Etienne-Lacroix and Americans for Democracy & Human Rights in Bahrain](#), (French NCP, 2015)
  - [Privacy International and Gamma International UK LTD](#), (UK NCP, 2013)
- The corporate responsibility to respect human rights vis-à-vis indigenous peoples:
  - [FIVAS & Norconsult; \(Norwegian NCP, 2014\) EDF & EDF Renewable in Mexico](#), (French NCP, 2018)
  - [Credit Suisse and Society for Threatened Peoples](#), (Swiss NCP, 2017)
  - [WWF and Survival International; Jijnjevaerie Saami Village & Statkraft](#), (Swedish NCP, 2012)
  - [ProdDESC, two human rights defenders and EDF](#), (French NCP, 2018)

#### 4.2.4. Key developments since 2011

**The digital revolution and the role of information and communications technology (ICT)** has become an issue at the forefront of debates about human rights in general, and with respect to RBC in particular. During the stocktaking exercise, Adherents have emphasised the importance of emerging technologies including AI for this Chapter, but also as a cross-cutting development of relevance for other chapters and issues, such as employment and industrial relations (occupational safety and health, gender equality, diversity and inclusion), and science and technology. Key issues include the spread of fake news; incitement to hatred and violence; curbing free speech; privacy; the use of digital surveillance tools; censorship; social monitoring; unequal access due to digital products and services; internet shutdowns; large-scale harvesting and misuse of data; environmental impacts of technology companies as well as of data centers; and the entrenchment of existing bias through the application of artificial intelligence.<sup>69</sup> Notable policy developments to address these risks include the adoption of the OECD Council Recommendation on Artificial Intelligence [[OECD/LEGAL/0449](#)]; the B-Tech Project by the UN Office of the High Commissioner for Human Rights (OHCHR)<sup>70</sup>; and the European Commission's ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights (2013).<sup>71</sup>

**Undue pressure against individuals, communities and organisations that raise concerns over business-related risks and impacts** has become an area of concern. This includes pressure against journalists, whistle-blowers alleging corruption or tax avoidance/evasion, union members or workers, and human rights and environmental defenders and lawyers, as well as family members of any of these individuals. A number of policy measures have emerged in response;<sup>72</sup> there is forthcoming guidance by the UN Working Group on Business and Human Rights;<sup>73</sup> and public zero-tolerance position statements have been issued by investors<sup>74</sup> and MNEs.<sup>75</sup> With regard to NCPs, OECD Watch has developed targeted recommendations to Adherents, NCPs and the OECD Secretariat on the need to discourage, anticipate, and respond effectively to reprisals against defenders.<sup>76</sup> Reprisals are not mentioned in the MNE Guidelines but risk undermining the NCP process and weakening the NCP system as a whole and thereby the effectiveness of the OECD Guidelines. For this reason, in March 2020, the WPRBC issued a statement expressing deep concern regarding alleged incidents of undue pressure on applicants submitting specific instances to NCPs.<sup>77</sup>



**Expectations on MNEs to eradicate slavery and child labour across their global supply chains have been evolving** since 2011. Recent policy developments include the United Kingdom Modern Slavery Act (2015), the Australian Modern Slavery Act (2018), the Netherlands' Child Labour Due Diligence Law (2019), the German Act on Corporate Due Diligence Obligations in Supply Chains (2021), the Norwegian Act on Business Transparency and Work on Basic Human Rights and Decent Working Condition (2021), the EU Guidance on Forced Labour (EU) and amendments to the US Federal Acquisition Regulation (2015). In 2019, the OECD, in collaboration with the Global Alliance 8.7, provided the first-ever estimates of child labour and human trafficking in global supply chains.<sup>78</sup>

In 2014, the Open-ended Intergovernmental Working Group mandated by the UN Human Rights Council began discussions to elaborate an international **legally binding instrument on business and human rights**. A third revised draft for a legally binding instrument was released in July 2021.<sup>79</sup>

Since 2011, **Adherents have played an important role in developing National Action Plans (NAP) on RBC or Business and Human Rights** and many NCPs have taken active part in the design, development and implementation of these.<sup>80</sup> Currently of the 24 existing NAPs, 22 have been concluded by Adherents to the MNE Guidelines.<sup>81</sup> To date, these NAPs reference the NCP in some role or function; and many recognise NCPs as a key mechanism in promoting RBC and access to remedy (see also section 2.7).

**Engaging with indigenous peoples with the objective of seeking their free, prior and informed consent (FPIC)** prior to certain types of business operations has become a more established practice in some sectors.<sup>82</sup> Indigenous peoples rights are recognised by [ILO Convention No.169 on Indigenous and Tribal Peoples](#) (1989) and the UN Declaration on the Rights of Indigenous Peoples (2007) which both apply to States. During the stocktaking exercise, Adherents have emphasised that the role of enterprises to protect indigenous peoples' rights is an area in need of further clarification and alignment. Some States have reaffirmed their commitment to upholding the procedural safeguard of FPIC<sup>83</sup> and a new regional agreement in the Americas on the rights of indigenous peoples that reflects FPIC has also been adopted.<sup>84</sup> Moreover, FPIC features in the International Finance Corporation's (IFC) Performance Standard 7 and the July 2020 revision of the Equator Principles follow the same approach. The recently adopted OECD DAC Blended Finance Principles which call for in-depth consultation with local stakeholders refer to both these instruments and the MNE Guidelines. Several large MNEs and a number of industry standards call for FPIC to be assured for all impacted stakeholders including but not only indigenous peoples.<sup>85</sup> The MNE Guidelines do not reference the UN Declaration on the Rights of Indigenous Peoples, FPIC or ILO Convention No. 169. However, FPIC is reflected in the 2017 [Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector](#) and in the 2016 [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#) (hereafter "OECD-FAO Guidance").

**Responsible governance of land tenure has been clarified** with Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012),<sup>86</sup> which served as a reference point in the development of the OECD-FAO Guidance.

**Emerging policy in the field of human rights increasingly address the situation of women.**<sup>87</sup> The UN Working Group on Business and Human Rights launched a gender-lens project in 2017. In 2019, the OECD Development Assistance Committee adopted the DAC Recommendation on Ending Sexual Exploitation, Abuse, and Harassment in Development Co-operation and Humanitarian Assistance [[OECD/LEGAL/5020](#)]. There has also been increasing attention paid to barriers women face in accessing remedy via judicial and non-judicial grievance mechanisms.<sup>88</sup> The need for integrating a gender approach to due diligence is also a cross-cutting theme in the OECD's due diligence guidance.<sup>89</sup> In addition, a number of human rights instruments and policies have emerged that address the protection of the family and the situation of vulnerable groups, such as older persons, persons with disabilities, migrants and LGBTI.<sup>90</sup> Bringing these elements together, there is new focus on "intersectionality" as a lens for understanding how women and other individuals may be impacted differently as a result of intersecting identity traits commonly subject to discrimination (e.g. gender, race, ethnicity, migrant status, caste, etc.).<sup>91</sup>

**References to business and human rights standards in international treaty bodies and tribunals are increasing**, particularly in the context of State obligations to protect against abuses by third parties. The Inter-American Court of Human Rights is viewed as a leader in developing the concept of a State's due diligence obligations in the business context, and affirming that all individuals within the jurisdiction of a State have the right to access justice, even when their rights have been violated by non-State actors.<sup>92</sup> Regional bodies in Africa have also made explicit States' obligations to ensure business' respect for human rights, including through the African Commission on Human and Peoples' Rights. Though still limited, the referencing of international business and human rights standards in national courts as well as quasi-judicial bodies is also on the rise.<sup>93</sup>

#### 4.2.5. *Input from stakeholder consultations*

Stakeholders highlight that the human rights chapter has facilitated greater international coherence on business responsibilities, in particular through its alignment with the UN Guiding Principles and the ILO Tripartite Declaration. This alignment has prompted significant investment in the development of government and business policies and procedures pertaining to human rights. Stakeholder feedback include the recommendation that policy makers can and should rely on these existing standards and the associated guidance when developing further regulation.

Stakeholders report that through the inclusion of a human rights and a due diligence methodology, companies have developed considerable experience in the implementation of due diligence, codes of conduct, training programmes, reporting channels and other important components of responsible business conduct. Stakeholders note that the **OECD Guidelines and NCP mechanisms have become a global reference point for RBC** and business responsibilities relating to human rights.

Across all stakeholder submissions, human rights including diversity and gender, is the most frequently cited of the thematic areas covered by the Guidelines. Stakeholders provide wide ranging comments and recommendations related to strengthening clarity on issues under Chapter IV of the Guidelines. This include **concerns about a lack of progress on national regulation, and questions on whether the voluntary and non-binding nature** of the Guidelines as well as the **voluntary nature of NCP grievance procedures** has improved the human rights situation of workers and communities affected by the activities of MNEs. They also question whether the Guidelines have helped address the need for **access to justice and remedy for communities negatively impacted by business activities**.

Stakeholders note the increasing number of attacks against human rights defenders focused on business activities, both physical and through strategic lawsuits (SLAPPs). They also highlight widespread corporate failure to speak out against harm to human rights defenders and recommended that the human rights chapter clarify that MNEs must avoid both actions as well as omissions in this regard. It was noted that the NCP specific instance procedure does not sufficiently allow for interventions to address ongoing human rights abuses, including reprisals against human rights and environmental defenders who engage with the process. This risk is seen as even greater for marginalized or isolated human rights and environmental defenders such as indigenous people, women, LGBTQ+ individuals, or those who are rural and remotely located.

Stakeholders also note that expectations on stakeholder engagement and non-discrimination related to **gender, race, religion, sexual orientation and identity, caste or other relevant statuses** could be clarified. Stakeholders **recommended that the Guidelines explicitly acknowledge the risk of discrimination faced by different groups and right holders in addition to workers**, and that the Guidelines establish requirements for companies to identify and address potential and actual impacts on marginalised and disadvantaged groups through constructive engagement.

Specifically, stakeholders note that the Guidelines could identify key rights of the most vulnerable members of society such as **Indigenous Peoples' right to free, prior, and informed consent (FPIC)** over use of

their territories, and the different ways people can be adversely impacted by business conduct (i.e. not only as employees but as community members). Stakeholders suggested that the Human Rights chapter should **specifically call on MNEs to respect the right to FPIC**, with additional commentary provided explaining the meaning of each element of FPIC and the expectation that MNEs will cooperate with indigenous peoples' own representative institutions and customary decision-making processes.

Stakeholders note that commentary and accompanying guidance could clarify the importance of **stakeholder engagement in relation to land intensive projects**, particularly for marginalised and disadvantaged groups. This would include expectations on due diligence on housing, land and property rights, such as **MNEs' responsibility to respect rights regardless of the state's fulfilment of its own duty to protect land rights**, their responsibility to identify and address overlapping historic claims to land, and their responsibility to respect legitimate land tenure (including of women, communal, and customary landowners). The Guidelines should establish standards for MNEs to respect land security and land rights and to provide or engage in remedy for victims of corporate-linked land rights violations more generally.

Stakeholders recommend that the Guidelines, including Chapter IV, **integrate a specific gender-sensitive approach** and should explicitly address the disproportionate impacts caused by **structural discrimination against women and against LGBTQ+ people, as well as vulnerabilities based on intersectional characteristics such as ethnicity, age or caste**. Stakeholders highlighted the gap in RBC standards on **caste discrimination as a specific concern**.

The need for private entities to examine their own **business models and practices that cause or contribute to actual or potential adverse human rights impacts** was also highlighted, including in relation to purchasing practices. The submissions provide extensive comments on **digitalisation and emerging technologies**, and the need to address the evolving human rights impacts of companies in the digital sphere (See Science and Technology Chapter 4.7 for further stakeholder feedback relating to digitalisation).

Stakeholders highlight that the Guidelines do not sufficiently address the establishment of **adequate remedy procedures** in accordance with international standards such as the UNGPs, including **operational grievance mechanisms or neutral, third party assisted remedial options** (See the NCP Chapter for further stakeholder feedback relating to access to remedy).

## Selected statements by stakeholders related to CHAPTER IV – HUMAN RIGHTS

**OECD Watch:** *"The standards [the Guidelines] set for multinational enterprises are outdated and incomplete, missing major and pressing societal issues such as climate change, digitalization, tax avoidance, land rights, and security for human rights defenders."*

**Alliance Sud:** *Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples' right to free, prior, and informed consent (FPIC) over use of their territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.*

**OHCHR:** *"OHCHR considers the alignment between relevant parts of the MNE Guidelines and the UNGPs to be of pivotal importance, and arguably a key factor in the significant uptake of the standards they both embody, at the company level as well as at the policy and regulatory levels. [...] Given the*

*risks [in] opening up the text of the MNE Guidelines [...] OHCHR is of the view that policy makers can and should rely on existing standards and the associated guidance when regulating.”*

### 4.3. Employment and industrial relations

#### 4.3.1. Chapter overview

Chapter V of the MNE Guidelines seeks to promote observance among enterprises of the international labour standards developed by the International Labour Organization (ILO), notably the fundamental principles and rights at work (ILO core conventions). Other issues addressed in this Chapter relate to the provision of adequate information to workers on company operations, ensuring consultation and cooperation between employers and workers, encouraging the employment and training of local workers, and providing the best possible conditions of work, including adequate wages and occupational health and safety (OHS) at work. Businesses are expected to conduct due diligence on their operations and throughout their supply chains to identify, prevent and mitigate actual or potential adverse impacts, including in relation to employment and industrial relations.

#### 4.3.2. NCP survey responses

Overall, NCPs ranked Chapter V high in terms of continued relevance (8.4 out of 10).<sup>94</sup> However when asked about the suitability of the Guidelines for themes of relevance to this Chapter, in particular digitalisation and diversity these ranked lower (6.7 out of 10 and 6.9 out of 10 respectively).

**NCPs highlighted the following strengths:** the link between the MNE Guidelines and the ILO core conventions is a key aspect of the Chapter. The ILO instruments are the most important source for assessing specific instances in this area of the MNE Guidelines. Terms such as “prevailing labour relations” and “employment practices” are sufficiently broad to permit a variety of interpretations in light of different national circumstances. The Chapter contains clear and precise principles concerning trade union rights, and emphasises the importance of social dialogue and consultation as a preventative mechanism to adverse impacts.

**NCPs highlighted the following challenges:** the Chapter could better reflect developments related to the **platform and gig economy** and its impacts on protection of workers. Other areas where further clarity might be needed include **migrant workers; domestic work; job creation; apprenticeships, gender** and broader **inclusion and diversity** promotion policies including, but not limited to, **persons with disabilities**. This could include further emphasis on **forced labour and child labour**; labour relations during crises or **states of emergencies** such as the COVID-19 pandemic; and a more proactive approach to **health and safety** at work and **informality**. Finally, NCPs commented on the need to better reflect the **2017 revision to the [ILO Tripartite Declaration](#)** and potential synergies between NCPs and ILO MNE Tripartite Focal Points, especially in terms of measures to be adopted by governments in the fields of labour administration and public labour inspection. To date, two adhering countries have set up an ILO Tripartite Focal Point (Norway and Portugal).<sup>95</sup>

#### 4.3.3. Specific instances

Prior to the 2011 update, Chapter V accounted for the majority of chapters invoked in specific instances – a total of 70%. Since 2011, the specific instances that relate to this Chapter is lower, totalling 39%. Two factors may explain this: i) some cases are now filed under Chapter IV and ii) trade unions’ diminishing interest in using NCPs.

NCPs' handling of specific instances addressing employment and industrial relations have resulted in important changes, including companies' policies and due diligence processes; improved social dialogue and co-operation; establishment of remediation schemes; and important positive impacts on labour law reforms at national level.

A number of NCP cases have addressed different aspects of Chapter V, including:

- Workers in vulnerable situations: [Fédération Internationale de Football Association \(FIFA\) and Building and Wood Workers' International \(BWI\)](#), (Swiss NCP, 2015)
- Addressing historical grievances:
  - [Heineken, Bralima and former employees of Bralima](#), (Dutch NCP, 2015)
  - [Banro and former employees](#), (Canadian NCP, 2017)
- Labour and industrial relations in fragile and conflict-affected contexts: [DNO ASA and Industri Energi](#), (Norwegian NCP, 2018)
- Occupational health and safety:
  - [Drummond Ltd. and the National Trade Union of Diseased and Disabled Workers of the Mining Sector \(SINTRADEM\)](#), (Colombian NCP, 2016)
  - [The General Federation of Labor Cesar's Office \(CGT Cesar\) and the General Confederation of Labor Colombia \(CGT Colombia\)](#), (Colombian NCP, 2016)
  - [Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia](#), (Australian NCP, 2013)
  - [PWT Group and the NGOs Clean Clothes Campaign Denmark and Active Consumers](#), (Danish NCP, 2014)
  - [KiK Textilien und Non-Food, C&A Mode, Karl Rieker and Uwe Kekeritz, Member of the German Bundestag](#), (German NCP, 2013)
  - Rana Plaza Report (French NCP, 2013)
  - Teleperformance and UNI et al. (French NCP, 2020)
- Restructuration or closure:
  - Etex, Building and Wood Workers' International (BWI) and Ceramic Workers' Union of the Republic of Argentina (FOCRA), (Belgian NCP, 2016)
  - [MAERSK Container Industry and Trade Union Number 1 of MAERSK Container Industry; Unilever and Trade Union N°1, Chilean Trade Union Confederation \(CUT\) \(Chile\)](#), (Chilean NCP, 2019)
  - [Closure of a paper mill in France](#), (French NCP, 2014)
  - [Unilever and Trade Union N°1, Chilean Trade Union Confederation \(CUT\)](#), (Chilean NCP, 2019)
- Anti-union dismissals, recognition of trade unions and launching collective bargaining negotiations:
  - [Natixis and Unite Here](#), (French NCP, 2016)
  - [DIAM and Birlésik Metal Is](#) (French NCP 2017)
  - [Teleperformance and UNI and all](#) (French NCP, 2020).

#### 4.3.4. *Key developments since 2011*

The **ILO Tripartite Declaration** was updated in 2017 and includes new principles on decent work related to social security, forced labour, transition from the informal to the formal economy, wages, safety and health, access to remedy and compensation of victims. In several sectors, certain business practices

related to purchasing, or reliance on external firms for recruitment, are under scrutiny for the unintended impacts they can have on depreciating wages and violations on fundamental principles and rights at work.<sup>96</sup>

**The Global Deal** is a multi-stakeholder initiative for social dialogue and inclusive growth established in 2016. The initiative addresses the future role of social dialogue institutions to shape outcomes in a globalised labour market and is hosted at the OECD.<sup>97</sup>

The **ILO Centenary Declaration for the Future of Work** was adopted by governments, employers and workers at the 108<sup>th</sup> session of the International Labour Conference in June 2019. This roadmap for a human-centred future of work was developed in response to the transformative changes in the world of work, driven by technological innovations, demographic shifts, climate change and globalization.<sup>98</sup>

**The emergence of new forms of work and business models** has led to concerns about shifting risks and responsibilities away from employers onto workers (e.g. health care benefits and retirement provisions). Relevant initiatives to address these impacts include the [OECD Jobs Strategy](#) (2018), the [G20 Declaration Ministers of employment and labour](#) (2018), the [OECD Job Quality Framework \(2014\)](#), and the ILO's [Social Protection Floors Recommendation, 2012 \(No. 202\)](#).

The increased use of Artificial Intelligence (AI) has raised questions over its application in the field of employment and industrial relations, in particular in terms of data, robustness, explainability, accountability and bias. Notable recent initiatives to address such concerns include the adoption of the OECD Council Recommendation on Artificial Intelligence [\[OECD/LEGAL/0449\]](#).<sup>99</sup>

Technology, evolving demographics, and climate change have created new occupational, safety and health concerns, as evidenced in recent ILO, EU<sup>100</sup> and G20<sup>101</sup> initiatives related to occupational health and safety.

**Global supply chains have increasingly extended into the informal economy.**<sup>102</sup> Two billion people or more than 61 % of the world's employed population make their living in the informal economy.<sup>103</sup> The Covid-19 pandemic has also severely impacted informal workers and the ILO estimated that almost 1.6 billion workers in the informal economy have been significantly impacted by the COVID-19 pandemic, leading to an estimated decline in their earnings of 60 percent.<sup>104</sup> Adopted in 2015, the [ILO Recommendation No. 204](#) addresses transition from the informal economy to the formal economy.

**Promotion of corporate policies to promote work-family balance.** This has become particularly evident in the context of the Covid-19 crisis, in particular for those working from home.<sup>105</sup>

#### 4.3.5. *Input from stakeholder consultations*

A fifth of public submissions comment on themes related to employment and industrial relations. Stakeholders called for a broad and comprehensive review of labour rights protections and highlighted a number of gaps in the Guidelines. These include a lack of clarity on the risks – and special due diligence needed – for **disadvantaged or marginalised workers** including women, homeworkers, people of low caste, migrant workers and others.

Stakeholders highlight that Chapter V focuses on internal employment rather than on **labour across the whole value chain** and therefore does not address important labour rights issues. They also warn that the Guidelines do not sufficiently discourage the adoption of damaging **purchasing practices**, provide procedures for **responsible disengagement**, or discourage overreliance on auditors to fulfil due diligence expectations. Stakeholders further highlight the lack of language reflecting the nexus between employment, industrial relations and RBC expectations for MNEs in the context of digitalisation.

Stakeholders warned that the introduction of due diligence reporting may **inadvertently encourage outsourcing** of core business activities such as recruitment to uncontrolled external companies, and that voluntary self-reporting by business has too often counted as adherence to the Guidelines.



Stakeholders recommended employment and industrial relations be more prominently situated in the Guidelines to effectively promote **freedom of association and collective bargaining**. Submissions highlighted NCP cases relating to violations of freedom of association, which frequently fail because either the NCP or the MNE chose not to proceed with mediation, notably when appropriate conditions for mediation are not met.

