GLOBAL FORUM ON RESPONSIBLE BUSINESS CONDUCT

SUMMARY

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SUMMARY REPORT

2016 Global Forum on Responsible Business Conduct

On the occasion of the 40th anniversary of the OECD Guidelines for Multinational Enterprises, the 2016 Global Forum on Responsible Business gathered participants from governments, businesses, trade unions and civil society to discuss policies and leverage can promote better business practices, to address adverse impacts in supply chains, and to support the contribution of the private sector to the achievement of the Sustainable Development Goals.

Opening remarks by Angel Gurría

The OECD Secretary-General Angel Gurría opened the Forum by highlighting the significant contribution of the OECD Guidelines to successful multilateral action in the area of responsible business conduct. After 5 updates, most recently in 2011, the gold standard set by the Guidelines 40 years ago remains as relevant as ever. Recent developments have shown that responsible business conduct expectations are increasingly used to shape domestic legal frameworks and business and investment strategies and practices. Despite the progress made, however, recent events such as the leak of the Panama Papers are a reminder that much remains to be done. The Global Forum on Responsible Business Conduct provides a venue to discuss these issues and respond to the growing demand for more accountability.

Making an impact through responsible business

The opening session, divided into two parts, focused on measures that governments and other actors, including the financial sector, are taking to promote responsible business conduct principles and standards and ensure that they make an impact. Panellists discussed a wide range of innovative actions, from policies aimed at addressing impacts throughout supply chains, voluntary agreements between governments and businesses to enhanced disclosure requirements and new engagement models that financial institutions and financial service providers are implementing in order to promote responsible business conduct among their clients.

Responsible business conduct policies are a cost effective way to create a better business environment. Policy makers are gaining awareness of the potential of responsible business conduct policies to foster long-term growth, as demonstrated by the recent policy developments to advance responsible business conduct, such as the UK Modern Slavery Act and the US Trade Facilitation & Enforcement Act.

Soft and hard law can be complementary approaches to address responsible business conduct through supply chains. Many responsible business conduct standards are voluntary, but some countries are successfully complementing soft law with regulation to address the most serious impacts in supply chains (i.e. modern slavery, forced labour, lack of transparency).

Policies and initiatives promoting responsible business conduct have increased significantly. The inclusion of responsible business conduct criteria in a growing number of economic instruments and trade agreements reflects the potential of promoting and enabling responsible business practices on a broader scale.

Leveraging the power of the purse. Financial institutions and financial service providers have significant leverage to promote responsible business conduct. Institutional investors and shareholders should exercise their right to vote at general assemblies and create more demand for accountability.

Increased transparency and disclosure can harness the power of civil society and create a culture of responsible business conduct. This can also provide incentives for business to adopt responsible business conduct practices.

Key takeaways:

- Policy action on responsible business conduct helps creating a global level playing field and ensuring stakeholder rights are respected.
- Investors are willing to use the National Contact Points system to create more leverage.
- There is a need for better and clearer data on responsible business conduct both at a firm and country level, in order to create more accountability and transparency and provide investors with adequate tools to use their leverage and enforce responsible behaviours.

Protecting World Heritage Sites and the role of the OECD Guidelines for Multinational Enterprises (organised by WWF)

This session discussed the importance of natural World Heritage Sites (WHS), almost half of which are threatened by harmful industrial activities according to a new report by the World Wildlife Fund; the role that they can play in delivering beneficial sustainable development outcomes to people and nature; and collaboration between OECD and UNESCO to ensure the protection of WHS. A collective no-go pledge by the International Council of Mining and Minerals (ICMM) and individual no-go commitments by oil and gas companies have contributed to the protection of WHS, but companies in all industries need to be aware of their shared responsibility to respect and preserve these unique places. The OECD Guidelines and its NCP mechanism can be a powerful tool for preventing harm in protected areas.

World Heritage Sites can be engines of economic growth and development. Protecting WHS is not anti-development; investing in the integrity of WHS means favouring ecologically sound and sustainable development over unsustainable industrial pressures. WHS should not be islands of perfection in seas of destruction; they can be engines of economic growth and development for local communities.

World Heritage Sites deserve special recognitions and protection, as they have been selected by states. Discussing responsible business conduct means recognizing that businesses, civil society, governments, and international institutions have a shared responsibility towards the protection of the environment in these sites. The phrase “together investing in World Heritage” exemplifies this collective responsibility. As such, it is important that the OECD Guidelines are observed.

Key takeaways:

- The OECD Guidelines and the NCP system can be instrumental for the protection of World Heritage Sites.
- OECD, UNESCO and other stakeholders should collaborate to ensure that the OECD Guidelines are observed and to make investing in conservation a reality.