Stakeholders called for a number of updates to the Guidelines that would help clarify the responsibilities of MNEs in relation to employment and industrial relations. These included: better reflecting expectations for MNEs to demonstrate how they meaningfully promote labour rights and use their leverage to remediate violations over their whole value chain; guidance on **living wages** and incentivising collectively negotiated wage agreements, and discourage **purchasing practices** that prevent businesses from paying a collectively bargained liveable wage; moving away from the use of terms like “employment” and “employees” and instead **refer to workers’ rights, regardless of employment status**; concept of **just transition** be incorporated in the Guidelines given the impacts of climate action and digital disruption on labour markets including guidance on **responsible disengagement**; acknowledge newer vulnerabilities for growing numbers of workers in **platforms companies and the digital economy** and inform relevant businesses of their responsibility to respect labour rights.

Stakeholders also highlight that the Stocktaking process should take into account the changes made to the **2017 revision of the ILO Tripartite Declaration** (5th version), which stresses for instance that both home and host country governments of MNEs have responsibilities in promoting good corporate practice. It also highlights the need to apply the principles of the ILO Tripartite Declaration to the context of FDI and trade.

## Selected statements by stakeholders related to CHAPTER V – Employment and industrial relations

**TUAC:** *“The Guidelines can provide hope for all workers – including workers in global supply chains – to defend their rights and improve their living and working conditions.”*

**OECD Watch:** *“Labour rights are at risk around the world in all sectors and value chains.... Given their importance, the Guidelines could provide stronger guiding standards on respecting freedom of association and collective bargaining.”*

**Clean Clothes Campaign:** *“Chapter V focuses on internal employment rather than on labour across the whole value chain, and as such fails to set important labour rights standards for MNEs.”*

**ILO:** *“OECD guidance is playing an important role in supporting companies in undertaking due diligence.”*

## 4.4. Environment

### 4.4.1. Chapter overview

Chapter VI of the MNE Guidelines provides recommendations for enterprises to improve their environmental performance and maximise their contribution to environmental protection, with a strong

focus on the use of environmental management systems as well as other recognised tools for environmental risk management. Businesses are expected to conduct due diligence on their operations and throughout their supply chains to identify, prevent and mitigate actual or potential adverse impacts on the environment. Other chapters also contain recommendations relevant to environmental matters, including the chapters on Disclosure (Chapter III), Human Rights (Chapter IV), Employment and Industry Relations (Chapter V), Consumer Interests (Chapter VIII) and Science and Technology (Chapter IX).

#### 4.4.2. *NCP survey responses*

Overall, NCPs ranked Chapter VI high in terms of continued relevance (8.0 out of 10).<sup>106</sup> At the same time, when asked about overall suitability to address environment the NCPs ranked the Guidelines lower (7.3 out of 10). With regard to suitability to address animal welfare, NCPs provided a ranking of 5.4 out of 10.

**NCPs highlighted the following strengths:** NCPs found Chapter VI well adapted and effective in addressing contemporary challenges faced by Adherents. NCPs noted in particular that Chapter VI facilitates a clear link with sustainable development; is particularly relevant in addressing stakeholder engagement; captures key concepts and tools including environmental management systems and environmental impact assessments (EIAs); and highlights intersections between health, science and technology.

**NCPs highlighted the following challenges:** the need to reference climate change explicitly, including alignment with the Paris Agreement on climate change; links and reciprocal relationship between environment and human rights (including impacts on environmentally displaced populations and indigenous peoples); updating references to relevant international environmental frameworks and agreements; further detail on environmental due diligence; setting targets for climate change and biodiversity; and issues related to the circular economy (i.e. waste management and recycling).

#### 4.4.3. *Specific instances*

Since 2011, 24% of all specific instances have made reference to provisions of the Environment Chapter. The majority of cases concern alleged environmental impacts of large-scale projects or operations in the mining, manufacturing and energy sectors. The number of climate change-related cases has increased in recent years.

Key NCP specific instances relevant to interpretation of the MNE Guidelines with respect to environmental challenges include:

- Climate Change, including issues relating to consumer interests and disclosure:
  - [ING Bank and NGOs concerning climate policy](#), (Dutch NCP, 2017)
  - [BP and Client Earth](#), (UK NCP, 2019)
  - [ANZ Banking Group and Friends of the Earth, Egan, Dodds and Simons](#), (Australian NCP, 2020)
  - [Group PZU S.A. and Development YES – Open-Pit Mines NO Foundation](#), (Polish NCP, 2018)
- Right to a healthy living environment, environmental impacts on human rights, free prior and informed consent (FPIC) and rights of indigenous peoples:
  - [Nuon Energy N.V. and/or Nuon Wind Development B.V., and Stichting Hou Friesland Mooi](#), (Dutch NCP, 2017)
  - [Statkraft AS and the SAMI reindeer herding collective in Jijnjevaerie Sami Village](#), (Swedish NCP, 2012)



- [Crédit Suisse and Society for Threatened Peoples Switzerland \(North Dakota Access Pipeline\)](#), (Swiss NCP, 2017)
- [World Wide Fund for Nature International \(WWF\) and Survival International Charitable Trust](#), (Swiss NCP, 2016)
- [KEXIM, Daewoo E&C and JRPM, PSPD, KTNC WATCH](#), (Korean NCP, 2018)
- [EDF-EDF Renewables and Prodesc and two HR defenders](#), (French NCP, 2018)
- Environmental management including waste management and impacts of large infrastructure projects on communities and biodiversity:
  - [Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational](#), (Spanish NCP, 2017)
  - [ENI S.p.A., ENI International BV, and CWA and ACA](#), (Italian NCP, 2017)
  - [The Future In Our Hands \(FIOH\), Intex Resources Asa and The Mindoro Nickel Project](#), (Norwegian NCP, 2009)
  - [Michelin Group, and four NGOs and a trade union](#), (French NCP, 2012)
  - [Impacts of oil exploration in an area of the Virunga National Park in the DRC](#), (UK NCP, 2013)
  - [Perenco and ASF & I Watch](#), (French NCP, 2018)
- Export credit agencies, climate change and disclosure:
  - [Atradius Dutch State Business \(ADSB\) and NGOs](#), (Dutch NCP, 2015)
  - [UK Export Finance \(UKEF\) and Global Witness](#), (UK NCP, 2020)
- Consumer interests and sharing environmental information: [Grupa OLX and Frank Bold Foundation](#), (Polish NCP, 2018)
- Workers' health and safety: [Vale and BHP Billiton and SITICOP, CNQ-CUT, BWI, and IndustriALL](#), (Brazilian NCP, 2018)

#### 4.4.4. *Key developments since 2011*

**The environmental agenda has evolved significantly since 2011.** Key international agreements include the Paris Agreement on climate change, the 2030 Agenda for Sustainable Development, and the Aichi Biodiversity Targets 2011-2020 under the Convention for Biological Diversity. Deforestation, climate change, preservation of protected or world heritage sites, and circular economy are not referenced in the MNE Guidelines, while other topics such as biodiversity and pollution of air, land and water are mentioned only briefly.

**Increasing momentum by governments and business to align business and investment decisions with the goals of the Paris Agreement.**<sup>107</sup> In particular, there has been considerable momentum in sustainable finance policy at domestic and regional levels with a focus on **climate change**, including for example the introduction of the EU Sustainable Finance Platform,<sup>108</sup> the International Platform on Sustainable Finance,<sup>109</sup> and the Network for Greening the Financial System.<sup>110</sup> There has also been increased attention on corporate lobbying in relation to whether corporations are supporting or discouraging governments' adoption of climate-friendly regulations in line with achieving targets under the Paris Agreement.<sup>111</sup>

**Significant developments in measurement and reporting of business impacts on the environment,**<sup>112</sup> including metrics, benchmarks, science-based targets and advances in quantifying the costs of environmental externalities.<sup>113</sup> This includes internationally adopted disclosure frameworks as well as standardising "green" activities.<sup>114</sup> Also, the recommendations of the Taskforce on Climate-related

Financial Disclosures (TCFD) has become the leading framework for how businesses should integrate considerations of financial climate risk into strategy, governance, risk management and disclosure.<sup>115</sup>

**Nature-positive or regenerative considerations** have developed in response to negative trends in nature, biodiversity, and ecosystem functions (including deforestation)<sup>116</sup> posing extreme risk for economies and well-being”.<sup>117</sup> The Conference of the Parties (COP15) to the Conference on Biodiversity (CBD) will review delivery of the 2011-2020 Aichi Biodiversity Targets<sup>118</sup> increasing demands on business.<sup>119</sup> The Taskforce on Nature-related Financial Disclosures (TNFD) was set up in 2020 to provide a framework for corporates and financial institutions to assess, manage and report on their dependencies and impacts on nature, and ultimately steer finance towards nature positive outcomes aligned with the CBD post-2020 Global Biodiversity Targets, the SDGs and the Paris Agreement.<sup>120</sup>

**Liability risk and demands on business** from governments, investors and policy makers to address environmental threats, dependencies and direct impacts on the environment are accelerating – particularly in regard to climate change and biodiversity.<sup>121</sup>

**Increase in industry collaboration and coalitions to address systemic or sector specific environmental risks** with a focus on aligning climate action,<sup>122</sup> but also in response to expectations around animal welfare protections.<sup>123</sup> Since 2011, OECD due diligence guidance have been issued providing concrete guidance and expectations specific to environmental considerations.<sup>124</sup>

**Increasing attention on animal welfare in business conduct.** Ineffective regulation of animal-based industries has also led to adverse environmental impacts such as deforestation and biodiversity loss, environmental pollution and climate change. A number of international standards, laws, models, principles and guidance have emerged in the past decade to help companies to better address animal welfare in order to protect animals as well as humans and ecosystems.<sup>125</sup> The MNE Guidelines do not establish standards for RBC regarding animal welfare, however the OECD-FAO Guidance for Responsible Agricultural Supply Chains developed in 2016 calls on companies to strive to ensure the ‘five freedoms’ for animal welfare are implemented, *i.e. freedom from hunger, thirst and malnutrition, physical and thermal discomfort, pain, injury and disease, fear and distress, and freedom to express normal patterns of behaviour*, as set out in the standards developed by the World Organisation for Animal Health (OIE).<sup>126</sup>

The need for a just transition has strengthened the focus on the nexus between environmental and social dimensions of the MNE Guidelines. This includes human rights; the future of work; loss and damages discussions, climate change adaptation, and procedural rights and protection of environmental and human rights defenders.<sup>127</sup>

**Advances in international initiatives on the circular economy** include the creation of the G7 Alliance on Resource Efficiency in 2015, the adoption of the Toyama Framework on Material Cycles, the inclusion of specific goals related to resource efficiency in the 2030 Agenda for Sustainable Development [circular economy action plan](#), and the introduction of resource efficiency into the G20 agenda in 2017. An example of an initiative at the regional level is the [EU circular economy action plan](#) (2015 and 2020).<sup>128</sup>

#### 4.4.5. *Input from stakeholder consultations*

##### **Achievements**

Stakeholders raise the achievements of the Guidelines in creating a common understanding, and supporting international consensus on business impacts as they relate to both human rights and the environment. They also noted the role of the Guidelines in covering a broad range of issues and providing a comprehensive approach to addressing the key environmental challenges of our time including the climate and biodiversity loss crises.

It is noted that despite many tracks of parallel legislation relating to corporate responsibility on environmental issues, there is no unifying guidance on the scope of environmental impacts and risk that business should address, and the Guidelines play an important role in addressing this gap.

In this regard, stakeholders recognise the role of the NCPs as a global source for resolving questions relating to business responsibility for environmental impacts, with particular regard to the increasing body of climate related NCP cases. For example, high-profile cases such as the Dutch NCP's case "ING Bank and NGOs concerning climate policy" are noted as having contributed to clarifying climate action expectations for business. Further to some of the challenges referenced below, stakeholders also note that despite certain environmental aspects needing further explanation and recognition within the Guidelines, a number of environmental elements within the Guidelines are also elaborated on in the due diligence guidances.

### **Challenges**

A quarter of survey respondents note that the Guidelines risk losing their relevance in the face of the climate crisis given that climate change and the Paris Agreement is not explicitly addressed in the Guidelines, and that the Guidelines do not establish clear expectations on climate mitigation, adaptation or just transition principles. Stakeholders note that the Guidelines in their current form do capture climate change as part of RBC, but that for this to take fuller effect there is a need to explicitly reference climate change in the Guidelines. In 2021, the Australian NCP in its final statement in the case "ANZ Banking Group and Friends of the Earth, Egan, Dodds and Simons" made a comprehensive analysis of the climate-related provisions in the Guidelines and their commentary, noting "the increasing awareness that the Guidelines' text around climate change and environmental expectations of companies is behind current practise".<sup>129</sup>

A similar share of respondents also highlight that the environmental section of the Guidelines is significantly less detailed and prescriptive as compared with the human rights chapter. Respondents particularly note the absence of animal welfare from the Guidelines, and the absence of clear responsibilities regarding biodiversity and deforestation.

Furthermore, more than half of public submissions highlight climate change, biodiversity, pollution, deforestation and animal welfare, as themes, which the Guidelines do not adequately address. A number of submissions also highlight protection of environmental defenders as needing to be further addressed in the Guidelines.

Climate change represents the predominant issue raised by almost all submissions addressing the environmental aspects of the Guidelines. A number of submissions call for explicit reference to the Paris Agreement and requirements for business to conduct activities in line with the Paris Agreement – including the adoption of short and long term emission reduction targets and public disclosure of Paris aligned climate action. Further clarity on the intersections between climate responsibilities under the Guidelines and the Disclosure chapter is also highlighted, particularly regarding questions around climate performance, risk and materiality. Specific reference is made to greenwashing and the need for the Guidelines to provide further safeguards to prevent promotion of false or misleading climate information – particularly in light of the increasing trends in climate reporting and companies adopting net zero targets. In this context there is increasing attention on standards with regard to climate impacts including in relation to science-based net-zero emission pathways for economic sectors in establishing sector specific benchmarks that companies may be assessed against.

Regarding adverse environmental impacts and risks in a broad sense, submissions raise the need for more detail on what environmental due diligence entails in the context of the provisions of the Guidelines. More detail on scope of environmental impacts to be addressed and the interconnections between the human rights and environmental chapters, including reference to the right to a healthy environment are specifically

noted. On climate due diligence, submissions highlight the need for further clarity on obligations relating to climate due diligence in particular and how this intersects with human rights due diligence.

### **Opportunities**

Survey respondents raise that the OECD should continue to strengthen its working level collaborations with several entities involved in environmental protection efforts including international organisations and further to OECD's ongoing collaboration with UNEP, UNFCCC, OHCHR and others.

International cooperation on environmental, and in particular, climate corporate responsibilities was also raised as an opportunity in light of the many parallel and overlapping legislative proposals currently on foot, the transboundary nature of environmental impacts and the important role of RBC in this regard.

## **Selected statements by stakeholders related to CHAPTER VI – Environment.**

**Amnesty International:** “The MNE Guidelines should make it clear that corporations must adopt and implement measurable short and long-term targets for minimizing greenhouse emissions compatible with the imperative of limiting global warming to 1.5°C above pre-industrial levels – and make relevant information about their emissions and mitigation efforts public. (...) The MNE Guidelines should also call on business enterprises to avoid and remedy pressing environmental impacts that are currently missing or seriously under-addressed in the standards in Chapter VI on Environment, including deforestation, pollution, and biodiversity loss.”

**Grantham Institute of Research, London School of Economics:** “There is evidence from the current body of climate litigation that highlights the need for MNEs to seriously engage with the adaptation and resilience agenda.... [there is an] urgent need for companies to understand and address how physical climate impacts might affect both their own operations and their value chains.”

**Greenpeace International:** “MNE business activities are among those most responsible for the potentially irreversible biodiversity decline. The Guidelines should require MNEs to act on biodiversity.”

**OECD Watch:** “The Guidelines do not even mention the term “climate change,” nor clearly call upon MNEs to set and achieve emission targets and actually avoid environmental impacts including deforestation, pollution, and biodiversity loss. (...) The Guidelines do not reflect growing legal protections for animals, whose well-being is widely understood as tied to public health (seen with COVID-19) and environmental protection.”

**Humane Society International:** “*The Guidelines are also out of sync with the OECD-FAO Guidance on Responsible Agricultural Supply Chains, which identifies animal welfare as a supply chain key risk, references international and regional standards, and lists some risk mitigation measures.*”

## **4.5. Combating Bribery, Bribe Solicitation and Extortion**

### **4.5.1. Chapter overview**

Chapter VII calls on enterprises not to directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. It also expects enterprises to resist bribe solicitation and extortion, and to refrain from making illegal contributions to candidates for public office, political parties or other political organisations. To achieve these aims, the Chapter underscores the

need for enterprises to develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery through risk-based due diligence.

#### 4.5.2. *NCP survey responses*

Overall, NCPs ranked Chapter VII high in terms of continued relevance (8.4 out of 10).<sup>130</sup> Yet, when asked about their overall suitability to address integrity and lobbying, the NCPs ranked the Guidelines lower (7.1 out of 10).

**NCPs highlighted the following strengths:** the focus on bribery of both public officials and private sector employees allows NCPs to address the many contexts in which bribery may occur. The focus on transparency, and risk-based internal controls, ethics and compliance programmes enables prevention and detection.

**NCPs highlighted the following challenges:** lack of reference to issues such as **lobbying** and **conflicts of interest** and consequent need to broaden the Chapter beyond bribery and extortion, illicit markets and counterfeit products; focus on a **culture of integrity** (e.g. addressing organisational cultures in both business and government) being cognisant of the revised 2009 OECD Anti-Bribery Recommendation (forthcoming); and finally, some NCPs noted a lack of clarity on how the provisions in Chapter II (refraining from **improper involvement in local political activities**) related to the Chapter VII provisions on refraining from **illegal political donations**.

#### 4.5.3. *Specific instances*

Since 2011, Chapter VII has been invoked in 8% of the cases submitted to NCPs.<sup>131</sup> The following NCP case has related specifically to corruption and bribery:

- Allegations of bribery of foreign public officials and local citizens by company: [intimidation and bribery in Cameroon](#); US NCP (2013)

However, there has been a tendency for NCPs to focus their initial assessments and final reports on the other chapters and not comment on issues related to Chapter VII. One NCP noted that this may be due to the fact that bribery is a criminal offence in most jurisdictions; company reluctance to admit to engaging in acts of bribery; the view of corruption as a 'victimless crime'.<sup>132</sup> It is worth noting that paragraph 7 of Chapter VII, which requires MNEs to refrain from making illegal political contributions as well as to ensure that their political contributions fully comply with public disclosure requirements, has not been raised in cases in relation with Chapter VII.

#### 4.5.4. *Key developments since 2011*

**Recognition that corruption is not limited to bribery of public officials or employees**<sup>133</sup> but encompasses many acts that are relevant to the MNE Guidelines such as abuse of lobbying, trading in influence, cronyism, patronage, misuse of sponsorships and charitable donations. Moreover, there has also been increasing recognition that corruption is strongly correlated with impacts on human rights<sup>134</sup> as well as other issues covered by the Guidelines including environment, consumer interests, competition, and taxation.

**Adoption of legislation by governments to address integrity risk** in areas such as lobbying and revolving doors<sup>135</sup>, corporate sponsorship, political donations from companies.<sup>136</sup> Growth in companies voluntarily disclosing political finance contributions<sup>137</sup>, in addition to increased regulatory requirements for political candidates, parties and organisations to disclose contributions.<sup>138</sup>

**Increased understanding of the different corruption risk areas within sectors** (e.g. sport,<sup>139</sup> minerals,<sup>140</sup> etc.) and along the supply chain and the need for tailored guidance to identify, prevent and/or mitigate these corruption risk areas.<sup>141</sup>

**Improved understanding of the drivers of effective anti-corruption and corporate integrity compliance programmes**<sup>142</sup>, which include improved transparency on supply chains, corporate structures and beneficial ownership, along with ensuring anti-corruption and integrity training is appropriately targeted to different geographies and sectors; and improved protection for whistleblowers/ reporting persons. There is also increased recognition of the impact of organisational culture factors on preventing corruption, including management example and commitment to integrity and anti-corruption, rewards and bonus structures, organisational voice and silence factors, internal team dynamics, and external relationships with stakeholders.<sup>143</sup> Moreover, there is growing consensus that such compliance programmes should address more than just bribery risks, and should be mainstreamed with corporate functions addressing other RBC issues, including RBC due diligence, and responsible lobbying.<sup>144</sup>

**Adoption of international standards, national legislation and tools to address corruption risk areas in the public sector**, including in State Owned Enterprises (SOEs) and public procurement<sup>145</sup> coupled with policies and tools targeting both the public and private sectors to enhance whistle blower protection.<sup>146</sup>

**Company responsibility in co-operating with law enforcement** during the investigation process or beforehand in conducting anti-corruption due diligence prior to investigation (as prescribed in various national legislation<sup>147</sup>).

#### 4.5.5. *Input from stakeholder consultations*

Respondents to the online survey respondents rated the topic of bribery, bribe solicitation and extortion as highly relevant for implementing RBC globally. A limited number of written submissions were received with respect to Chapter VII of the Guidelines in the context of public consultations.

These contributions highlighted the importance of the close relationship between corruption and human rights. In addition, stakeholders highlighted that the Guidelines should set expectations regarding all forms of corrupt practices involving enterprises. Stakeholders also made calls for disclosures such as of beneficial ownership and for emphasis on internal controls, ethics, and compliance programmes or other measures such as whistleblowing for preventing bribery and other forms of corruption.

## 4.6. Consumer interests

### 4.6.1. *Chapter overview*

Chapter VIII calls on enterprises to act in accordance with fair business, marketing and advertising practices; ensuring that goods and services they provide meet legally required health and safety standards; informing consumers about the impact the production and consumption of their goods and (e)services may have on people and planet and about sustainable consumption; paying special attention to vulnerable and disadvantaged consumers; respecting consumer privacy; and providing consumers with access to remedy.

### 4.6.2. *NCP survey responses*

Overall, NCPs ranked Chapter VIII high in terms of continued relevance (8.3 out of 10).<sup>148</sup>

**NCPs highlighted the following strengths:** focus on consumer health and safety; provision of accurate, verifiable, and clear information to consumers and respect of consumers' privacy; focus on vulnerable consumers and digitalisation; and access to non-judicial dispute resolution.



**NCPs highlighted the following challenges:** lack of updated information on emerging issues and policy developments with respect to **digitalisation, artificial intelligence, online services, data protection** and governance; and insufficient explanation of the notion of **sustainable consumption**.

#### 4.6.3. *Specific instances*

Since 2011, Chapter VIII has been invoked in 8% of cases submitted to NCPs,<sup>149</sup> of which two cases focus specifically on consumer interests ([Individual and Royal Air Maroc, Moroccan NCP, 2019](#) and [Ascoma International and M. Teumagnie, French NCP, 2020](#)). Several factors may explain the relatively low reference: consumer protection legislation and enforcement is well developed in many adhering countries; awareness among consumers, either about their rights, or about the MNE Guidelines and the NCPs, may be low; increasingly complex and rapidly changing products, transactions, and (online) services may make it hard for consumers to understand who has caused the negative impact.

NCP cases referring to consumer interests have focused on a broad range of issues including disclosure with respect to financial services and medical treatments, and online marketing and advertising practices. The majority of cases concern alleged misinformation to consumers about the environmental impact of business activities. NCP specific instances relating to this Chapter include:

- Environmental issues, climate change and disclosure:
  - [ING Bank and NGOs concerning climate policy](#), (Dutch NCP, 2017)
  - [BP and Client Earth](#), (UK NCP, 2019)
  - [ANZ Banking Group and Friends of the Earth, Egan, Dodds and Simons](#), (Australian NCP, 2020)
  - [Group PZU S.A. and Development YES – Open-Pit Mines NO Foundation](#), (Polish NCP, 2018)
  - [Grupa OLX and Frank Bold Foundation](#), (Polish NCP, 2018)
  - [I-Buycott & Starbucks Coffee France](#), (French NCP, 2019)
- Employment and industrial relations, general policies, disclosure, and human rights: [Unilever and Trade Union N°1, Chilean Trade Union Confederation \(CUT\)](#), (Chilean NCP, 2019)
- Consumer interests and the general policies chapter of the Guidelines: [Public administration and defence in Australia](#), (Australian NCP, 2005)
- General policies, Human rights, Consumer interests: [Syngenta and Public Eye, Maharashtra Association of Pesticide Poisoned Persons \(MAPPP\), Pesticide Action Network \(PAN\), Constitutional and Human Rights \(ECCHR\) and Pesticide Action Network Asia Pacific \(PANAP\)](#), (Swiss NCP, 2020) (in progress), [subsidiary of a French Bank and an individual in Cameroon](#) (French NCP, 2018)

#### 4.6.4. *Key developments since 2011*

The context within which consumers operate today is profoundly affected by globalisation, digitalisation, new technologies, and new business models (digital platforms, peer-to-peer services, planned obsolescence).

**Updates from International Organisations include:** the UN Guidelines on Consumer Policy (UNGCP) revised in 2015, and the Advertising and Marketing Communications Code for global advertising and responsible marketing of the International Chamber of Commerce, revised in 2018.<sup>150</sup>

**The OECD has updated various instruments** to provide guidance relating to product safety and health, cross-border consumption and e-commerce, which focus on new and emerging product safety-related issue areas for consumers such as online market surveillance and new technologies.<sup>151</sup>

**Chapter VIII applies to services but does not make specific mention of financial services which may come with specific risks.** The OECD has updated or is in the process of updating various legal instruments with respect to new financial services such as the Recommendation on High-Level Principles on Financial Consumer Protection [[OECD/LEGAL/0394](#)] and the Recommendation on Consumer Protection in the field of Consumer Credit [[OECD/LEGAL/0453](#)].

#### 4.6.5. *Input from stakeholder consultations*

Respondents to the online survey indicate that consumer interests is of high relevance for implementing responsible business conduct globally.

In general, stakeholders pointed out that Chapter VIII on Consumer Interests could be better leveraged to drive enterprise accountability on transparency and disclosure. They found that a crosscutting approach to business impacts related to key social and environmental challenges, including respect of children, animal welfare, and climate performance should be considered.

A number of respondents noted the need for clear guidance on animal welfare in the MNE Guidelines as it is increasingly acknowledged as a relevant issue to consumer concern, especially in the light of risks related to zoonotic diseases. Some stakeholders highlighted that Chapter VIII should consider the respect of children's rights in enterprise marketing and advertising activities. Meanwhile, a number of stakeholders believed that governments and NCPs should build better capacity to counter false or misleading information to consumers in the continued global efforts on climate net-zero commitments.

### Selected statements by stakeholders related to CHAPTER VIII – Consumer Interests.

**Grantham Institute:** *“As companies continue to adopt net-zero commitments and as climate risk reporting becomes ever more mainstream there is an urgent need to ensure that companies, governments and NCPs are better equipped with the means to guard against further promotion of false or misleading information to both investors and consumers.”*

**MVO Platform:** *“A section in the consumer interest section of the Guidelines should state that companies must also respect children's rights in their marketing and advertising”.*

**Four Paws International:** *“The OECD Guidelines do not address animal welfare despite clear links between responsible business conduct on animal welfare and impacts to animals, people, and the planet. There is no reference to animal welfare at all. Despite the fact that animal welfare is increasingly acknowledged as an issue relevant to responsible business conduct and a consumer concern.”*

## 4.7. Science and Technology

Chapter VIII includes an expectation that enterprises respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate. Cross-border flow of data, information, ideas and knowledge can generate higher productivity and greater innovation, while raising challenges related to privacy, data protection, intellectual property rights, and security. Addressing these challenges allows to further facilitate the flow of data and strengthen consumer and business trust. Developments with respect to internet privacy may be relevant to consider here including new regulatory expectations such as the EU General Data Protection Regulation.<sup>152</sup>



#### 4.7.1. *Chapter overview*

Chapter IX calls on enterprises to support science and technological innovation in the countries where they operate. It offers recommendations of how enterprises can facilitate the transfer and diffusion of technologies and expertise, and create value in host countries. This Chapter is unique among the other chapters of the MNE Guidelines in that it focuses almost entirely on the positive contributions of business to sustainable development through science and technology, as opposed to the potential harm caused by these technologies. For this reason, RBC due diligence provisions in Chapter I do not apply to this section.

Currently, many of the potential harms linked to technology are addressed tangentially, though not explicitly, in the sections related to Human Rights; Employment and Industrial Relations; Consumer Interests; Competition; and Taxation. The growing frequency of these issues since the last update has raised questions from stakeholders as to whether explicit mention of these issues should be integrated into Chapter IX, thereby extending the due diligence provisions to this chapter as well.

#### 4.7.2. *NCP survey responses*

Overall, NCPs ranked Chapter IX high in terms of continued relevance (7.4 out of 10).<sup>153</sup>

**NCPs highlighted the following strengths:** emphasis on fostering innovation and technological development; science and technology as means to develop local and national innovative capacity; encouraging MNEs to engage in development and training of employees.

**NCPs highlighted the following challenges:** it is unclear how the Chapter fits with the other chapters in the MNE Guidelines; the chapter does not address the **adverse impacts** linked to technology and associated business models; specifically the Chapter could contain a **due diligence provision that science and technology should not be used in a way that contradicts the other chapters of the MNE Guidelines**. It was also noted that the Chapter could provide more detail on **technological transfer issues such as data ownership, intellectual property rights, patents, trademarks, geographical indications**, etc.

#### 4.7.3. *Specific instances*

Since 2011, Chapter IX was only invoked in six specific instances, of which only two were accepted. In those cases, no agreements were reached and the NCPs did not engage or make recommendations with regard to this chapter in their final statements. NCPs noted that the unique nature and lack of awareness about this Chapter make it difficult to apply. While 14 specific instances have been filed with NCPs involving some connection with digitalisation, none of these invoked Chapter IX. Recent examples in this regard that highlight the potential link with science & technology include:

- Investor due diligence on a business relationship with a manufacturer of technology allegedly used in mass surveillance of the Uyghur community in China ([UBS and Society for Threatened Peoples Switzerland](#), Swiss NCP, 2020)
- Selling unlawful or dangerous materials online ([Grupa OLX Sp. z o.o. and Frank Bold Foundation](#), Polish NCP, 2018)
- Dissemination of sensitive personal information through email-based public relations work ([Mercer PR and Australian Women Without Borders](#), Australian NCP, 2016)
- Telecommunications service provider allegedly involved in censorship of political dissidents ([FIDH, JFI and Redress vs Italtel](#), Italian NCP, 2017)

#### 4.7.4. *Key developments since 2011*

**The COVID-19 pandemic has brought renewed relevance to technology transfer.** The importance of digital technologies for the resilience of global supply chains and work in general has been underlined, and with it the importance of bridging the digital divide in order to ensure an inclusive recovery. Likewise, science and technology can be critical tools to solve key RBC due diligence challenges, for example related to worker voice, traceability and transparency.

**On the issue of technological transfer, the centre of gravity for innovation is increasingly multipolar.** There is more competition globally for technology and innovation and likewise more risk of geopolitical tensions relating to technology that is seen as intrinsic to national self-interest. As science and technology policies shift to promote the SDGs, the incentives for government support to research and development intensive and innovative companies, including MNEs, is also evolving and becoming more targeted, directional, and impact-oriented.<sup>154</sup>

**Technology transfer is increasingly associated with challenges and risks.** These include cybercrime<sup>155</sup>, matters of national security<sup>156</sup>, data theft<sup>157</sup>, intellectual property theft, and anti-competitive practices. In recent years, and against the background of technology cold wars and tensions over of technology, data and internet sovereignty, the OECD has developed Council Recommendations on these topics and several OECD countries have passed legislation or amended rules to mitigate against such risks.<sup>158 159</sup>

During the stocktaking exercise, Adherents have emphasised the importance of the impact of technology on human rights, as well as and employment and industrial relations. Key issues include the spread of misinformation and disinformation; online incitement of hatred and violence; curbing free speech; privacy; the use of digital surveillance tools; censorship; social monitoring; unequal access due to digital products and services; internet shutdowns; large-scale harvesting and misuse of data; the treatment of workers in the gig economy; and the entrenchment of existing bias through the application of artificial intelligence.<sup>160</sup> Notable policy developments to address these risks include the adoption of the OECD Council Recommendation on Artificial Intelligence [[OECD/LEGAL/0449](#)]; the B-Tech Project by the UN Office of the High Commissioner for Human Rights (OHCHR);<sup>161</sup> and the European Commission's ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights (2013).<sup>162</sup>

**The WPRBC has initiated work on digitalisation** and has supported the development of papers on Artificial Intelligence, Online Platform Companies and the role of distributed ledger technology, such as blockchain in responsible supply chains. In June 2021, the WPRBC adopted a Terms of Reference for Future Work on RBC & Digitalisation [DAF/INV/RBC(2020)12/REV1]. This document set out the strategy for the WPRBC on engaging with this topic, including: (1) mainstreaming digitalisation in the RBC agenda and mainstreaming RBC in the broader OECD digitalisation agenda, (2) assessing how fit-for-purpose the MNE Guidelines are to address digitalisation impacts, and (3) developing tools and research to support NCPs, policy makers, and business in addressing these impacts.

#### 4.7.5. *Input from stakeholder consultations*

Stakeholders note that impacts related to technology are receiving increased attention from business and governments, specifically highlighting the value of recent WPRBC work on digitalisation mentioned above. However, the key point of feedback is that these impacts need to be more clearly spelled out to ensure that the MNE Guidelines remain a relevant and comprehensive standard on business responsibility related to impacts of technology. In fact, of the stakeholders commenting on technology, the overwhelming majority of comments received are regarding adverse impacts of technology and digitalisation. Only one stakeholder comment was on the issue of technological transfer, the current focus of Chapter IX.

Impacts highlighted in stakeholder submissions cover worker protection in the digital 'gig' economy, data ethics and privacy, human rights abuses linked to the development and use of technology, taxation of

digital companies, moderation of online content, and environmental degradation linked to the manufacture and use of technology. While many of these impacts are already tangentially covered through other Chapters (e.g. on human rights, labour, environment, and consumer interests), stakeholders expressed urgent need for an explicit reference to these issues to ensure the MNE Guidelines remain relevant and up-to-date.

Including impacts of technology in this chapter would also extend the due diligence provisions to this chapter. One of the responses to the NCP survey mentioned above offered explicit language to that effect, “science and technology should not be used in a way that contradicts the other chapters of the MNE Guidelines.” This is consistent with existing work on RBC & digitalisation, which mostly examines how companies designing, manufacturing, selling and using technology can conduct due diligence to identify, prevent, and mitigate risks of negative impacts.

On technological transfer, it was noted that Chapter IX should seek to align with the Sustainable Development Goals, the Doha Declaration on the TRIPS agreement and public health<sup>163</sup>, and relevant UN treaty body guidance on the role of businesses in sharing life-saving health technologies. Within the OECD, this topic is primarily addressed through the Working Party on Biotechnology, Nanotechnology and Converging Technologies (BNCT), relevant OECD instruments include the Recommendation on Responsible Innovation in Neurotechnology (2019)<sup>164</sup> and OECD Guidelines for the Licensing of Genetic Inventions (2006),<sup>165</sup> which both cross-reference the MNE Guidelines.

## Selected statements by stakeholders related to CHAPTER IX – SCIENCE & TECHNOLOGY

**OECD Watch:** *“The OECD Investment Committee has itself undertaken a thorough analysis of the nexus between digitalisation and RBC, identifying a lack of a comprehensive standard to address these many challenges. The OECD Guidelines should ideally be that standard, but they are ten years out of date and say next to nothing on the issue.”*

**Ranking Digital Rights:** *“In 2021, the protection of human rights online and in the broader domain of digital communication is no longer an emerging issue. We welcome the OECD’s work to update the Guidelines in line with other existing global norms. To better reflect this reality, we believe that the following six key gaps in the Guidelines should be addressed in the next revision to ensure they remain fit for purpose: Explicitly recognize the importance of protecting online privacy; Clarify human rights due diligence processes; Strengthen Guidelines on non-financial reporting; Address the development and use of algorithmic systems; Incorporate transparency about and control over personal data; Effective remedy against the violation of human rights online through the National Contact Points (NCPs).”*

**NomoGaia:** *“The digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, jeopardize democratic values, and threaten the environment. The gap leaves MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.”*

## 4.8. Competition

### 4.8.1. Chapter overview

Chapter X calls on domestic and multinational enterprises to carry out their activities in a manner consistent with applicable competition laws and regulations; taking into account the competition laws of all

jurisdictions in which the activities may have anti-competitive effects; refrain from entering into or carrying out anti-competitive agreements among competitors; co-operate with investigating competition authorities; and promote employee awareness on compliance.

#### 4.8.2. *NCP survey responses*

Overall, NCPs ranked Chapter X high in terms of continued relevance (8.4 out of 10).<sup>166</sup>

**NCPs highlighted the following strengths:** good coverage of the main risks related to competition; the diversity of legal frameworks; the role of national competition authorities; promotion of cross-border co-operation; the risks of collusion.

**NCPs highlighted the following challenges:** the need to take account of emerging issues such as **technological developments, digitalisation, and abuse of dominance by digital platforms** as anti-competitive practice; the need for a stronger link between Chapter X and **public procurement**; lack of attention to preventive measures, such as possibilities for the **disclosure** of information with respect to **cartels**; the need to show the relevance of voluntary guidelines in a field where national competition law and enforcement plays a dominant role.

#### 4.8.3. *Specific instances*

Since 2011, Chapter X has been invoked in only 1% of the cases submitted to NCPs (3 cases).<sup>167</sup> This low number may be due to the fact that the Chapter is relatively unknown among RBC stakeholders. More importantly, competition law and enforcement are increasingly regulated at the national level, which may have contributed to the low number of cases brought to the NCPs in the field of competition. All three cases submitted after 2011 were eventually dealt with through different parallel proceedings at the national level.<sup>168</sup>

#### 4.8.4. *Key developments since 2011*

**The OECD has developed work considering the relationship between competition law and RBC** including potential barriers as well as opportunities for collaborative RBC initiatives with the parameters of competition law.<sup>169</sup> The OECD Competition division has launched work, which seeks to identify synergies between sustainability and competition policy.<sup>170</sup> The EU is examining the landscape of competition policy and its compatibility with the EU Green Deal.<sup>171</sup>

Competition issues in digital markets has become a major policy focus, due to the size and economic power of certain digital firms.<sup>172</sup> This includes digital platforms and services offered in exchange for access to consumer data<sup>173</sup> and blockchain technologies<sup>174</sup> amongst others.

**Additional OECD developments contain potential synergies with the MNE Guidelines and NCPs** including the Recommendation on the Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)]; the Recommendation on International Co-operation on Competition Investigations and Proceedings [[OECD/LEGAL/0408](#)]; and the Recommendation on *Fighting Bid Rigging in Public Procurement* [[OECD/LEGAL/0396](#)].

#### 4.8.5. *Input from stakeholder consultations*

Chapter X – Competition was not mentioned by stakeholders in consultations.

## 4.9. Taxation

### 4.9.1. Chapter overview

Chapter XI calls on enterprises to comply with both the letter and spirit of tax laws and regulations of the countries in which they operate and make timely tax payments. The Chapter underscores the need for corporate boards to adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

### 4.9.2. NCP survey responses

Overall, NCPs ranked Chapter XI high in terms of continued relevance (7.7 out of 10).<sup>175</sup>

**NCPs highlighted the following strengths:** The Chapter provides supplementary support to existing laws; focus on respecting the spirit of tax laws in addition to the letter of the laws; the transfer pricing sections in the commentary are relevant and coordination between MNEs and tax authorities are well addressed.

**NCPs highlighted the following challenges:** The Chapter does not reflect recent international initiatives, standards and regulations on tax avoidance (such as the OECD's framework on **Base Erosion Profit Shifting (BEPS)**) in general and on **taxation for the digital economy**; there is no link made between **tax fraud and social security fraud**; although it is implied, the Chapter does not make specific recommendations on tax evasion; the links between this Chapter and other chapters (e.g. Competition and Science and Technology) could be clarified.

### 4.9.3. Specific instances

Since 2011, Chapter VII has been invoked in 3% of all cases submitted to NCPs,<sup>176</sup> often along with other chapters of the MNE Guidelines. The low number of cases may be caused by a number of complicating factors: many cases have focused on tax avoidance, profit shifting and inadequate application of the arm's length principle, which are considered by NCPs to fall under the "spirit" rather than the letter of tax regulations; practical challenges such as financial secrecy; tax evasion as a criminal offence under existing legal frameworks; and difficulty in identifying a discrete stakeholder that has been impacted. A recent specific instance relating to this Chapter concerns:

**Tax policy regarding a foreign online platform** company in the country where it operates ([Airbnb in France, \(French NCP, 2020\)](#) and **catering activities** ([Starbucks Coffee France](#) (French NCP, 2020)).

### 4.9.4. Key developments since 2011

**Increased awareness that tax avoidance practices by MNEs significantly undermine public finances and trust.** As a result, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) was created in 2016, which today features 140 countries and jurisdictions participating on an equal footing.<sup>177</sup> An increasing number of voluntary frameworks such as the Global Reporting Initiative (GRI), the UK Fair Tax Mark and B-Team are introducing expectations related to public country-by-country disclosure of taxes and incentives, driven also by leading investors. Currently, the international standard regarding the exchange of country-by-country-reports provides for the reporting to be made to tax authorities and not to the public.

**Digitalisation raises novel tax challenges.** This may result in important changes in the way corporate profits are allocated.<sup>178</sup>

**The ever growing importance of international cooperation on tax matters.** Under the OECD Common Reporting Standard (CRS), financial institutions are required to provide financial account information to tax

authorities, which in turn is exchanged *automatically* with the tax authorities of the account holder's resident country. The CRS marked a significant evolution from the previous standard providing for exchange of information on request.<sup>179</sup>

**Corporate boards continue to play a fundamental role in managing tax risks.** This is also reflected in the 2015 Principles for Corporate Governance, which indicate that the ability to oversee finance and tax planning strategies should allow to discourage practices such as aggressive tax avoidance, “that do not contribute to the long term interests of the company and its shareholders, and can cause legal and reputational risks”.<sup>180</sup>

**Tax certainty continues to be an important component of MNE investment decisions.** Within the working parties of the OECD Committee on Fiscal Affairs (CFA) and at the Forum on Tax Administration (FTA) the term often refers to processes which remove uncertainty in tax matters despite there being different tax systems in different jurisdictions. This often involves looking at effective dispute prevention and resolution mechanisms and includes Advance Pricing Arrangements, advance tax rulings, the International Compliance Assurance Program, and Mutual Agreement Procedures under tax treaties. Tax certainty is increasingly part of the policy agenda for both G20 and OECD countries as well as developing countries. There is work going on in a number of areas and the IMF and the OECD will continue to take forward the work on these fronts.

**Taxation plays a growing role in discussions about tackling other RBC issues, such as environmental issues.** By putting a price on pollution, taxes and tradable permit systems incentivise emissions abatement at the lowest possible cost.

#### 4.9.5. *Input from stakeholder consultations*

Overall, stakeholders considered that taxation is of high relevance for implementing responsible business conduct globally. Moreover, 14% of written submissions commented on taxation.

##### ***Achievements***

Stakeholders note the achievement of the MNE Guidelines in emphasising the tax expectation on enterprises to comply with both the letter and the spirit of the law and regulations. Some also note the importance to avoid triggering uncertainty in MNE Guidelines interpretation, which may consequently undermine a level playing field and long-term conditions for investment. Some stakeholders also underline that the inclusion of Chapter XI contributed to the comprehensiveness of the MNE Guidelines, providing a foundation for an integrated and holistic approach to RBC challenges.

##### ***Challenges***

However, some stakeholders point out that Chapter XI is not well adapted to the contemporary corporate environment. Some deemed the transfer pricing language inadequate to address inappropriate profit shifting and called for strengthening MNEs tax-related public disclosures. Similarly, stakeholders also pointed out the challenge in addressing the nexus between tax and social as well as environmental agendas, including respect for human rights and environmental protection.

Recognising the growing expectations related to disclosure of tax information and public reporting introduced by an increasing number of voluntary frameworks, many stakeholders including tax practitioners, highlight the need to ensure continuous alignment of the Guidelines with existing international tax standards such as the work under the OECD Forum on Tax Administration, BEPS, CRS and in tax treaties.

Stakeholders also recommend that a more comprehensive understanding and presentation of the concept of key tax issues (e.g. tax certainty, tax morale, the arm's length principle) and country-by-country reporting would be beneficial for the MNE Guidelines stocktaking process.

## Selected statements by stakeholders related to CHAPTER XI – Taxation.

**TUAC:** *“Tax chapter is not adapted to the contemporary corporate environment. The chapter does not presently cover country-by-country reporting or tax governance and risk management systems. It also fails to address observable discrepancies between corporate income tax accrued and corporate income tax due.”*

**OECD Watch:** *“Taxation: ...the OECD Guidelines are completely out of date. They do not even mention the phrase “tax avoidance,” let alone call on MNEs to eschew it. They discourage inappropriate profit shifting only through transfer pricing, instead of through the range of other financial transactions used for this purpose. The Guidelines also do not call for disclosures that would meaningfully help governments and stakeholders identify tax avoidance, such as disclosure of tax payments made, tax-related financial transactions, corporate structure, and beneficial ownership.”*

**Lady Lawyer Foundation:** *“(MNE Guidelines) outdated text on other areas on which popular expectations for corporate conduct have evolved – such as on fair taxation and non-financial disclosure –render the Guidelines obsolete on such issues.”*

**European Center for Constitutional and Human Rights/Transparency International Germany/German Watch:** *“Tax evasion needs to be addressed as part of the general principles and with clearer guidance on what is expected from companies.”*

**Australian multi-stakeholder roundtable, facilitated by Australian NCP:** *“Taxation needs to reflect contemporary context: The taxation chapter needs to reflect the OECD work on base erosion and profit shifting. The chapter should reference beneficial ownership disclosure along with the use of nominee directors or shell companies which can give rise to tax avoidance and money laundering.”*



## 5. National Contact Points: Achievements and challenges related to the Implementation Procedures

This section analyses key achievements, challenges and developments related to the system of National Contact Points for Responsible Business Conduct (NCPs) as laid out in the Implementation Procedures of the Guidelines.

### 5.1. Implementation procedures overview

Provisions relating NCPs are subsumed in the Implementation Procedures, which comprise:

- The Decision of the Council on the OECD Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)], which contains the binding obligation for Adherents to the Declaration to set up a NCP;

The Procedural Guidance, annexed to the Decision, which addresses the institutional arrangements of NCPs, their mandate to promote the Guidelines and issues related to the implementation of the Guidelines in Specific Instances, their reporting obligations, as well as provisions on the role of the Investment Committee and the Secretariat in assisting, monitoring and overseeing NCPs. In addition to the Implementation Procedures themselves, this section also addresses the commentary on the Implementation Procedures (hereafter, ‘the Commentary’).

The Commentary (para. 8) note that the Procedural Guidance ‘reflect[s] experience and recommendations developed over the years. By making them explicit the expected function of the implementation mechanisms of the Guidelines is made more transparent.’

The Decision (para. I.3) also provides for the Meeting of the Network of NCPs. The Meeting/Network of NCPs is intended to serve as a vehicle for experience sharing and peer learning, and does not have a detailed mandate, or a designated Chair or Bureau, as is the case for the WPRBC. It is not a formal OECD body.

### 5.2. NCP survey responses

Overall, NCPs rated highly (8.2/10) the *continued relevance* of the provisions of the Procedural Guidance, signalling that they continue to address the most important issues related to the NCP institutional arrangements and mandate.<sup>181</sup> NCPs rated slightly lower (7.8/10) the *suitability* of the provisions of the Procedural Guidance, notably as regards interpretation of the Guidelines and monitoring of the NCP network.<sup>182</sup>

Delegates, stakeholders and NCPs all pointed to the importance of strengthening the NCP system in light of its uniqueness in the RBC landscape and its importance in the implementation of the Guidelines.

**NCPs highlighted the following strengths:** valuable tool providing **directions and obligations** for adherent countries when setting up NCPs; **core criteria for functional equivalence** are a good basis for measuring NCP performance and engaging with stakeholders on the structure of NCPs; good coverage of the role of undertaking **promotional activities** for NCPs; identification of steps to **resolve issues and handle cases** in a manner that is impartial, predictable, equitable, and compatible with the Guidelines; recognition that **stakeholder relations** are key to the effective functioning of the Guidelines, and; clear mention of cases involving issues in non-adhering countries.

NCPs highlighted the following challenges: need for more guidance on institutional arrangements, in particular on impartiality and conflicts of interest that may arise; need for further clarity on procedural issues related to specific instances such as transparency and confidentiality; evidence thresholds at initial assessment; whether to issue determinations; follow-up process; parallel proceedings; need to address the issue of ‘forum shopping’ across the network; need for strengthening the role of the WPRBC and its Chair in monitoring of NCPs.

### 5.3. The Implementation Procedures in practice: key facts and figures on NCPs

#### 5.3.1. *Location and structure of NCPs*

The 50 NCPs are diverse in terms of their location within government and their structure, as well as in the involvement of stakeholders. In practice, four models of NCPs have emerged :

- The single agency structure (20 NCPs), whereby the NCP is composed of one or more representatives from a single ministry.
- The inter-agency structure (14 NCPs), whereby the NCP is composed of representatives from two or more ministries.
- The multi-partite structure (10 NCPs), whereby the NCP is composed of representatives from government, business, associations, trade unions and/or NGOs.
- The expert-based structure (4 NCPs), whereby the NCP is composed of independent experts.
- Two NCPs also have adopted a hybrid structure, combining elements from the four main models.

Thirty-five NCPs are based in ministries of economy, trade or investment, three in investment promotion agencies and ten in ministries of foreign affairs (often in departments handling economic affairs). Twenty-two NCPs are supported by advisory bodies composed of other government officials and/or stakeholder representatives. Five of these bodies also provide oversight to the NCP. In 2020, 36 NCPs included business representatives either in the NCP itself or in its advisory body, while 27 included civil society organisations and 24 included trade union representatives.

#### 5.3.2. *Promotion of the Guidelines*

NCPs deploy a number of **strategies to promote and disseminate the Guidelines** and their own role. The main tool for doing so is a website, which 48 NCPs have. Websites typically contain information and/or brochures about the Guidelines and the due diligence guidance, a presentation of the NCP and information on how to file a case. Forty-two NCPs also publish on their website their rules of procedure for handling specific instances. More rarely, websites contain the promotional plan of the NCP and a calendar of past and future promotional events.

**Promotional events** are also key to promote and disseminate the Guidelines. Since 2015, NCPs have collectively organised over 900 events and have participated in over 1600 events organised by other actors. Types of events are very diverse and include information sessions on the Guidelines and NCPs for national stakeholders, contributions on a wide array of themes in international events on RBC such as the UN Forum on Business and Human Rights, dedicated trainings for business, or engagement with academia and presentations on RBC to students. **Promotional activity is uneven across the NCP network**, with some NCPs organising or participating in dozens of events per year, and others very few or none. The main targeted audiences included government officials, business representatives, NGOs, trade unions, academia or the general public. More detailed information and figures on promotional activities by NCPs are included in Annual Reports on the Guidelines.<sup>183</sup>

### 5.3.3. *Handling of specific instances*

Over **575 specific instances have been received** by 39 NCPs since 2000, and over 380 since 2011. These **cases are distributed unevenly across the network**, as since 2011 six NCPs have received over 20 cases, and 16 NCPs have received fewer than five. Eleven NCPs have not yet received a case.

Since 2011, the chapters most often raised in specific instances have been human rights (59%), general policies (which contains provisions about due diligence, 54%), employment and industrial relations (40%), and environment and disclosure (each 24%). Since 2011, **55% of closed cases were accepted, and 45% were not accepted**. Since 2011, **42% of accepted and concluded cases led to an agreement**, either within or outside the NCP process. In that timeframe, over 300 statements have been published by NCPs, documenting those cases and the issues involved.

Cases have been **submitted by a wide range of actors**, including NGOs (41%), trade unions (38%) and individuals (18%). More rarely, cases have been submitted by companies or business organisations, local or indigenous communities, groups of stakeholders, or representatives of government such as ministers, town mayors or members of parliament. Although historically NGOs and trade unions have been the main categories of submitters, recently their share in new submissions has tended to decrease and that of individuals has tended to increase. Specific instances have also been submitted jointly by submitters from several categories (e.g. individuals and NGOs; local and international unions, etc.).

## 5.4. Key developments since 2011

Significant developments have taken place with regards to both access to remedy (process) and outcomes (substance of remedy). A raft of initiatives have documented the need for better remedies.<sup>184</sup>

The responsibility of business in providing for or cooperating in remediation has been identified as a key component of due diligence and has been increasingly clarified in OECD due diligence guidance.<sup>185</sup> There has been heightened attention to and scrutiny of operational-level grievance mechanisms including in the context of businesses' supply chain responsibilities.<sup>186</sup>

**Enhanced visibility of NCPs and high-level calls to strengthen the network of NCPs**, including by the [G7](#) and the [G20](#), and the Meeting of the [OECD Council at Ministerial Level](#). In response to these calls, the OECD Secretariat has developed three action plans on strengthening NCPs, approved by the WPRBC and covering the years 2016-2018, 2019-2021 and 2022-24 respectively [DAF/INV/RBC(2021)30/FINAL].

Another issue gaining attention with respect to access to remedy is the situation of groups experiencing particular vulnerability such as indigenous peoples (thematic reports of the UNWG [2013](#) and [2016](#)) and women and girls (OHCHR [ongoing project](#), with [guidance](#)), and the need for remedy that reflects this vulnerability, both in terms of access and outcome.

As flagged by the [WPRBC](#) and [civil society](#), this issue also concerns NCPs, following reports of **undue pressure** against complainants, intermediaries associated with them (e.g. trade unionists, lawyers, community associations and NGOs) or with the complaints-handling process (e.g. local facilitators, drivers, interpreters). Accountability mechanisms of major development finance institutions now reflect risks of retaliation in their [founding policies and/or Rules of Procedures](#), or have developed stand-alone retaliation risk management policies<sup>187</sup> coupled with [capacity-building](#) for staff.

**New grievance mechanisms and models are emerging in the field of RBC and Business and Human Rights**, such as, for example, certain national human rights institutions and ombudsmen and [human rights arbitration](#). At the national level, **RBC matters are increasingly subject to judicial proceedings**,<sup>188</sup> and **mandatory due diligence legislations are increasing judicial avenues for RBC** (see section 3. ). Delegates indicated that these developments represent an opportunity for NCPs and other mechanisms to learn from each other and work together to increase the effectiveness of the Guidelines and RBC in general, but also a challenge to the relevance of NCPs and the delineations of the respective mandates. It may also make the specific instance process more complex as parallel proceedings may further proliferate.

## 5.5. Analysis of the functioning of NCPs and the NCP network

Since 2011, a considerable amount of stocktaking and analysis has been conducted regarding the functioning of the NCP system and the implementation of the NCP mandate, including:

- WPRBC and IC reports such as [peer review](#) or substantiated submission reports [DAF/INV(2018)34/FINAL];
- Secretariat reports such as the [15th](#) and [20th anniversary](#) reports on NCPs, or the [2019 Council progress report on NCPs](#)
- Stakeholder policy papers, such as the [joint statement](#) of BIAC, TUAC and OECD Watch on NCPs, BIAC' [discussion paper](#) on the survey of member companies' experience with NCPs, TUAC's [brief](#) on NCP best practices, OECD Watch's [Remedy Remains Rare](#) report, ['4x10' plan](#) or [NCP evaluations](#) project.
- Academic research.<sup>189</sup>

Based on NCP survey responses, on the existing analysis above, and on delegates' input, achievements and strengths as well as challenges and weaknesses of NCPs can be identified.

### 5.5.1. Achievements and strengths

#### *A unique mechanism in the ecosystem in which the Guidelines are implemented*

NCPs are central in ensuring the effectiveness and uptake of the Guidelines and their unique character as the only comprehensive international RBC standard equipped with a remedy mechanism. NCPs remain the only state-based non-judicial grievance mechanism with a mandate to consider, and facilitate remedy for, corporate impacts across the world.

This uniqueness confers NCPs a number of strengths in ensuring the effectiveness of the Guidelines and RBC in general. This is despite the fact that **the designation 'National Contact Points' or NCPs for RBC is not viewed as an apt descriptor of the mandate** and may diminish their standing and visibility.<sup>190</sup>

- Given that 50 states representing over 50% of the world's GDP, and over 70% of global FDI stocks have adhered to the Guidelines, NCPs foster the implementation and the effectiveness of the Guidelines across a large share of the world's economic activity (see also below).

- The status of NCPs as a mechanism created by a binding international instrument and set up by governments gives them legitimacy and authority to act in the field of RBC.
- The dual mandate of NCPs, covering both promotion and remedy, allows them to foster the effectiveness of the Guidelines both proactively – through promotion – and retroactively – through specific instances and access to remedy.
- Through regular exchange of practices and peer learning as mandated by the Implementation Procedures and supported by the Secretariat, the NCP network has grown into an unmatched body of expertise and practical knowledge on RBC. As a result, NCPs are regularly consulted and often speak publicly about RBC issues.

*A widely available and affordable remedy mechanism with a broad scope of work*

The specific instance mechanism provides a **very open platform to provide access to remedy**. Such openness is enabled by the following elements:

- Any interested person or organisation with a legitimate interest in reporting issues related to the implementation of the Guidelines by companies may do so.
- NCPs do not charge a fee for filing a case, and also provide good offices free of charge (including, for an increasing number of NCPs, the services of professional mediators).
- There is no time limit for filing a case, allowing NCPs to handle cases addressing historical issues where relevant.
- NCPs may receive cases involving companies operating ‘in or from’ the territory of their country. This gives a potentially global scope to the specific instance mechanism and has allowed the 50 NCPs to review issues in over 100 countries and territories.
- NCPs may address impacts across all chapters of the Guidelines, giving them the broadest substantive platform among non-judicial grievance mechanisms. NCPs have particularly leveraged due diligence provisions of the Guidelines to address impacts in company supply chains or clients’ portfolios.

As a result of these **low barriers to using the mechanism**, a wide range of actors have sought the support of NCPs to seek access to remedy for corporate impacts, and NCPs have been able to take on issues for which no other forum was available, for resource, time or jurisdictional reasons.

In addition, given the **substantive breadth of the NCP mandate**, NCPs act as a ‘one stop shop’ to seek remedy for a range of issues linked to a company’s activities, such as for example, environmental degradation caused by a company, which in turn affects the human rights of local communities. In fact, since 2011, two thirds of cases handled by NCPs have raised more than one chapter of the Guidelines

*Contribution to the uptake and implementation of the Guidelines by companies*

Since their creation, NCPs have made an active contribution to the uptake and implementation of the Guidelines by companies through all aspects of their mandate.

First, NCPs have fostered uptake of the Guidelines by companies through their mandate to **promote the Guidelines with business**, for which they have developed a broad and far-reaching set of tools. For example, the French NCP’s report on global garment supply chains<sup>191</sup> commissioned in 2013 by the Government in the aftermath of the Rana Plaza collapse encouraged uptake of due diligence by French and foreign companies through the active promotion it generated in national and international fora.<sup>192</sup> Another example is the **self-assessment tool** called ‘[RBC Compass](#)’ designed by the Norwegian NCP to allow companies to evaluate the extent to which they comply with the Guidelines, which is now used across the NCP network. Other examples include **trainings for businesses** organised by NCPs. Most often, these trainings focus on a particular theme (such as due diligence), or on risks linked to sectors that are of

importance for the economy of the NCP's country. For example, in 2019 the UK NCP partnered with UK Finance, an industry association representing 300 firms providing credit, banking, markets and payment-related services, to raise awareness on the OECD due diligence guidance for the financial sector.

Second, NCPs' work on remedy through **specific instances often leads to positive changes** with respect to the issues at hand and better implementation of the Guidelines on the ground. In any given year, up to **40% of cases in which good offices are provided lead to an agreement** between the submitter and the company within the NCP process, and up to **47% lead to policy changes at the company** to address the issues at hand. Additionally, NCP cases, especially recently, have led to the **provision of direct remedy by the company to the submitters**, including monetary or in-kind compensation.<sup>193</sup> Moreover, final statements increasingly include **specific recommendations** to the company on how to implement the Guidelines with regard to the issues at hand, and **NCPs increasingly follow up** on such recommendations, leading to increased effectiveness of the specific instance process. Some NCPs also issue determinations on whether the company involved has observed the Guidelines in respect of the issues at hand. In this regard, it should be highlighted that the NCP statement as such can be an important outcome of the case, regardless of whether an agreement was reached, as well as an important source of authority for NCPs. NCP statements may contain detailed information regarding the application of the Guidelines in concrete situations, which in turn contributes to their effectiveness as they will subsequently guide enterprises, stakeholders, policy-makers and lawyers in future applications of the Guidelines.

Finally, the remedy role of NCPs is expanding as cases are increasingly **escalated to NCPs** when issues have not been satisfactorily dealt with at company or industry level. In a recent line of cases, NCPs have been asked to review the effectiveness of companies' or industry associations' own non-judicial grievance mechanisms as part of the due diligence requirement to provide for or cooperate in remediation when appropriate. Such cases include:

- [Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia](#) (Swiss NCP, 2018)
- [Shell Petroleum Development Company of Nigeria Limited \(SPDC\), Royal Dutch Shell \(RDS\) and Obelle Concern Citizens \(OCC\)](#) (Dutch NCP, 2018)
- [British American Tobacco \(BAT\) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations \(IUF\)](#) (UK NCP, 2016)

Third, through promotion and specific instances, **NCPs contribute to shaping public policies and government decisions** that support the implementation of RBC by companies through an enabling policy environment. NCPs are for example **fostering links with key government agencies** whose activities have a nexus to RBC, such as public procurement agencies, Export Credit Agencies or various ministries and inter-governmental groups, to inform them about the Guidelines and encourage them to include RBC considerations in their decision-making. Likewise, **NCPs are involved in adherent government's National Action Plans (NAPs)** on Business and Human Rights and/or RBC (see above). All adherents' NAPs mention their NCP. Some actions aim at strengthening the NCP, while others give responsibility to the NCP with regard to certain objectives. At the OECD level, **NCPs have played a decisive role in the proactive agenda**, providing their expertise and practical experience of the Guidelines in the development of the OECD due diligence guidance.

### 5.5.2. *Challenges and weaknesses*

#### *Functional equivalence has not yet been achieved*

There is **no prescribed model of NCP structure**, and the Procedural Guidance states the general principle that governments have flexibility in organising their NCPs. Such flexibility should however be consistent with the objective of **functional equivalence** which are measured according to four core criteria:



**visibility, accessibility, transparency and accountability.** The Implementation Procedures contain further **practical requirements that limit the flexibility of governments in organising their NCP**, including on resources (Decision, para. 1.4); expertise (PG, para. I.A.1.); impartiality (PG, para. I.A.1.); senior leadership (PG, para. I.A.2. and Commentary, para. 10); and stakeholder relations and confidence (PG, para. I.A.3., Commentary, paras. 10, 11 and 12).

Delegates and NCPs have indicated viewing flexibility as an asset, permitting to tailor NCPs to their national context.<sup>194</sup> Delegates also view functional equivalence as essential for ensuring a uniform application of the Guidelines by companies across adherents, and to avoid strategic filing of cases with some NCPs (sometimes referred to as “forum shopping”). However, many delegates shared stakeholders’ analysis that **functional equivalence is currently not achieved**, as not all NCPs meet the above criteria and requirements:

- NCPs generally lack human and financial resources, which limits their ability to achieve visibility and accessibility, as well as their ability to meet indicative time frames set by the Commentary (paras. 40-41).
- NCPs do not all have access to or are not closely overseen by senior leadership within government, which may reduce their visibility, their accountability and the confidence of stakeholders.
- Access to expertise across the broad scope of RBC is a challenge, especially for single agency NCPs that do not have an advisory body.
- Stakeholder engagement is increasingly central in NCP structures, and is realised through advisory bodies, multi-stakeholder structures, stakeholder nominations of experts, or through regular stakeholder meetings. Close to a quarter of NCPs however have neither of these arrangements in place, which in turn limits their ability to meet all functional equivalence criteria.
- Stakeholder confidence and perceptions of impartiality are challenging to maintain over time. This is especially so when NCPs’ staff or units within which they are based cannot be clearly isolated from potentially conflicting portfolios; or when the NCP does not have a strategy to prevent and address conflicts of interest.

**Reaching functional equivalence is made challenging by the vague and open-ended language of the Implementation Procedures** regarding the core criteria and practical requirements for functional equivalence and the lack of guidance as to what structures are considered effective (for instance regarding stakeholder inclusion). Additionally, the Implementation Procedures only set **weak monitoring and oversight mechanisms of the NCP network**. This limits avenues to hold accountable governments whose NCPs do not meet functional equivalence criteria.

- Peer reviews are the main review and accountability mechanism for NCPs (Procedural Guidance, II.5.c), and are viewed by delegates as instrumental in fostering the effectiveness of NCPs. However these remain voluntary and are funded by the government under review. Moreover, follow up to peer review recommendations by the WPRBC is limited. Recognising the importance of peer review for NCP effectiveness, the 2017 OECD Ministerial Council Meeting set the objective of having all NCPs peer reviewed by 2023. To date only 18 NCPs have been reviewed (and five reviews are ongoing as at February 2022) and there is no provision for periodic review.
- The substantiated submission mechanism whereby the Investment Committee may address issues related to NCP compliance with the Implementation Procedures (Procedural Guidance, II, 2. b.) has been used only once to date due to the sensitivity of issues addressed and the burdensome process (an additional submission is ongoing as at February 2022). Decision-making in the WPRBC is by consensus, requiring that the government of the NCP concerned does not object to the final decision. The possibility for the Investment Committee to issue



recommendations to improve the functioning of NCPs also requires consensus and has rarely been used (Procedural Guidance, II.2.d.)

- The WPRBC (and its Chair) in practice plays an important role in overseeing the NCP network but having been created in 2013, the WPRBC is not mentioned in the Implementation Procedures. Moreover, the oversight capacity of the WPRBC is reliant on its delegates acting in this role having a degree of independence from their respective NCPs. Currently, the large majority of WPRBC delegates are also NCP officials.
- The Network of NCPs is focused solely on peer-learning and has no detailed mandate. Delegates indicated that strengthening the Network could be an opportunity to help address some of the challenges faced by NCPs.
- Delegates and NCPs underlined the important role that the Secretariat plays in monitoring NCP activity (e.g. through a specific instance database and processing annual reports), fostering coordination and peer learning among NCs to assist with uniform interpretation of the Guidelines, and in providing capacity-building through [Action Plans to Strengthen NCPs](#). In practice, NCPs also frequently reach out to the Secretariat for support regarding the fulfilment of their mandate. However, the Secretariat's role is not clearly defined in the Implementation Procedures (Procedural Guidance, II.5.), and moreover does not have dedicated funding for these tasks, which limits its ability to support functional equivalence.
- Adherence to the Guidelines requires to ascertain new Adherents' willingness and ability to set up and maintain an effectively functioning NCP. However, mechanisms in place to enable the WPRBC and Investment Committee to verify new Adherents' plan and ensure that NCPs remain effective over time have not always been effective.

#### *Diverging implementation of the NCP mandate regarding promotion and specific instances*

The role of NCPs regarding promotion is generally implemented in a similar manner through websites, events and promotional materials (though with varying intensity) across the network. However, some delegates indicated that the provisions of the Procedural Guidance regarding promotion could be clearer on what is expected from NCPs in this regard, for example to assist NCPs in setting up promotional plans.

The role of NCPs as non-judicial grievance mechanisms is well accepted in principle but delegates pointed to **uncertainty in practice regarding how NCPs interpret their role in relation to specific instances**, as shown by different approaches to accepting and handling cases. In addition to issues of a procedural nature (see below), this uncertainty results in a **diversity of views and approaches regarding the authority of NCPs** to foster remedy and pursue business accountability for RBC impacts, which some delegates have indicated could encourage the strategic submission of cases with some NCPs ('forum shopping'):

- NCP approaches diverge greatly when there are parallel proceedings to the NCP process (Commentary, para. 26). Some NCPs adopt a large degree of deference to such proceedings and either pause or close the case, whereas other NCPs will seek to move forward to the extent they can contribute to the resolution of the issues.
- NCPs use different thresholds for factual evidence to be provided by the submitter when interpreting the 'material and substantiated criterion' (Commentary, para. 25) when performing initial assessment, which may also impact accessibility and predictability.
- The depth with which NCPs are willing and able to examine the issues when the company does not engage in the process or when the parties do not reach agreement, to perform additional fact-finding or research to better understand the issues, to come to a determination

that the company breached or did not breach the Guidelines, to issue detailed recommendations, and to follow up on case outcomes also varies substantially.

- NCPs have diverging approaches to communicating publicly about progress in cases, as the Guidelines only require an NCP to publish statements when a case is closed (not accepted or concluded). Some NCPs value low exposure by not communicating on the receipt of a case, not revealing parties' identities before the end of the process, nor publishing their initial assessments. Other NCPs readily publicise information about cases, posting detailed information upon receipt of a case, publishing initial assessments and issuing press releases upon conclusion. Some of these NCPs may then leverage such publicity to encourage good faith engagement by the parties.
- While NCPs are non-judicial mechanisms and cannot compel participation in the process or remedial action from companies, a small number of governments add a degree of sanction to the specific instance process by allowing their NCP to attach consequences for companies involved if they do not engage in the process in good faith. For example, in those cases the Canadian NCP can recommend denial or withdrawal of Government of Canada trade advocacy support to companies involved.<sup>195</sup>

These divergences largely result from the way NCPs have interpreted **loosely worded provisions in the Implementation Procedures** (such as those relating to parallel proceedings, recommendations or depth of analysis) or have chosen to **fill the gaps** of the Implementation Procedures (e.g. as regards determinations, publicity or 'sanctions').

This diverse slate of interpretations and practices affect NCPs' authority to act as non-judicial grievance mechanisms in their respective countries and in the eyes of their stakeholders. This arguably places NCPs on a **continuum between facilitators of dialogue and accountability mechanisms**. Delegates indicated that this was confusing for users, some of whom view NCPs as quasi-judicial mechanisms, while others view them as mediation or promotional mechanisms. Consequently, NCPs frequently report that **managing expectations of submitters and companies** as regards the role of the NCP in providing remedy is a challenge. Delegates also expressed concern that these varying interpretations could result in an inconsistent application of the Guidelines across the network, thereby further encouraging forum shopping.

Finally, NCPs have taken different approaches to **using their mandate to foster policy coherence**. While policy coherence is not *per se* part of the NCP mandate,<sup>196</sup> NCPs have in practice sought to act as agents of coherence e.g. through sharing specific instance statements across government, organising or participating in promotional events for other government departments, or contributing their substantive expertise to the development of policies such as national action plans or regulations on due diligence. Practices in this respect however diverge significantly, with many NCPs playing a limited or no role at all in government policies, while some others are very active and visible in policy circles and have established themselves as key cross-government resources on RBC. Having regard to the proliferation of policies and regulations on RBC at national and regional level (see above, section 2.7) and corresponding needs and opportunities, Delegates have indicated that more clarity on what the NCP mandate entails in respect of policy coherence could be useful, in particular as regards implications for the prerogatives of governments in developing policy, the impartiality of NCPs, as well as resources available to NCPs. Considerations regarding the role of NCPs in policy coherence for RBC are also being discussed in the context of the forthcoming Council Recommendation on the role of Government in promoting RBC.<sup>197</sup>

#### *Lack of clarity regarding key procedural aspects of the specific instance process*

The Procedural Guidance and its Commentary divide the NCP process into **three phases**: initial assessment, good offices and conclusion, and provide indications regarding how NCPs should handle additional questions that might emerge during the process.

In practice, NCPs indicate that, while different national contexts make it necessary for NCPs to retain a degree of flexibility in how they handle specific instances, the Implementation Procedures often **fail to provide clear guidance to NCPs in respect of key aspects of the process**, which in turn leads to diverging practices and disagreements across the network and among users, and blurs the hierarchy between the text of the Procedural Guidance and its interpretation by NCPs. In particular:

- The Procedural Guidance (I.C.1.) indicates that NCPs should perform an initial assessment to determine whether a case merits further examination, and the Commentary (para. 25) lists six cumulative criteria to perform that assessment. However, these criteria are very general and lend themselves to either very open or very restrictive interpretations. This in turn may have an effect on the accessibility of NCPs, which has been a major concern of certain stakeholder groups in recent years, as well as encourage forum shopping, which has been a concern for some governments and NCPs. It may also lead to inconsistent decisions when similar or related cases before several NCPs would be accepted and others not. Some NCPs also add a preliminary step on formal admissibility, on which the Procedural Guidance is silent.
- The Procedural Guidance (I.C.2.c) recognises that several NCPs may be concerned by the same issues and mandates some degree of coordination amongst them (Commentary, paras. 22 and 23). In doing so, it however fails to capture all situations whereby several NCPs may be concerned by same issues, or to provide clear criteria to assign lead or supporting roles to these various NCPs depending on the situation. This has led to delays in cases, and disagreements among NCPs as to the modalities of coordination. There is no provision or escalation procedure if NCPs cannot agree on coordination. The need for coordination will likely continue to affect the handling of many cases, as in over 30% of cases more than one NCP has considered themselves concerned.
- The Procedural Guidance (I.C.) indicates that NCPs should handle specific instances in an efficient and timely manner, and the Commentary (para. 40) sets out indicative timelines. NCPs have noted these timelines were often not practicable, due to the growing complexity of cases and different stakeholders involved, as well as complexities emerging from different NCP structures (for example, multipartite).
- The Implementation Procedures require NCPs to ensure that parties can engage in the process on fair and equitable terms. However, they provide no details on how to deal with concrete situations in which equitability may be at risk, due to issues such as resource asymmetry, undue pressure, or access of the mechanisms to certain groups that may be in a situation of vulnerability such as women, children or indigenous peoples. Even SMEs may face this risk.
- The Procedural Guidance sets down transparency as a core criteria that NCPs must meet, but allows for a degree of confidentiality in the specific instance process (II.C.4.). In the absence of clear guidance, NCPs find it difficult to navigate the conflicting demands of transparency and confidentiality, for example in the context of campaigning by submitters, or when one party refuses to allow the documents it submitted to be shared with the other party.

**The NCP network has issued indicative guides that collect and record good practices** where provisions of the Implementation Procedures were missing or too general through **indicative guides**. Guides are currently available on [confidentiality and campaigning](#), [case coordination](#), [recommendations and determinations](#), [initial assessments](#) and [follow up](#). The release of these guides has coincided with a consolidation of good practices, such as better acceptance rates following initial assessments, more consistent inclusion of recommendations in statements, and more frequent follow up to agreements and recommendations by NCPs.<sup>198</sup> However, delegates recognise that, while useful, these Guides are limited to recording existing practice and may not authoritatively interpret the Guidelines, which is the prerogative of the Investment Committee (Procedural Guidance, II.2.c.), although the Investment Committee has rarely acted in this regard. These Guides have therefore improved predictability, while divergences remain on

key procedural aspects, thereby blurring the meaning of the Procedural Guidance, such as for example with regard to initial assessment.

## 5.6. Input from stakeholder consultations

Input relating to the NCP system featured prominently in the online survey, public submissions, as well as contributions from international organisations and stakeholders.

### 5.6.1. *Achievements of the NCP system*

Over half of the respondents to the online survey cite at least one achievement of the NCP system, with 44% of them noting the NCP's role in raising awareness of the Guidelines. Relatedly, 13% recognise the role of the NCP in interpreting the Guidelines and clarifying their meaning in concrete cases. International organisations note the contribution of the promotional work of NCPs to policy coherence. The mandate of the NCP system as a key global mechanism for raising grievances and seeking remedy for business-related impacts for many stakeholders is also frequently underlined, with 33% valuing the role of NCPs in contributing to the solution of issues via dialogue and good offices, and 31% noting the facilitation of concrete remedy by NCPs in certain cases. International organisations also noted in this regard the complementarity of NCPs with other mechanisms in both the judicial and non-judicial area.

Respondents also point to achievements with regard to the structure of NCPs, with over one out of four achievements cited relating to the fact that NCPs seek to maintain relations with stakeholders and gain their confidence (28%), thereby providing a space for civic participation in the RBC space, and contributing to improved dialogue between MNEs and stakeholder organisations.

Institutional stakeholders and 10% of achievements cited in the survey also highlight progress made in the gradual strengthening of individual NCPs, in particular through improvements in the rules that govern the functioning of NCPs, though they recognise that important challenges remain.

### Selected statements by stakeholders related to achievements of the NCP system

**Norges Bank Investment Management:** "NCPs have made an active contribution to the uptake and implementation of the Guidelines by companies through guidance and promotional activities."

**European Center for Constitutional and Human Rights e.a.:** "[NCPs] offer a state based non-judicial grievance mechanism that is by nature less formalistic than court proceedings and with a lower entry threshold."

**Lady Lawyer Foundation:** "NCPs are the lynchpin of the OECD Guidelines system. They ensure both awareness of the Guidelines among their own and other governments, MNEs, and other stakeholders, and accountability of MNEs through facilitating resolution of Guidelines-based disputes."

### 5.6.2. *Challenges related to the NCP system*

Challenges relating to the NCP system were mentioned in over two thirds of survey responses (68%) and in over half of public submissions (55%). Challenges can be placed in three broad categories:

- NCPs' lack of authority and enforcement capacity in relation to specific instances. Illustrative of this challenge are the suggestions that the NCP system should be less 'soft' and include some form of consequence for companies not engaging in good faith in specific instances (36% of public submissions mentioning NCPs; 38% of survey responses mentioning a challenge to the NCP system<sup>199</sup>) and the need for NCPs to more consistently issue determinations, and perform follow up (41% of public submissions; 17% of survey responses). The lack of leverage available to NCPs to bring companies to the table was also noted by International Organisations.
- Procedures followed by NCPs are in some respect inadequate, confusing, or lacking in consistency across the network, as all NCPs publish their own rules of procedures, with significant variations (21% of survey responses, 38% of public submissions). More precisely, issues such as evidentiary thresholds applied at initial assessment stage (11% of survey responses; 13% of public submissions), timelines for the handling of cases (9% of survey responses; 4% of public submissions) or the need to protect parties against retaliation or undue pressure (4% of survey responses; 15% of public submissions) are mentioned.
- Functional equivalence is not achieved across the NCP network (34% of survey responses; 18% of public submissions). Institutional stakeholders stress in this regard that the MNE Guidelines do not give sufficiently precise guidance to governments on how to establish a functioning NCP. More specific issues linked to functional equivalence emerging from the consultation include the insufficient visibility of many NCPs (32% of survey responses; 8% of public submissions); insufficient resources allocated to NCPs (26% of survey responses; 26% of public submissions) or challenges to the impartiality of NCPs (17% of survey responses; 18% of public submissions). In this regard, international organisations note a lack of awareness of the NCP system overall, as well as practical issues linked to a lack of resources, such as rotation of staff and insufficient access to experts.

## Selected statements by stakeholders related to challenges to the NCP system

**International Corporate Accountability Roundtable (ICAR):** “Unfortunately, the Guidelines’ Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures of NCPs that they vary widely in their effectiveness.”

**Australian Council of Trade Unions:** “The absence of consequences at each stage of the specific instance process for MNEs undermines respect for the Guidelines and NCP mechanism and creates a disincentive for MNE participation”

**Danish Institute of Human Rights:** “Although over 50% of the specific instances brought to the attention of NCPs concern chapter IV, human rights expertise is not represented in all NCPs”

**BIAC:** “...we underline the importance of consulting with representative stakeholders’ groups, such as representative business/employers’ organizations, and to engage in a joint dialogue in order to learn about representative stakeholders’ expectations and identify avenues to foster confidence.”

**Norges Bank Investment Management:** “With regards the NCP mechanism – as raised by several stakeholders – it is important that the NCPs apply the requirements in the Guidelines in a uniform manner when considering further examination of a specific instance.”

### 5.6.3. Opportunities and proposed ways forward

The public consultation shows a strong support for the NCP mechanism, making the Guidelines the only international instrument on RBC equipped with an implementation mechanism. NCPs are both the number one overall achievement and the number one overall challenge to the Guidelines listed by survey respondents. Stakeholders call for a stronger NCP system and raise a number of opportunities:

- Stronger awareness raising about the existence and functioning of the NCP system, in particular through increased promotional activity.
- Re-evaluating the notion of functional equivalence, in particular with regard to the core criteria defined by the Procedural Guidance and the related requirements on resources, impartiality and stakeholder confidence.
- Establishing the NCPs more clearly as RBC authorities within government and vis-à-vis stakeholders, both in terms of leverage on specific instance parties, but also in terms of the support they receive from government and their perception as holders of expertise on RBC and interpreters of the Guidelines.
- Further developing relations with stakeholders and other relevant bodies to increase confidence and expertise. Institutional stakeholders highlight the importance of engaging in a joint dialogue to foster confidence in the NCP system. International organisations note that engagement with relevant mechanisms (e.g. National Human Rights Institutions, ILO focal points) are a way of strengthening NCPs.
- Conducting an evaluation of the procedural aspects of the specific instance process, in particular by reviewing how the Procedural Guidance plays out in respect of key steps of the specific instance process, and how the NCP network interprets the Procedural Guidance in their own rules of procedure.



## 6. Conclusions

The purpose of the MNE Guidelines stocktaking exercise is to i) obtain a clearer picture as to whether the OECD Guidelines for Multinational Enterprises remain fit for purpose; and ii) to provide a basis upon which to discuss potential options for moving forward. Throughout the stocktaking exercise, fit for purpose has been treated as a wide concept encapsulating the relevance and effectiveness of the Guidelines and the ecosystem surrounding them in addressing business impacts today as well as their ability to 'lead from the future' by shaping business conduct to suit future needs.

Based on the stocktaking exercise, it can be concluded that a number of achievements and challenges are relevant to assessing whether the Guidelines remain fit for purpose. The observations of the stocktaking exercise can be summarised under three broad criteria focusing on the fitness of the Guidelines in relation to issues, implementation and institutions.

### 6.1. Fit for the issues: Do the Guidelines adequately address contemporary substantive RBC issues? Are they likely to remain relevant in the future?

#### **The Guidelines are considered highly relevant**

The stocktaking exercise confirms that delegates, institutional and public stakeholders consider the concepts, principles and thematic issues covered by the Guidelines as being highly relevant in today's business context. The Guidelines and their application have been able to adapt to changing business models and impacts. The development of authoritative yet practical guidance on risk-based due diligence in specific sectors and on specific themes has contributed to the continued relevance of the Guidelines as well as the increasing role of RBC standards globally. The strong alignment of the Guidelines to key instruments such as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration is seen as a key quality.

At the same time, in terms of being fit for contemporary and likely future RBC issues, the stocktaking exercise finds that since 2011 there have been significant developments in terms of the environmental, social and societal impacts associated with business activities. These developments include accelerating concerns related to climate and environment, persistent human rights challenges, and increasing awareness of the risks posed by digitalisation and technology.

#### **Opportunities exist to enhance the relevance of the Guidelines**

The stocktaking exercise points to opportunities related to these and other issue areas as outlined below in the following three categories: i) relevance and clarity in emerging areas; ii) clarity and effectiveness in existing areas; and iii) alignment and coherence with existing standards.



**Relevance and clarity in emerging areas:** while the language of the Guidelines remains flexible to new issues, a number of business impacts that are viewed as highly salient are not explicitly addressed:

- The stocktaking exercise identifies opportunities for clarifying expectations related to **environmental impacts of business activities** including climate change, biodiversity, and animal welfare that are currently not well-addressed in the Guidelines. In particular, the Guidelines are seen to lack clear expectations on climate mitigation, adaptation or just transition principles.
- The stocktaking identifies a need to clarify expectations regarding **risks and impacts related to digitalisation and technology**, which may affect a range of thematic areas including human rights, employment and worker rights, competition and consumer interest, which are currently not well-addressed in the Guidelines.

**Clarity and effectiveness in existing areas:** on topics that are already reflected in the Guidelines, the Stocktaking exercise has highlighted opportunities to provide more clarity and more robust guidance to have greater effect and to ensure consistent application across Adherents.:

1. A range of **areas related to human rights**, such as gender discrimination, children's rights, the rights of indigenous peoples, protection of human rights defenders, trade union representatives and environmental activists, impacts on specific at-risk and vulnerable groups, and land rights.
2. The stocktaking exercise highlighted similar opportunities in the **area of employment and industrial relations**, in relation to the right to a living wage and the right to freedom of association and collective bargaining.
3. The stocktaking exercise also finds that clarity might be needed in relation to the application of the Guidelines to a range of **diverse business models and economic actors**, including local companies within cross-border supply chains, platform companies, complex financial structures, multistakeholder initiatives, and economic activities of state actors. The flexibility of the Guidelines to apply to a wide range of business models is held as important and is demonstrated by NCP practice. However, there is a risk that lack of clarity on the breadth of application may result in an uneven playing field and inconsistent interpretation by NCPs. The stocktaking also highlights that this lack of clarity is reproduced in the name of Guidelines, which may reduce their visibility and perceived relevance in an economic context where forms of cross-border business activities are increasingly diverse.
4. Lastly, the stocktaking exercise points to the need for more clarity in addressing **interlinkages between business-related impacts** on people, planet and society. This has particularly been noted in relation to potential human rights consequences of environmental impacts; digital products and services; corruption; and aggressive tax practices. The stocktaking finds that the Guidelines, as a comprehensive instrument, are in a unique position to more effectively acknowledge such interlinkages and associated due diligence expectations. The relevance of the Guidelines in the context of the 2030 Agenda and Paris Agreement on climate change is also pertinent in this regard.

**Alignment and coherence with existing standards:** some frameworks and instruments referenced in the Guidelines or highly material to the Guidelines have seen significant development since 2011. The stocktaking exercise identifies opportunities to bring the Guidelines **up to speed** in these areas in order to ensure **alignment and coherence** with relevant instruments and frameworks:

1. The stocktaking shows that the **OECD Recommendations and Guidance on due diligence**,<sup>200</sup> adopted since the 2011 update of the Guidelines, have been highly impactful and today constitute the main international standard for due diligence on responsible business conduct. The stocktaking highlights a need to update the due diligence references in the Guidelines to reflect OECD Recommendations and Guidance in this area. This could include better reflecting the remediation phase of due diligence and reinforcing the role of meaningful stakeholder engagement, especially with marginalised and at-risk groups.

2. In the **taxation area** the stocktaking notes a number of opportunities to ensure that the Guidelines remain aligned with key OECD standards and frameworks developed since 2011. This includes the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and the OECD Common Reporting Standard (CRS), which have significantly altered the context for tax practices and transparency of enterprises.
3. In addition, the G20/OECD Principles for **Corporate Governance**<sup>201</sup> have introduced important principles addressing aggressive tax practices, “that do not contribute to the long term interests of the company and its shareholders, and can cause legal and reputational risks”. The principles are due to undergo a revision during 2022 raising opportunities to ensure further alignment between the G20/OECD Principles for Corporate Governance and the MNE Guidelines.
4. In the area of **consumer interests**, the OECD has updated various standards relating to product safety and health, cross-border consumption and e-commerce, online market surveillance and new technologies, and financial services such as the Recommendation on High-Level Principles on Financial Consumer Protection [[OECD/LEGAL/0394](#)] and the Recommendation on Consumer Protection in the field of Consumer Credit [[OECD/LEGAL/0453](#)].
5. In the area of **anti-bribery** and **business integrity**, the stocktaking has reflected the recognition that corrupt practices are not limited to bribery of public officials but encompass a range of acts that are relevant to the MNE Guidelines such as abuse of lobbying, trading in influence, cronyism, patronage, misuse of sponsorships and charitable donations. OECD standards adopted since 2011, including the Recommendation of the Council on Public Integrity [[OECD/LEGAL/0435](#)], have highlighted some of these broader aspects.
6. The stocktaking finds that expectations regarding **sustainability disclosure** have expanded significantly since 2011 and points to opportunities to better reflect these developments in the Guidelines. Key developments include an increasing demand for disclosures, better and more consistent **metrics and data**, and a changing understanding of the **dynamic nature of materiality**, including also the role of disclosure in helping companies consider their risk profile in a more comprehensive way. The OECD Council Recommendations on due diligence developed since 2011 have clarified the **expectation on enterprises to publicly report on their due diligence** policies, processes, and activities, including findings, actions and outcomes.
7. The stocktaking exercise points to the importance of ensuring continuous **alignment with other multilateral standards and frameworks outside the OECD**. Clear alignment of the Guidelines to standards such as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration are seen as key priorities in this regard. The stocktaking also points to opportunities to strengthen this alignment by referencing and linking with key multilateral frameworks, while taking into account their distinct role and nature, such as the **Paris Agreement on climate change and the 2030 Agenda for Sustainable Development** that are seen as global reference points for addressing business related impacts on people, planet and society.

## 6.2. Fit for implementation: Are the Guidelines, and their ecosystem, fit to drive global uptake and implementation of responsible business conduct?

### The Guidelines have contributed to embedding responsible business conduct in global value chains, financial markets and public policies

The stocktaking identifies a number of key achievements related to uptake and implementation of the Guidelines in global value chains, financial markets, and public policies that can be partially attributed to the Guidelines and the WPRBC agenda. Notable developments include uptake and implementation of OECD RBC due diligence standards in **market based mechanisms and certification schemes**;

**mandating of RBC due diligence** by a number of regulators; **expansion of the number of Adherent countries**, and significant progress in **engaging with non-Adherent countries**.

### **Opportunities exist to further increase uptake and implementation of the Guidelines**

The stocktaking exercise identifies a number of opportunities for further increasing uptake and promoting RBC by strengthening the Guidelines' ecosystem:

1. **Engaging with non-Adherents:** the stocktaking confirms the high importance placed by all stakeholders on levelling the global playing field for RBC. Engagement with non-Adherents has increased since 2011 and National Contact Points (NCPs) frequently deal with specific instances related to or in non-Adherent countries or territories. Since 2011, there has also been increased action from non-Adherent countries on RBC including in the context of **G20, APEC and ASEAN**. The stocktaking has highlighted opportunities to further scale up this engagement including by expanding and building on the **WPRBCs regional and sub-regional collaboration** programmes and engagement with multilateral and regional organisations; strengthening the role of **regional NCP networks** and links between NCPs and other relevant mechanisms; and increasing **participation by non-Adherents** in OECD meetings on RBC. Additionally, opportunities exist also in terms of adherence procedures and the role of the GFRBC.
2. **Government policies for RBC:** Since 2011, there has been increasing emphasis on the role of governments and international organisations in promoting and enabling RBC. Key **policy initiatives on RBC** include supply chain and trade policy initiatives on human rights, labour standards and environmental standards; some Adherents actively pursue the inclusion of RBC considerations into trade and investment agreements while others remain more cautious in this regard; some Adherents have introduced general, sectoral or thematic due diligence laws and regulations; financial and non-financial disclosure laws and regulations; corporate governance initiatives; public procurement rules; trade advocacy; export credit requirements; sustainable finance initiatives; green transition and circular economy initiatives; as well as initiatives related to responsible lobbying and political donations. Nevertheless, the stocktaking exercise has confirmed the need to establish and enforce **policy frameworks that support RBC in a coherent fashion**. Some **NCPs have taken steps to act as agents of policy coherence**, although most NCPs are not structured or resourced to undertake this role. The WPRBC has taken initiatives to promote policy coherence including through the organisation of policy makers' roundtables on sectoral and thematic issues. Proliferation of policy measures at the domestic level has been noted as a growing challenge for businesses operating globally which can lead to unnecessary costs for business and undermine the effectiveness of government action on RBC. The stocktaking highlights a need to consider the relationship and **alignment between international standards and national laws** on RBC-related issues. Moreover, **government capacity** to effectively integrate RBC may be lacking across various policy areas and initiatives. A further challenge is for governments to **coordinate internal efforts** in the promotion and implementation of different international standards on RBC. The development of an **OECD Recommendation on the role of government in promoting RBC** represents an opportunity to address these needs while further enhancing implementation of RBC and helping governments in this regard.
3. **Alignment and market-based mechanisms:** the stocktaking confirms the potential for achieving scale by building on the success of the due diligence guidances and the 'proactive agenda' more broadly, including by ensuring that the growing number of **industry and multistakeholder initiatives** on sustainability are aligned with the Guidelines and OECD due diligence guidances as well as addressing key challenges such as ensuring approaches that are suitable for SMEs. Based on results demonstrated in the proactive agenda and its alignment assessment practice, considerable opportunities exist to leverage the **OECD as a platform for governments to align approaches in ways that enable increased uptake and implementation of the Guidelines** by business at the sectoral and thematic levels. This will be relevant in both the real economy and in

the financial sector and will be important to ensure consistency with and effectiveness of **evolving regulatory and policy initiatives**, while **reducing cost and complexity for businesses**.

4. **Metrics and data:** the stocktaking notes the increasing **need for RBC data** considering developments in the regulatory space, financial markets as well as tracking of progress in achievement of sustainable development goals. The current lack of relevant and quality data results in a **fragmented and inconsistent view of companies' performance** on responsible business conduct and of the **uptake and effectiveness of RBC policies**, and results in confusion and **unnecessary costs for businesses** and investors. The stocktaking points to the opportunities for developing a simple and uniform set of **metrics for market actors and regulators** to assess RBC due diligence in line with OECD standards, by building on existing WPRBC initiatives on measurement and monitoring of RBC.
5. **Visibility, accessibility, and 'plain language':** the stocktaking confirms that stakeholders have welcomed the practical approach of the due diligence guidances as well as efforts by NCPs to promote awareness of the Guidelines. However, at a global level and among mainstream companies, including SMEs, the **visibility and awareness of the Guidelines and the NCPs remain low**. Opportunities exist for making RBC more visible and accessible by introducing 'plain language' in the **title of the Guidelines and NCPs** as well as across the text and commentary of the Guidelines. It would in particular be important to consider the **accessibility of the Guidelines for SMEs** as well for businesses in non-Adherent countries.

### 6.3. Institutionally fit: Is the NCP system as currently designed and operated fit to deliver on its mandate to further the effectiveness of the Guidelines?

**The system of National Contact Points for Responsible Business Conduct is seen as among the most important achievements of the Guidelines but also as their most significant challenge**

The Guidelines are unique in that they include a **national institutional mechanism** to further their effectiveness. The stocktaking highlights important strengths and achievements by NCPs and shows that, through their **dual mandate to promote the Guidelines and facilitate access to remedy**, NCPs have been instrumental in clarifying the meaning of the Guidelines in light of concrete issues, and in driving uptake and implementation. Over the period since 2011, the NCP system has seen a steady rise in the number of specific instances received by some NCPs, a number of NCPs have played a growing role in promoting the Guidelines and facilitating policy coherence. NCP peer reviews have led to concrete improvements in the reviewed institutions.

#### **Opportunities exist for strengthening the system of National Contact Points**

The stocktaking identifies a number of opportunities for further leveraging the unique capabilities of the NCP system, for achieving more coherence across the network, and has also confirmed a number of challenges that risk undermining the effectiveness and credibility of this system. The opportunities identified in the stocktaking exercise include:

1. **Functional equivalence:** the stocktaking confirms that significant gaps exist in the functional equivalence of NCPs in the areas of **visibility, accessibility, transparency and accountability**, undermining consistency in the network. These gaps often result from **under-resourcing, insufficient government support and/or inadequate structures at a number of NCPs**. Achieving functional equivalence is made challenging by the **vague and open-ended language of the Implementation Procedures** and the lack of guidance as to what effectiveness really means for NCPs (for instance regarding stakeholder participation in the NCPs activities). Additionally, the Implementation Procedures only set **weak monitoring and oversight mechanisms** of the NCP network, **lacking means to hold governments accountable** when their

NCPs do not meet functional equivalence criteria. Past high-level political commitments, capacity-building, peer learning and voluntary peer reviews have yielded **positive results but on a limited scale and pace**.

2. **Support during and after adherence:** the stocktaking notes significant progress in the number of Adherents to the Guidelines. It finds that, as the **number of Adherents grows**, so does the need to build and support **consistency across Adherents** in order to avoid further fragmentation. In considering support and **follow-up measures during and after adherence, as well as in the context of peer reviews**, the stocktaking has pointed to opportunities in drawing on experience from other OECD policy areas in this regard.
3. **Role and clarity regarding specific instances:** there is a high divergence regarding how NCPs interpret their role in relation to specific instances, including **diverging practices in accepting and handling cases**. This reveals itself in a diversity of views and approaches regarding the **authority of NCPs to provide decisions, foster remedy** and pursue business accountability for RBC impacts. **Implementation Procedures often fail to provide clear guidance** to NCPs in respect of key aspects of the process (notably: admissibility, communication, substantiated analysis criteria, determination, recommendations, follow up), which in turn leads to **diverging practices and disagreements across the network** and among users.
4. **Remedy landscape:** since 2011, the **regulatory and judicial landscape related to RBC** has changed significantly. At the same time, other non-judicial and also judicial mechanisms have become more active on RBC issues. The stocktaking notes the opportunity to consider the strategic role of **NCPs as national authorities, agents of policy coherence, and as remedy mechanisms** in this changing RBC landscape. The stocktaking also highlights opportunities to leverage **synergies with other remedy mechanisms** including for example National Human Rights Institutions.

## Referenced documents

- [Findings from the survey of National Contact Points for RBC](#)
- [Compilation of submissions from BIAC](#)
- [Compilation of submissions from TUAC](#)
- [Compilation of submissions from OECD Watch](#)
- [Public consultation: Compilation of public submissions](#)
- [Public consultation: Compilation of responses to the online survey](#)
- [Public consultation: Compilation of submissions from international organisations](#)

## Notes

<sup>1</sup> The MNE Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) [[OECD/LEGAL/0144](https://www.oecd.org/legal/0144)].

<sup>2</sup> The following OECD directorates provided input: the Centre for Tax Policy and Administration (CTP), the Development Co-operation Directorate (DCD), the Directorate for Employment, Labour and Social Affairs (ELS), the Environment Directorate (ENV), the Public Governance Directorate (GOV) and the Directorate for Science, Technology and Innovation (STI). Other divisions in the Directorate for Financial and Enterprise Affairs (DAF) have also been consulted and the following have provided input: the Anti-Corruption Division (ACD), the Competition Division (COMP), the Corporate Governance and Corporate Finance Division (CG) and the Financial Markets Division (FM).

<sup>3</sup> The report was sent to the Secretariats responsible for the following OECD Committees and subsidiary bodies: Working Group on Bribery in International Business Transactions; Employment, Labour and Social Affairs Committee; Environmental Policy Committee, Chemicals and Biotechnology Committee; Working Party on Climate; Investment and Development, Trade Committee; Working Party on Export Credits and Credit Guarantees; Committee for Agriculture, Corporate Governance Committee; Working Party on State Ownership and Privatisation Practices; Committee on Fiscal Affairs, Development Assistance Committee; Public Governance Committee; High Level Risk Forum; Working Party on Open Government; Working Party on Gender Mainstreaming and Governance; Working Party of the Leading Practitioners on Public Procurement; Working Party of Senior Public Integrity Officials; Regulatory Policy Committee; Committee of Senior Budget Officials; Committee for Scientific and Technological Policy; Committee on Consumer Policy; Committee on Industry, Innovation and Entrepreneurship; Global Forum on Transparency and Exchange of Information for Tax Purposes, Committee on Digital Economy Policy.

<sup>4</sup> Based on responses to the question “Overall, what are the top three opportunities for strengthening the OECD’s standards and work on Responsible Business Conduct?”

<sup>5</sup> See “2011 Update of the OECD Guidelines for Multinational Enterprises: Comparative table of changes made to the 2000 text” <https://www.oecd.org/daf/inv/mne/49744860.pdf> for a comparative table of changes made in the 2011 update to the Guidelines.

<sup>6</sup> [Transforming Our World, the 2030 Agenda For Sustainable Development](#) (par. 67).

<sup>7</sup> 2015 Paris Agreement [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>8</sup> <https://climateactiontracker.org/global/temperatures/>.

<sup>9</sup> Edelman Trust Barometer 2021 <https://www.edelman.com/trust/2021-trust-barometer>.

<sup>10</sup> Business Roundtable 2019 statement on the Purpose of a Corporation: <https://system.businessroundtable.org/app/uploads/sites/5/2021/02/BRT-Statement-on-the-Purpose-of-a-Corporation-February-2021-compressed.pdf> and Robert Schuman 2018 research paper on a European sustainable business model: <https://www.robert-schuman.eu/en/european-issues/0460-towards-a-european-sustainable-business-model>.

<sup>11</sup> The Financial Sector Is Waking up to Climate Change <https://www.eesi.org/articles/view/the-financial-sector-is-waking-up-to-climate-change>.

<sup>12</sup> ITUC 2019 Global Rights Index: <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>.

<sup>13</sup> ILO, The Global Labour Income Share and Distribution (2019) <https://www.ilo.org/ilostat-files/Documents/Labour%20income%20share%20and%20distribution.pdf>.



<sup>14</sup> Implementing the OECD Guidelines for Constructive Industrial Relations. Trade Union Advisory Committee to the OECD. September 2021. <https://tuac.org/wp-content/uploads/2021/09/GuidelinesBriefing1.pdf>.

<sup>15</sup> Two-track recovery undermines trust and solidarity. ILO. October 2021. [https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS\\_822705/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_822705/lang-en/index.htm) and The Declining Labour Income Share. ILO. 2019. <https://ilostat.ilo.org/the-declining-labour-income-share/>.

<sup>16</sup> Global Witness, Defending Tomorrow (2020); <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>

<sup>17</sup> According to the IMF, emerging market and developing economies account for 57.8% of world GDP (2021). <https://www.imf.org/external/datamapper/profile/OEMDC>

<sup>18</sup> About 70% of international trade today involves global value chains (GVCs), as services, raw materials, parts, and components cross borders. <https://www.oecd.org/trade/topics/global-value-chains-and-trade/>

<sup>19</sup> Global Trade Alert database <https://www.globaltradealert.org/>

<sup>20</sup> World Bank (2021), <https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-looking-back-2020-and-outlook-2021>

<sup>21</sup> Others being National Treatment, Conflicting Requirements, and International Investment Incentives and Disincentives.

<sup>22</sup> See OECD, ILO and UNOHCHR (2019), Responsible Business - Key messages from international instruments; <http://mneguidelines.oecd.org/RBC-Key-Messages-from-International-Organisations-ENG.pdf>

<sup>23</sup> This includes for example the jointly developed OECD-FAO Guidance for Responsible Agricultural Supply Chains, which is the only OECD guidance on due diligence developed together with another international organisation.

<sup>24</sup> Belgium (agriculture and minerals), Canada (financial and garment and footwear); Colombia (agriculture), Costa Rica (agriculture), France (minerals, agriculture, garment and footwear, financial), Germany (agriculture), Italy (agriculture and garment and footwear), Norway (agriculture), Sweden (financial); Switzerland (agriculture, financial, and minerals), UK (financial), USA (agriculture), see Table 3.1, [DAF/INV/RBC(2021)6]

<sup>25</sup> All OECD Members and non-Members that have adhered to the Guidelines and related OECD legal instruments, and that participate in the work of the Investment Committee and the WPRBC, are referred to as Adherents.

<sup>26</sup> It is integrated in the Procedural Guidance of the Guidelines. See [the Decision on the Guidelines](#), sections II.3 and II.7; and *Procedural Guidance*, sections B.3.c, C.5, II.2.f, II.5.e. See also *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, paragraphs 5, 17, 39, 41, and 49.

<sup>27</sup> For example, the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443] recommends that “Adherents and where relevant their NCPs, with the support of the OECD Secretariat, ensure the widest possible dissemination of the Guidance and its active use by enterprises, ...”.

<sup>28</sup> See also *Considerations for the Chair of the Working Party on Responsible Business Conduct* [DAF/INV/WP(2012)4/REV1]; *Terms of Reference for the Global Forum on RBC* [DAF/INV(2012)5/FINAL]; *Summary Record of the Meeting of the Working Party of the Investment Committee 5 - 6 October 2011* [DAF/INV/WP/M(2011)4].

<sup>29</sup> The success of outreach efforts on RBC was also recognised in the 2017 In-Depth review of the Investment Committee [C(2017)52], which highlighted that a “major strength of the Investment Committee is its long track record of engaging with Partners” and underlined as good practice implementation of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

<sup>30</sup> Survey also stated that, with regards to certain specific issues, a broader coverage of countries would enhance the effectiveness of the implementation of the Guidelines, in the event of the OECD/G20 Inclusive Framework on BEPS covering 135 countries regarding taxation, for example.

<sup>31</sup> For example, in 2016, under China's G20 Presidency, G20 Ministers agreed on the G20 Guiding Principles for Global Investment Policymaking, which set out an expectation that investment policies should promote and facilitate the observance by investors of international best practices and applicable instruments of RBC and corporate governance. Additionally, in 2020 ASEAN and APEC Heads of State adopted the ASEAN Comprehensive Recovery Framework which cites the Guidelines and the OECD Policy Framework for Investment as well as the APEC Putrajaya Vision 2040, which includes an explicit commitment to promote RBC in trade and investment.

<sup>32</sup> Candidates must adhere to the whole Declaration. They also accept the obligations stemming from Council Decisions on implementation of the Declaration, including the Decision of the Guidelines to establish an NCP.

<sup>33</sup> The formal procedure has since been applied for three candidate countries since 2015 (Croatia, Uruguay, and Bulgaria (ongoing)). Certain elements, however, were applied previously by the Council for then-candidates Kazakhstan and Ukraine.

<sup>34</sup> The GFRBC's successful performance and well-functioning nature was also highlighted in the 2017 In-Depth Evaluation of the Investment Committee. The Investment Committee, following a request from the External Relations Committee in 2016 to review global relations strategy, equally assessed that the GFRBC consistently fulfils the OECD Global Forums criteria. Strategic value of the RBC for are also well-recognised by the institutional stakeholders.

<sup>35</sup> <https://mneguidelines.oecd.org/2014-informal-ministerial-on-rbc.htm>

<sup>36</sup> For a full list of NAPs, see <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>

<sup>37</sup> Under the Decision of the Guidelines, the OCED Investment Committee shall regularly invite the institutional stakeholders and other international partners to express their views on matters covered by the Guidelines.

<sup>38</sup> <https://www.oecdwatch.org/joint-statement-calling-for-an-effective-peer-review-programme-and-adequately-equipped-ncps/>

<sup>39</sup> <https://www.oecd.org/daf/oecd-business-and-finance-outlook-26172577.htm>

<sup>40</sup> These data strongly support the point that slavery and child labour need to be addressed as a whole-of-supply chain issue. For example, across regions it is estimated that between 28 and 43 per cent of the child labour estimated to contribute to exports does so indirectly, through preceding tiers of the supply chain (such as extraction of raw materials or agriculture); ILO, OECD, IOM, UNICEF (2019) *Ending child labour, forced labour and human trafficking in global supply chains*, <https://mneguidelines.oecd.org/Ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf>

<sup>41</sup> Note: Number of responses: 33. Based on responses to the question: Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter I. Concepts and Principles? [Scale 1-10, with 10 being highest suitability and 1 the lowest], Source: NCP Reporting Questionnaire (2020).

<sup>42</sup> Note: Number of responses: 32. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter II. General policies? [Scale 1-10, with 10 being highest suitability and 1 the lowest], Source: NCP Reporting Questionnaire (2020).

<sup>43</sup> OECD NCP Case database, relevant as of February 2021.

<sup>44</sup> Response by the IC to the Substantiated Submission by OECD Watch regarding the Australian National Contact Point [https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm\\_uploads/2021/03/IC%20response%20to%20OW%20substantiated%20submission-%20DAF%20INV\(2018\)34\\_FINAL.pdf](https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm_uploads/2021/03/IC%20response%20to%20OW%20substantiated%20submission-%20DAF%20INV(2018)34_FINAL.pdf)

<sup>45</sup> Since 2011 there have been at least 15 cases brought to NCPs concerning entities not traditionally considered “enterprises.” and at least 9 cases brought against “domestic” enterprises, or enterprises without an obvious international dimension.

<sup>46</sup> OECD (2011) Guidelines for Multinational Enterprises, Chapter II, Commentary para 15

<sup>47</sup> See OECD (2017) Due diligence guidance for Meaningful Stakeholder Engagement in the Extractive Sector. Table 7. <https://doi.org/10.1787/9789264252462-en>.

<sup>48</sup> Specific instance concerning the activities of G4S submitted by Human Rights Law Centre (HRLC, an Australian NGO) and Rights and Accountability in Development (2014) Australian NCP

<sup>49</sup> Response by the IC to the Substantiated Submission by OECD Watch regarding the Australian National Contact Point [https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm\\_uploads/2021/03/IC%20response%20to%20OW%20substantiated%20submission-%20DAF%20INV\(2018\)34\\_FINAL.pdf](https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm_uploads/2021/03/IC%20response%20to%20OW%20substantiated%20submission-%20DAF%20INV(2018)34_FINAL.pdf)

<sup>50</sup> These guidance are: OECD (2011), Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; OECD (2016), Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector; OECD (2016), OECD-FAO Guidance for Responsible Agricultural Supply Chains; OECD (2017), Responsible Business Conduct for Institutional Investors; OECD (2017), OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector; OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct; and, OECD (2019), OECD Due Diligence Guidance for Responsible Corporate Lending and Securities Underwriting. All guidance are available at: <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

<sup>51</sup> Gordon, K., J. Pohl and M. Bouchard (2014), “Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey”, OECD Working Papers on International Investment, 2014/01, OECD Publishing. <http://dx.doi.org/10.1787/5jz0xvgx1zlt-en>

<sup>52</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>

<sup>53</sup> The OECD Principles of Corporate Governance form an integral part of the Recommendation of the Council on Principles of Corporate Governance [OECD/LEGAL/0413]. The Principles of Corporate Governance were endorsed by the Leaders of the G20 at the Antalya Summit on 15-16 November 2015 and by the members of the Financial Stability Board (FSB), who designated the Principles as one of the FSB’s Key Standards for Sound Financial Systems.

<sup>54</sup> See OECD (2017) Due diligence for Meaningful Stakeholder Engagement in the Extractive Sector <https://doi.org/10.1787/9789264252462-en>.

<sup>55</sup> See OECD (2021), *Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment*, <http://mneguidelines.oecd.org/engagement-with-trade-unions-in-due-diligence-processes-conducted-by-industry-led-or-multi-stakeholder-initiatives.pdf>.

<sup>56</sup> See OECD (2020), *Digitalisation and Responsible Business Conduct Stocktaking of Policies and Initiatives*, <https://mneguidelines.oecd.org/Digitalisation-and-responsible-business-conduct.pdf>.

<sup>57</sup> United Kingdom Home Office (2020), Online Harms White Paper, <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper#executive-summary>.

<sup>58</sup> Number of responses: 31. Based on responses to the question: Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter III. Disclosure? [Scale 1-10, with 10 being highest suitability and 1 the lowest], Source: NCP Reporting Questionnaire (2020).

<sup>59</sup> The EU Non-financial reporting directive calls on companies meeting certain thresholds to publically report information concerning matters related to the environment, social and employee matters, respect for human rights, and anti-bribery and corruption. It makes direct reference to recommendations of the Guidelines. Specifically the EU Directive references the Guidelines as a framework which companies can rely upon in fulfilling their reporting obligations under Directive and by including an expectation that companies report on their due diligence systems and outcomes. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

<sup>60</sup> The OECD Centre for RBC catalogued these expectations in 2015. OECD-CDSB (2018) Climate change disclosure in G20 countries: Stocktaking of corporate reporting schemes <https://www.oecd.org/investment/corporate-climate-change-disclosure-report.htm>. Since then however there have been additional significant developments most notably the introduction of the recommendations of the Task-Force on Climate Related Reporting which several countries are looking to integrate into regulation. The Environment Chapter also includes expectations on sustainability reporting which may merit updating based on these developments.

<sup>61</sup> For example a study by the Corporate Alliance for Transparency has found that only 36% of companies reporting under the EU Non Financial Reporting Directive describe their human rights due diligence system, 26% provide a clear statement of salient issues and 10% describe examples or indicators to demonstrate effective management of those issues. Alliance for Corporate Transparency (2019) [https://www.allianceforcorporatetransparency.org/assets/2019\\_Research\\_Report%20Alliance\\_for\\_Corporate\\_Transparency-7d9802a0c18c9f13017d686481bd2d6c6886fea6d9e9c7a5c3cfafea8a48b1c7.pdf](https://www.allianceforcorporatetransparency.org/assets/2019_Research_Report%20Alliance_for_Corporate_Transparency-7d9802a0c18c9f13017d686481bd2d6c6886fea6d9e9c7a5c3cfafea8a48b1c7.pdf)

<sup>62</sup> In response to the IFRS' stated intention to focus on financial materiality, in its submission the OECD noted the importance of financially material as well as environmentally and socially material disclosures and the fact that the financial relevance and impact of environmental and social factors is dynamic and evolving. OECD Response to the IFRS Foundation Consultation on Sustainability Reporting (2020) [http://eifrs.ifrs.org/eifrs/comment\\_letters/570/570\\_27468\\_RobertPatalanoOrganisationforEconomicCooperationandDevelopmentOECD\\_0\\_OECDCommentLettertoIFRSFoundation\\_SustainabilityReporting\\_23Dec2020.pdf](http://eifrs.ifrs.org/eifrs/comment_letters/570/570_27468_RobertPatalanoOrganisationforEconomicCooperationandDevelopmentOECD_0_OECDCommentLettertoIFRSFoundation_SustainabilityReporting_23Dec2020.pdf)

<sup>63</sup> Most notably this has been the approach of the EU Non-Financial Reporting Directive (NFRD). Responses to the IFRS consultation have noted a diversity of perspectives with respect to materiality assessment. See Environmental Finance, 'Double materiality' splits market in IFRS sustainability standards consultation, 07 January 2021 <https://www.environmental-finance.com/content/news/double-materiality-splits-market-in-ifrs-sustainability-standards-consultation.html>

<sup>64</sup> Paragraph 30 of the Disclosure chapter provides that "In order to determine what information should be disclosed at a minimum, the Guidelines use the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the *economic decisions* taken by users of information." (emphasis added).

<sup>65</sup> See OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Section II.5.1, <https://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>.

<sup>66</sup> For example, GRI, the world's leading sustainability reporting framework used by over 5,000 companies and the majority of S&P 500 companies, recently modified its universal reporting standards to integrate and align with recommendations of the OECD Due Diligence Guidance for Responsible Business Conduct. See Review of GRI's Universal Standards (GRI 101, 102 and 103) <https://www.globalreporting.org/standards/work-program-and-standards-review/review-of-gris-universal-standards/> The EU Non-financial Reporting Directive also calls on companies to report on their due diligence processes and policies for managing environmental and social risk in line with OECD recommendations. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095> The EU Regulation for Sustainable Disclosure for Investors sets out how European asset managers should integrate ESG issues into their processes, including reporting on adherence to internationally recognised standards for due diligence, and referencing due diligence guidance developed by the OECD. Official Journal of the European Union (2019), REGULATION (EU) 2019/2088 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 November 2019 on sustainability-related disclosures in the financial services sector, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&rid=1>.

<sup>67</sup> Note: Number of responses: 31. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter IV. Human rights? [Scale 1-10, with 10 being highest suitability and 1 the lowest], Source: NCP Reporting Questionnaire (2020).

<sup>68</sup> OECD Database of Specific Instances, relevant as of February 2021, <https://mneguidelines.oecd.org/database/>.

<sup>69</sup> OECD (2020), *Digitalisation and Responsible Business Conduct: Stocktaking of Policies and Initiatives*, <https://mneguidelines.oecd.org/Digitalisation-and-responsible-business-conduct.pdf>.

<sup>70</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

<sup>71</sup> <https://op.europa.eu/en/publication-detail/-/publication/ab151420-d60a-40a7-b264-adce304e138b>

<sup>72</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018) (the Escazú agreement). Ratified by Antigua and Barbuda, Argentina, Bolivia, Ecuador, Guyana, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Uruguay (as at February 2021). The Agreement articulates, amongst other, the responsibilities of countries to ensure that human rights defenders – in the broad sense of the term – are able to act free from the threat of retaliation, including by adopting measures to prevent, investigate, and punish attacks.

<sup>73</sup> See <https://www.ohchr.org/en/issues/business/pages/hrdefenderscivicspace.aspx>

<sup>74</sup> In response to the increase in reports of retaliation against stakeholders, a number of companies have adopted policies and codes of conduct addressing these risks. For example, a number of development finance institutions – multilateral and bilateral – have released public-facing documents on how retaliation will be addressed (cf. [IFC position statement](#) (2018)).

<sup>75</sup> Beyond the development finance context, a number of multinational companies have also taken the lead to address retaliation against their stakeholder, including through zero-tolerance position statements on retaliation against stakeholders, also those critical of the companies' activities (see, for example [ENI](#), [Vale](#) and [Kellogg](#)) or through a focus on workers by including dedicated provisions against retaliation against workers in supplier codes of conduct and enforcement protocols (see, for example, [ADIDAS](#)).

<sup>76</sup> Factsheet by OECD Watch and Business and Human Rights Resource Centre, 2019. <https://www.oecdwatch.org/human-rights-defenders-face-reprisals-heres-what-oecd-and-national-contact-points-can-do-to-protect-them/>

<sup>77</sup> Statement available at <https://mneguidelines.oecd.org/ncps/working-party-on-rbc-statement-march-2020.htm>

<sup>78</sup> ILO, OECD, IOM, UNICEF (2019) *Ending child labour, forced labour and human trafficking in global supply chains*, <https://mneguidelines.oecd.org/ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.htm>.

<sup>79</sup> <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>

<sup>80</sup> <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>

<sup>81</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

<sup>82</sup> The requirement to consult with indigenous peoples with an absolute view to obtain their FPIC for specific activities is reflected in international Finance Corporation's Environmental and Social Performance Standards (2012, see Performance Standard 7 Indigenous Peoples) and similarly in the Equator Principles which are based on the IFC's Performance Standards. Similarly, the members of the International Council of Mining and Metals have committed to upholding the principle of FPIC in their activities (ICMM Position Statement on Indigenous Peoples). In the agriculture sector, the FPIC is a central requirement of the Principles and Criteria of the Roundtable for Sustainable Palm Oil (Principles and Criteria, 2005 and Guide on FPIC 2015). Through their role as investors, UN agencies such as the Food and Agriculture Organization (Policy on Indigenous and Tribal Peoples, 2010), UNDP (Social and Environmental Standards, 2020) and International Fund for Agricultural Development (Seeking Free, Prior and



Informed Consent in IFAD Investment Projects, 2015) have also adopted standards and requirement for FPIC in their investment activities and programmes.

<sup>83</sup> Currently no UN Member State opposes the UN Declaration on the Rights of Indigenous Peoples (Declaration) – the most comprehensive and authoritative instrument on the human rights of indigenous peoples. Governments have also re-affirmed their commitment to this Declaration – including the principle of FPIC – through the adoption of the outcome document of the high-level summit also known as the UN World Conference on Indigenous Peoples (2014).

<sup>84</sup> In 2016, the Organization of American States (OAS) adopted the American Declaration on the Rights of Indigenous Peoples, granting specific protection for indigenous peoples in North America, Mexico, Central and South America, and the Caribbean. It reiterates the need to consult and cooperate in good faith with indigenous peoples to obtain their free, prior and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

<sup>85</sup> See, e.g. Initiative for Responsible Mining Assurance, Forest Stewardship Council Principles and Criteria, and Bonsucro Production Standards.

<sup>86</sup> The Voluntary Guidelines on Tenure promote secure tenure rights and equitable access to land, fisheries and forests with respect to all forms of tenure: public, private, communal, indigenous, customary and informal (2012). They offer guidance on a range of land rights issues beyond forced displacement, such as respecting the vulnerable tenure of women, customary, communal, and collective tenure holders, and respecting the legitimacy of undocumented tenure. The Voluntary Guidelines are directed towards states, but also call on business enterprises to act with due diligence to avoid infringing human rights and legitimate tenure rights, ensure risk management systems to address adverse impacts on human rights and legitimate tenure rights, provide for or cooperate in remedy where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights, and identify and assess actual and potential impacts on human rights and legitimate tenure rights in which they may be involved

<sup>87</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (2019): Gender dimensions of the Guiding Principles on Business and Human Rights, A/HRC/41/43.

<sup>88</sup> See, e.g. UN Committee on Elimination of All Forms of Discrimination Against Women, “General recommendations on women’s access to justice,” CEDAW/C/GC/33, 23 July 2015, available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf).

<sup>89</sup> Including, for example, in the General Due Diligence Guidance for Responsible Business Conduct (2018), the OECD-FAO Guidance on Responsible Agricultural Supply Chains (2016), Responsible Supply Chains in the Garment and Footwear Sector (2017).

<sup>90</sup> These include the Inter-American Convention on protecting the rights of older persons (2015), a Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons was similarly (2018), a new Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (2018) and a Global Compact for Safe, Orderly and Regular Migration endorsed by the UN General Assembly in 2018. The EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013) called on the European Commission to take proposals to end discrimination in employment and access to goods and services, amongst other. In its resolution of 14 February 2019 on the future of the LGBTI list of actions Parliament asked the Commission to make LGBTI rights a priority in its work programme for 2019 to 2024 by mainstreaming them across all relevant directorates-general, and adopting a further strategy for this period.

<sup>91</sup> UN Women, “Intersectional feminism: what it means and why it matters right now,” 1 July 2020, available at: <https://www.unwomen.org/en/news/stories/2020/6/explainer-intersectional-feminism-what-it-means-and-why-it-matters>; and UNHRC, “Human Rights Council holds annual panel discussion on the integration of a gender perspective in its work,” 28 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26309&LangID=E>.

<sup>92</sup> UN Guiding Principles on Business and Human Rights at 10. The Impact of the UNGPs on Courts and Judicial Mechanisms. Debevoise & Plimpton LLP. <https://www.debevoise.com/insights/publications/2021/07/un-guiding-principles>. Report prepared in conjunction with the 'UNGPs 10+' project organized by the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises.

<sup>93</sup> See recent judgement in *Milieudefensie et al v Royal Dutch Shell* which referenced both the OECD Guidelines and UNGPs for instance. <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>. See also UN Guiding Principles on Business and Human Rights at 10. The Impact of the UNGPs on Courts and Judicial Mechanisms. Debevoise & Plimpton LLP. <https://www.debevoise.com/insights/publications/2021/07/un-guiding-principles>.

<sup>94</sup> Note: Number of responses: 30. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter V. Employment and industrial relations? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020)

<sup>95</sup> In Norway, the National Contact point for RBC follows up Norway's obligations under the OECD Guidelines and the ILO Tripartite Declaration. See *Terms of Reference for Norway's National Contact Point for Responsible Business Conduct* <https://files.nettsteder.regjeringen.no/wpuploads01/blogs.dir/263/files/2019/01/EN-Mandat-Kontaktpunktet-2018.pdf>

<sup>96</sup> ILO (2017), *Purchasing practices and low wages in global supply chains: Empirical cases from the garment industry*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_561141.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_561141.pdf); and ILO (2017), *Purchasing practices and working conditions in global supply chains: Global Survey results*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_556336.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf); and ILO (2015), *Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges, and opportunities*, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf).

<sup>97</sup> Global Deal (2018), Building Trust in a Changing World of Work, <https://www.theglobaldeal.com/resources/GLOBAL-DEAL-FLAGSHIP-REPORT-2018.pdf>

<sup>98</sup> ILO Centenary Declaration for the Future of Work, 2019. Available at <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/centenary-declaration/lang--en/index.htm>

<sup>99</sup> Article 1.2. provides that "a. AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights. b. To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination, that are appropriate to the context and consistent with the state of art.

<sup>100</sup> European Commission, 2014. An EU strategic framework on health and safety at work 2014-2020, Communication from the Commission, Brussels, 6.6.2014 COM (2014) 332 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332>; European Commission, 2017. Safer and healthier work for all — Modernisation of the EU occupational safety and health legislation policy, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 10.1.2017 COM(2017) 12 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017DC0012&from=EN>

<sup>101</sup> G20 Statement on the Global Prevention Initiative 'Vision Zero Fund', G20 Labour and Employment Ministers Meeting 2017, May 19, 2017, Bad Neunahr.

<sup>102</sup> Ending child labour, forced labour and human trafficking in global supply chains: International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration and United Nations Children's Fund, 2019, pg. 23.

<sup>103</sup> ILO; 2018. *Women and men in the informal economy: A statistical picture* (Third edition). It provides comparable estimates on the size of the informal economy and a statistical profile of informality using criteria from more than 100 countries.



<sup>104</sup> ILO, 2020, Impact of lockdown measures on the informal economy. Available at: [https://www.ilo.org/wcmsp5/groups/public/-/-ed\\_protect/-/-protrav/-/-travail/documents/briefingnote/wcms\\_743523.pdf](https://www.ilo.org/wcmsp5/groups/public/-/-ed_protect/-/-protrav/-/-travail/documents/briefingnote/wcms_743523.pdf)

<sup>105</sup> The OECD Better Life Index by periodically comparing the level of well-being among member countries and key partners highlights work-family balance as an essential topic in terms of the population's quality of life (<http://www.oecdbetterlifeindex.org/topics/work-life-balance/>); See also the work of the International Center for Work and Family (ICWF) / IESE Business School <https://www.iese.edu/faculty-research/research-centers/icwf-international-center-work-family>.

<sup>106</sup> Note: Number of responses: 31. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter VI. Environment? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>107</sup> Achieving the goals of the Paris Agreement requires ambitious action by the private sector to reduce greenhouse gas (GHG) emissions, strengthen the climate resilience of companies to adapt, and ensuring finance flows are consistent with a pathway towards low greenhouse gas emissions and climate-resilient development; The Paris Agreement; [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

<sup>108</sup> The platform supports related policy initiatives including the EU Taxonomy Regulation and the overarching European Green Deal; European Commission, Platform on sustainable finance: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en)

<sup>109</sup> Objective is to scale up the mobilisation of private capital towards environmentally sustainable investments; European Commission; [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/international-platform-sustainable-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/international-platform-sustainable-finance_en)

<sup>110</sup> <https://www.banque-france.fr/en/financial-stability/international-role/network-greening-financial-system>

<sup>111</sup> See for example OECD (2021), Lobbying in the 21<sup>st</sup> Century: Transparency, Integrity and Access, OECD Publishing, Paris, <https://doi.org/10.1787/c6d8eff8-en>; World Resources Institute (2014), Corporate Lobbying on Climate Change: Silence is not Neutrality, <https://www.wri.org/insights/corporate-lobbying-climate-change-silence-not-neutrality>; IIGCC (2018), Investor Expectations on Corporate Lobbying, <https://www.iigcc.org/resource/investor-expectations-on-corporate-lobbying/>.

<sup>112</sup> Sectors relying heavily on ecosystem services stemming from biodiversity (e.g. water or land-use) have been shown to be more vulnerable to environmental threats such as climate change – leading to increased likelihood of negative supply shocks and related adverse impacts of people and the planet. Kedward, K., Ryan-Collins, J. and Chenet, H. (2020). Managing nature-related financial risks: a precautionary policy approach for central banks and financial supervisors. UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2020-09); <https://www.ucl.ac.uk/bartlett/public-purpose/wp2020-09>. See also NCP cases

<sup>113</sup> For example: Science-based Targets Network (2020) Science-based Targets for Nature: Initial Guidance for Business <https://sciencebasedtargetsnetwork.org/wp-content/uploads/2020/11/Science-Based-Targets-for-Nature-Initial-Guidance-for-Business.pdf>; Trucost; <https://www.trucost.com/>; Carbon Disclosure Project (CDP), <https://www.cdp.net/en>.

<sup>114</sup> For example, the EU Taxonomy Regulation (2020) and the Green Bond Catalogue issued in 2015 by the People's Bank of China; OECD (2020), Developing Sustainable Finance Definitions and Taxonomies, Green Finance and Investment, OECD Publishing, Paris, <https://doi.org/10.1787/134a2dbe-en>. See also Chapter III on Disclosure.

<sup>115</sup> TCFD recommendations on disclosure span governance, strategy, risk management, and metrics and targets – and recommend the use of scenario analysis; <https://www.tcfddhub.org/scenario-analysis/>

<sup>116</sup> PBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services; <https://doi.org/10.5281/zenodo.3553579>

<sup>117</sup> The Economics of Biodiversity: The Dasgupta Review (2021); [https://catalogue.unccd.int/1659\\_Dasgupta\\_Review\\_-\\_Headline\\_Messages.pdf](https://catalogue.unccd.int/1659_Dasgupta_Review_-_Headline_Messages.pdf)

<sup>118</sup> A set of five strategic goals and 20 targets that Parties to the UN Convention on Biological Diversity (CBD) are intended to use as a guiding framework for their national commitments towards biodiversity conservation, sustainable use and the equitable sharing of its benefits arising from the use of genetic resources; OECD (2019), “The Post-2020 Biodiversity Framework: Targets, indicators and measurability implications at global and national level”, November version.

<sup>119</sup> Convention on Biological Diversity, CBD and Business Engagement; <https://www.cbd.int/business/bc.shtml>.

<sup>120</sup> Taskforce on Nature-related Financial Disclosures (TNFD); <https://tnfd.info/>

<sup>121</sup> For example, trends in climate change litigation have shown an increasing number of cases, including actions relying on human rights enshrined in international law and national constitutions; challenges to domestic enforcement (or lack of enforcement) of climate-related laws and policies; actions challenging fossil fuel extraction or resource-dependent projects; claims focused on corporate liability and responsibility for climate harms ; addressing failures to adapt to climate change; and seeking accurate climate disclosures - including targeting greenwashing; UN Environment Programme (2002). Global Climate Litigation Report: 2020 Status Review; <https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y>.

<sup>122</sup> For example, the UN Climate Change Fashion Charter for Climate Action and the Race to Zero and Race to Resilience Dialogues being led by the COP26 High Level Climate Champions: <https://unfccc.int/climate-action/sectoral-engagement/fashion-for-global-climate-action>; <https://unfccc.int/climate-action/race-to-zero/race-to-zero-november-dialogues-programme>

<sup>123</sup> For example, see Food and Agriculture Organisation of the United Nations (FAO), Gateway to Farm Animal Welfare; [http://www.fao.org/ag/againfo/themes/animal-welfare/aw-resources/codes-of-practice-and-recommendations/en/?no\\_cache=1](http://www.fao.org/ag/againfo/themes/animal-welfare/aw-resources/codes-of-practice-and-recommendations/en/?no_cache=1)

<sup>124</sup> OECD/FAO (2016), OECD-FAO Guidance for Responsible Agricultural Supply Chains, OECD Publishing, Paris, <https://doi.org/10.1787/9789264251052-en>; OECD (2018); and OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, OECD Publishing, Paris, <https://doi.org/10.1787/9789264290587-en>.

<sup>125</sup> See notably the standards developed by the World Organisation for Animal Health (OIE), the International Organization for Standardization (ISO) TS34700, the International Finance Cooperation’s the Good Practice Note ‘Improving Animal Welfare in Livestock Operations’, and UNEP’s finance initiative’s principles for responsible banking (2019) and for non-life insurance business (in 2020), which refer to the FARMS Initiative Responsible Minimum Standards as a key resource for farm animal welfare.

<sup>126</sup> Standards of the OIE represent are agreed by 180 countries. Other commonly referenced standards that have built upon the OIE’s baseline include the FARMS Initiative Responsible Minimum Standards (<https://www.farms-initiative.com/>.) and the Five Domains Model (See David J. Mellor, “Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare.” 2017, [https://www.researchgate.net/publication/319020431\\_Operational\\_Details\\_of\\_the\\_Five\\_Domains\\_Model\\_and\\_Its\\_Key\\_Applications\\_to\\_the\\_Assessment\\_and\\_Management\\_of\\_Animal\\_Welfare](https://www.researchgate.net/publication/319020431_Operational_Details_of_the_Five_Domains_Model_and_Its_Key_Applications_to_the_Assessment_and_Management_of_Animal_Welfare).)

<sup>127</sup> OECD (2019), Accelerating Climate Action: Refocusing Policies through a Well-being Lens, OECD Publishing, Paris, <https://doi.org/10.1787/2f4c8c9a-en>; Just Transition Centre (2017). Just Transition: A report for the OECD, <https://www.oecd.org/environment/cc/q20-climate/collapsecontents/Just-Transition-Centre-report-just-transition.pdf>

<sup>128</sup> OECD (2019), Global Material Resources Outlook to 2060, <https://www.oecd.org/environment/global-material-resources-outlook-to-2060-9789264307452-en.htm>

<sup>129</sup> [Final Statement: Complaint by Friends of the Earth, Egan, Dodds and Simons regarding ANZ Group \(ausncp.gov.au\)](#)

<sup>130</sup> Number of responses: 30. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter VII. Combatting bribery, bribe solicitation and extortion? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>131</sup> OECD NCP Case database, relevant as of December 2020

<sup>132</sup> See for example United Nations (2020) [Connecting the Business and Human Rights and Anti-Corruption Agendas](#)

<sup>133</sup> United Nations (2003), [United Nations Convention against Corruption](#)

<sup>134</sup> United Nations (2020) [Connecting the Business and Human Rights and Anti-Corruption Agendas](#)

<sup>135</sup> See for example the OECD (2017), Recommendation of the Council on Public Integrity [\[OECD/LEGAL/0435\]](#), OECD (2010), Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [\[OECD/LEGAL/0379\]](#), the 2016 OECD Framework for Financing Democracy. On corporate sponsorship, see Council of the European Union (2020), [Sponsorship of the Presidency of the Council of the European Union: guidance on best practice](#)

<sup>136</sup> Over the period of 2012-2020, there was an increase in the number of countries adherent to the Guidelines who adopted regulations to restrict i) company donations to political parties; ii) company donations to political parties; iii) foreign donations to political parties; and/or iv) foreign donations to political candidates. Data obtained from [International IDEA's Political Finance database](#), retrieved 4 February 2021.

<sup>137</sup> See for example the 2020 report by [Centre for Political Accountability](#), which maps trends in US companies voluntary disclosure of political donations.

<sup>138</sup> See for example OECD (2020), [Public Integrity Handbook](#); OECD (2016), [Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture](#)

<sup>139</sup> See for example the work of [IPACS \(International Partnership Against Corruption in Sport\)](#)

<sup>140</sup> See for example [OECD \(2016\), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition](#)

<sup>141</sup> See for example OECD (2021), Frequently Asked Questions: How to address bribery and corruption risks in mineral supply chains, <https://mneguidelines.oecd.org/faq-how-to-address-bribery-and-corruption-risks-in-mineral-supply-chains.pdf>

<sup>142</sup> See for example OECD (2020) [Corporate Anti-Corruption Compliance Drivers, Mechanisms and Ideas for Change](#)

<sup>143</sup> See for example Taylor, A. (2017), "The Five Levels of an Ethical Culture: How to build and sustain organisations with integrity", BSR, San Francisco, [https://www.bsr.org/reports/BSR\\_Ethical\\_Corporate\\_Culture\\_Five\\_Levels.pdf](https://www.bsr.org/reports/BSR_Ethical_Corporate_Culture_Five_Levels.pdf)

<sup>144</sup> See for example OECD (2020), [Responsible Business Conduct and Anti-Corruption Compliance in Southeast Asia: Practices, progress and challenges](#); United Nations (2020) [Connecting the Business and Human Rights and Anti-Corruption Agendas](#); World Economic Forum (2020) [Good Intentions, Bad Outcomes? How Organisations can make the leap from Box-Ticking Compliance to Building a Culture of Integrity](#). On responsible lobbying in particular, see OECD (2021), [Lobbying in the 21st Century: Transparency, Integrity and Access](#), OECD Publishing, Paris, <https://doi.org/10.1787/c6d8eff8-en>.

<sup>145</sup> On SOEs, see for example 2019 Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State Owned Enterprises [\[OECD/LEGAL/0451\]](#). On public procurement see for example 2015 Recommendation of the Council on Public Procurement [\[OECD/LEGAL/0411\]](#) and [Directive 2014/24/EU](#) of the European Parliament and of the Council of 26 February 2014 on public procurement. See also OECD(2014), [Foreign Bribery Report](#), OECD (2016), [Preventing Corruption in Public Procurement](#) and the [Methodology for Assessing Procurement Systems](#) (MAPs), in particular [Pillar IV Accountability, Integrity and Transparency of the Public Procurement System](#).

<sup>146</sup> See for example the Directive EU 2019/1937 of the [European Parliament and of the Council on the protection of persons who report breaches of Union law](#); OECD (2016) [Committing to Effective Whistleblower Protection](#)

<sup>147</sup> See for example Brazil's [Clean Company Act 2014 \(Law No. 12 846\)](#) and [Decree 8420/2015](#)

<sup>148</sup> Note: Number of responses: 29. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter VIII. Consumer interests? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>149</sup> OECD NCP Case database, relevant as of December 2020

<sup>150</sup> See respectively <https://unctad.org/fr/node/2833> and <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>

<sup>151</sup> Recommendation of the Council on Consumer Product Safety [OECD/LEGAL/0459] of 2020, which is a revision of the 1999 version of the Recommendation, referred to in Chapter VIII; in addition, work is ongoing on a revision of the 2012 Recommendation of the Council on the Protection of Children Online [OECD/LEGAL/0389]. For a discussion about the latest developments around privacy and (consumer) data, see <https://mneguidelines.oecd.org/Digitalisation-and-responsible-business-conduct.pdf>

<sup>152</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), see <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>153</sup> Note: Number of responses: 29. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter IX Science and technology? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>154</sup> See for example, STI report on R&D investment in AI, *World Corporate Top R&D Investors: Shaping the future of technologies and of AI*, <http://www.oecd.org/sti/world-corporate-top-rd-investors-shaping-future-of-technology-and-of-ai.pdf>.

<sup>155</sup> See UNCTAD database of cybercrime legislation, <https://unctad.org/page/cybercrime-legislation-worldwide>.

<sup>156</sup> See US, UK, and Australia bans on Huawei networks, <https://news.sky.com/story/huawei-the-company-and-the-security-risks-explained-11620232>.

<sup>157</sup> See global database of data protection laws, <https://www.dlapiperdataprotection.com/index.html?t=about&c=IL>.

<sup>158</sup> See for example the Recommendation of the Council on Digital Security, Risk Management for Economic and Social Prosperity [OECD/LEGAL/0415] (2015), Recommendation of the Council on Health Data Governance [OECD/LEGAL/0433] (2016), and Recommendation of the Council on Digital Security of Critical Activities [OECD/LEGAL/0456] (2019).

<sup>159</sup> Currently, three Council Recommendations relating to science and technology are undergoing review and potential revision in their relevant committees in order to reflect current technological innovation and political and economic realities. These are the Recommendation of the Council for Facilitating International Technology Co-operation with and Involving Enterprises [OECD/LEGAL/0282], the Recommendation on International Co-operation in Science and Technology [OECD/LEGAL/0237], and the Recommendation on the Protection of Children Online [OECD/LEGAL/0389].

<sup>160</sup> OECD (2020), Digitalisation and Responsible Business Conduct: Stocktaking of Policies and Initiatives, <https://mneguidelines.oecd.org/rbc-and-digitalisation.htm>; OECD (2021), Business and Financial Outlook 2021: AI in Business and Finance, <https://www.oecd.org/daf/oecd-business-and-finance-outlook-26172577.htm>.

<sup>161</sup> OHCHR (n.d.), B-Tech Project, <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>.

<sup>162</sup> European Commission, ICT sector guide on implementing the UN guiding principles on business and human rights, <https://op.europa.eu/en/publication-detail/-/publication/ab151420-d60a-40a7-b264-adce304e138b>.

<sup>163</sup> Doha Declaration on the TRIPS agreement and public health, World Trade Organisation Ministerial 2001, [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm).

<sup>164</sup> Recommendation of the Council on Responsible Innovation in Neurotechnology [OECD/LEGAL/0457].

<sup>165</sup> OECD (2006), Guidelines for the Licencing of Genetic Inventions, <https://www.oecd.org/sti/emerging-tech/36198812.pdf>.

<sup>166</sup> Note: Number of responses: 28. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter X. Competition? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>167</sup> OECD NCP Case database, relevant as of December 2020.

<sup>168</sup> [Molinos Río de la Plata and Maxiconsumo](#) submitted to the NCP of Argentina; a [case on competition issues in Gabon](#) handled by the NCP of France alleging the establishment of a monopoly by a French company; and [Intesa Sanpaolo S.p.A. and Lady Lawyer Foundation \(LLF\)](#). The two latter cases were not accepted in part because it was determined that the issue would be better handled through a different national procedure.

<sup>169</sup> This paper was produced jointly by the RBC Centre and OECD Competition division. See OECD (2015) Competition law and RBC <https://mneguidelines.oecd.org/global-forum/2015GFRBC-Competition-Law-RBC.pdf>.

<sup>170</sup> This is part of the work stream of the OECD Competition Divisions ([Sustainability and competition - OECD](#)), and see also [www.oecd.org/daf/competition/sustainability-and-competition-2020.pdf](http://www.oecd.org/daf/competition/sustainability-and-competition-2020.pdf).

<sup>171</sup> The European Commission is also exploring this issue in the context of its Green Deal [[Call for contributions en.pdf \(mlex.com\)](#)]

<sup>172</sup> OECD (2020), Abuse of dominance in digital markets, [www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf](http://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf)

<sup>173</sup> <http://www.oecd.org/daf/competition/competition-in-digital-advertising-markets.htm>

<sup>174</sup> Pike, C, and A. Capobianco (2020), *Antitrust and the trust machine*, <http://www.oecd.org/daf/competition/antitrust-and-the-trust-machine-2020.pdf>

<sup>175</sup> Note: Number of responses: 31. Based on responses to the question: How does your country evaluate the continued relevance of the provisions in this Chapter XI. Taxation? [Scale 1-10, with 10 being highest suitability and 1 the lowest]. Source: NCP Reporting Questionnaire (2020).

<sup>176</sup> OECD NCP Case database, relevant as of December 2020

<sup>177</sup> <http://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-july-2019-july-2020.pdf>

<sup>178</sup> <https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2020.pdf>

<sup>179</sup> <https://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>. Today, the implementation of both standards is monitored by the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes, which includes 161 members. As of January 2021, 96 jurisdictions have started automatic exchanges and information has been exchanged on over 84 million financial accounts.

<sup>180</sup> [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)



<sup>181</sup> Number of responses: 30. Based on responses to the question: How does your country evaluate the continued relevance of the provisions of the Procedural Guidance?

<sup>182</sup> Number of responses: 33. Based on responses to the question: How does your country evaluate the suitability of the provisions of the Procedural Guidance regarding interpretation of the Guidelines and monitoring of the NCP network, taking into account the creation of the WPRBC in 2013?

<sup>183</sup> See <https://www.oecd.org/corporate/mne/annualreportsontheguidelines.htm>

<sup>184</sup> Since 2014, OHCHR has been implementing the [Accountability and Remedy Project](#) to enhance the effectiveness remedies in cases of business involvement in severe human rights abuses. In 2017, the UN Working Group on Business and Human Rights [clarified](#) what constitutes an effective remedy. In 2016, the Council of Europe [recommended](#) that States examine how to reduce barriers to access to remedy. A 2017 [opinion](#) by the European Union Agency for Fundamental Rights (FRA) highlight persisting challenges and provides recommendations on how to ensure effective access to remedy within the EU.

<sup>185</sup> See also Australian NCP ANZ Banking Group, and Inclusive Development International and Equitable Cambodia (2018), which asserted the role of ANZ to contribute to remedy for harms to which it had contributed through lending.

<sup>186</sup> See, for example, (Swiss NCP, 2019), Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia and (UK NCP, 2019) British American Tobacco (BAT) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

<sup>187</sup> IDA/IBRD Inspection Panel (2017), IFC/MIGA Compliance Advisor Ombudsman (2017), Asian Development Bank's Accountability Mechanism (2018) and IDB/IDB Invest Independent Consultation and Investigation Mechanism (2019).

<sup>188</sup> See UK Supreme Court, *Okpabi and others v Royal Dutch Shell Plc* (2021), UK Supreme Court's *Lungowe v Vedanta* (2019).

<sup>189</sup> See e.g. Černič, Jernej Letnar. "The Divergent Practices of NCPs under OECD Guidelines for Multinational Enterprises: Time for a More Uniform Approach?" *International Labor Rights Case Law* 7.1 (2021): 11-16.; Lorion, Sébastien. "Définir les Points focaux gouvernementaux pour les droits de l'homme : Pratique, orientations et concept", *Danish Institute for Human Rights* (2021); Baaij, Cornelis JW. "From Conciliation to Quasi-Adjudication: Quantifying the Judicialization of OECD Dispute Resolution between Global Businesses and Local Stakeholders." *available at SSRN 3662296* (2020); Buhmann, Karin. "National Contact Points under OECD's Guidelines for Multinational Enterprises: Institutional Diversity Affecting Assessments of the Delivery of Access to Remedy." *Accountability, International Business Operations and the Law: Providing Justice for Corporate Human Rights Violations in Global Value Chains*. Routledge, 2019. 38-59; Kaufmann, Christine, Nicola Bonucci, and Catherine Kessedjian. "National contact points and access to remedy under the UNGP-Why two can make a dream so real." (2018): 175-184; Macchi, Chiara. "The Role of the OECD National Contact Points in Improving Access to Justice for Victims of Human Rights Violations in the EU Member States." *La implementación de los Principios Rectores de las Naciones Unidas sobre empresas y los derechos humanos por la Unión Europea y sus Estados miembros*, Thomson Reuters-Aranzadi (2017): 145-165; Souque, Maylis. "Structure et rôle des Points de Contact Nationaux : Diversité et Culture." In *Actes du colloque organisé par l'OCDE et la SFDI pour les 40 ans des Principes directeurs de l'OCDE le 19 décembre 2016*, edited by Maylis Souque, 141-155. Pedone (2017); van't Foort, Sander. "The History of National Contact Points and the OECD Guidelines for Multinational Enterprises." *Rechtsgeschichte-Legal History* 25 (2017): 195-214; Bommier, Swann. "Responsabilité environnementale des entreprises et régulation extraterritoriale - L'implantation de Michelin en Inde à l'épreuve des Principes directeurs de l'OCDE", *Etudes internationales* 47 (2017): 107-130; Martin-Chenut, Kathia, de Quenaudon, René and Varison, Leandro. "Les Points de contact nationaux : un forum de résolution des conflits complémentaire ou concurrent du juge ?" In *La RSE saisie par le droit perspectives interne et internationale*, edited by Kathia Martin-Chenut and René de Quenaudon. Pedone (2015); Maheandiran, Bernadette. "Calling for Clarity: How Uncertainty Undermines the Legitimacy of the Dispute Resolution System under the OECD Guidelines for Multinational Enterprises." *Harvard Negotiation Law Review* 20 (2015): 205-44; Ruggie, John, and Tamaryn Nelson. "Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges." *The Brown Journal of World Affairs* 22 (1): 99-127 (2015); Souque, Maylis. "L'affaire Michelin en Inde : une illustration du rôle normatif du PCN et de l'effectivité des Principes directeurs de l'OCDE". In *L'entreprise multinationale et le droit international*, *Actes du colloque annuel de la Société française*

*pour le droit international*, edited by Laurence Dubin, Pierre Bodeau-Livinec, Jean-Louis Iten and Vincent Tomkiewicz, 381-404. Pedone (2017); Ochoa Sanchez, Juan Carlos. "The Roles and Powers of the OECD National Contact Points Regarding Complaints on an Alleged Breach of the OECD Guidelines for Multinational Enterprises by a Transnational Corporation." *Nordic Journal of International Law* 84.1 (2015): 89-126; Cantú Rivera, Humberto. "The OECD and Human Rights: the Case of the Guidelines for Multinational Enterprises and the National Contact Points." *Anuario mexicano de derecho internacional* 15 (2015): 611-658; Ochoa Sanchez, Juan Carlos. "An Empirical Examination of the Function of the OECD National Contact Points to Handle Complaints on an Alleged Breach of the OECD Guidelines for Multinational Enterprises." In *Bulletin of Comparative Labour Relations: Protecting Labour Rights in a Multi-Polar Supply Chain and Mobile Global Economy*, edited by Roger Blanpain, Jan Wouters, Glenn Rayp, Laura Beke, and Axel Marx, 89:159–69. Wolters Kluwer (2014).

<sup>190</sup> Some NCPs use a different name, others have in practice been using the name 'National Contact Points for Responsible Business Conduct', while other [suggestions](#) have been made such as 'Responsible Business Authorities'.

<sup>191</sup> French NCP (2013), Rapport du PCN sur la mise en œuvre des Principes directeurs de l'OCDE dans la filière textile-habillement, <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau3/Pages/b5a6e1c0-4f22-487b-b761-de12f330268f/files/d38d5458-4dcc-44a5-bd52-ebf068240b56>.

<sup>192</sup> See <https://www.tresor.economie.gouv.fr/tresor-international/pcn-france/rapport-rana-plaza-la-conduite-responsable-des-entreprises-dans-les-chaines-dapprovisionnement-textile-habillement-mondiales>

<sup>193</sup> A sample of recent NCP cases that have made a contribution to remedy, is available under '20 cases for 20 years of NCPs', <http://mneguidelines.oecd.org/ncps/ncps-at-20/>.

<sup>194</sup> To assist with decisions on structures, NCPs have issued a [guide](#) reviewing the pros and cons of various arrangements relative to different kinds of context.

<sup>195</sup> See Art. 14.4 of the Canadian NCP's [rules of procedure](#).

<sup>196</sup> Para. 37 of the Commentary to the Procedural Guidance contains the only reference to policy coherence in respect of NCPs as it states 'In order to foster policy coherence, NCPs are encouraged to inform [other] government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes.'

<sup>197</sup> <https://mneguidelines.oecd.org/public-consultation-draft-oecd-recommendation-on-the-role-of-government-in-promoting-responsible-business-conduct.htm>

<sup>198</sup> OECD (2021), Annual Report on the OECD Guidelines for Multinational Enterprises 2020: Update on National Contact Point Activity, <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>.

<sup>199</sup> In the rest of this subsection, 'survey responses' designate survey responses that list at least one challenge to the NCP system; and 'public submissions' designate public submissions that mention NCPs.

<sup>200</sup> The Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [[OECD/LEGAL/0386](#)]; the Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [[OECD/LEGAL/0427](#)]; the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [[OECD/LEGAL/0428](#)]; the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)]; and the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].

<sup>201</sup> Recommendation of the Council on Principles of Corporate Governance [[OECD/LEGAL/0413](#)].





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