Addressing severe human rights impacts in global supply chains

In light of recently publicised cases of human trafficking and modern slavery in global supply chains (e.g. on fishing boats, cocoa plantations, and cotton farms), this session explored concrete tools to prevent and mitigate severe human rights impacts throughout the supply chain, building on the recommendations of the 2016 OECD-FAO Due Diligence Guidance for Responsible Agricultural Supply Chains and the forthcoming OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

Businesses cannot address slavery alone. Currently some laws and policies also contribute to perpetuating it; for instance, loopholes in Thai legislation that does not protect migrant workers and limits trade unions hinder the efforts made to reduce slavery on Thai fishing boats. However, business can play a major role in reducing slavery, including through advocacy to governments.

Responsibility follows impact. Companies need to accept responsibility for impact wherever it happens in their supply chain. There is a need for leadership, and companies should use their leverage to address these issues.

Systemic approaches are needed for systemic problems. Information is key and all stakeholders need to collaborate to prevent severe human rights impacts in increasingly complex supply chains. For example, the implementation of the new provisions in the US Trade Enforcement and Trade Facilitation Act is challenged by the difficulty of connecting forced labour to imported products.

The power of consumers should be harnessed. On the other hand, the role of consumers in promoting sustainability should not be overplayed, as the consumer purchasing power should not be the driver of responsible behaviour.

Key takeaways:

- Prioritisation is critical when undertaking due diligence, particularly as addressing human rights impacts may require significant investments that do not always yield direct results.
- Collaboration between various stakeholders, business, government and civil society is key to effective due diligence.
- There is a need for moving beyond certification efforts to being proactive on the ground.

Taxation and responsible business conduct

The OECD Guidelines for Multinational Enterprises recognise that it is important for enterprises to contribute to public finances by making timely payment of their tax liabilities, and comply with both the letter and spirit of tax laws and regulations. The Guidelines also recommend that enterprises treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. This message was reinforced in the latest version of the OECD Principles of Corporate Governance. The OECD/G20 BEPS Project, launched in 2013, has responded to calls for a fairer international tax system, curtailing the gaps and mismatches in the international tax system to put an end to double non-taxation and ensure more transparency. Greater transparency facilitates use of "cooperative compliance" programmes established by tax administrations, which ensure payment of the right amount of tax at the right time and certainty for taxpayers. This session looked at what responsible business conduct means in the context of taxation.

The current tax system could better integrate the financial sector into the regulatory framework, by engaging with investors to design and implement regulations that fit the realities of today's international business and trade. A fair regulatory system can help governments raise tax resources to invest in education and health.

There is increasing scrutiny from investors on corporate governance and tax information disclosure. Companies benefit from trust between governments and companies from transparency in tax planning and strategy. There is potential for tax planning practices to include environmental or social concerns.

Key takeaways:

- Transparency is needed from governments as much as it is from business. Relevant tax-related information needs to be shared and made accessible.
- There is a need to establish a level-playing field between governments. This can be established through a global agenda. It is important for businesses to have standardised rules and confidence in the viability of the tax system.

Multi-stakeholder initiatives and responsible business conduct

A large number of multi-stakeholder initiatives (MSIs) have emerged in the past two decades to help business identify and avoid adverse environmental, labour and human rights impacts in global supply chains. The session included experts and participants from national and international MSIs and reflected on their experiences to date, and draw broad lessons to help strengthen collaborative engagement on responsible business conduct in the future. It also explored how countries can strengthen MSIs and how MSIs can measure their effectiveness and impact.

MSI's are neither a silver bullet, nor a means for governments and companies to outsource their responsibility. The scope and purpose of an MSI needs to be clearly articulated. A smart mix of regulatory and voluntary measures is typically most effective.

Governments should lead by example. Governments can as well act as an "honest broker" to bring groups together, help launch MSIs and cooperate at the international level to scale up initiatives. Governments should also put into practice what they are advocating, for example by applying recommended standards into public/government procurement.

The voice of women and communities which MSIs intend to help needs to be built into MSI structures, decision making and activities. The effectiveness of MSI's can be compromised if representatives do not have a mandate, or expertise.

MSIs may provide an opportunity for civil society get a 'seat at the table', and engage in development decisions. However, civil society may be seen as less credible or being co-opted by others if MSIs are not effective.

Many MSIs have internal governance shortcomings, particularly with regards to compliance, enforcement and dispute resolution. There is a need for on the ground research to see if MSIs are effective from the perspective of the communities they are intended to help. Most MSIs are not measuring their impact on human rights or on those directly impacted by the sector concerned. In the interim, the design frameworks of MSIs can provide a gauge to their effectiveness.

Key takeaways:

- MSIs need to have a greater focus on measuring the impact of the initiative on communities and the environment; and need to strengthen internal governance, ensure enforcement / compliance (in the case of standards type MSI's) and be aware of consequences.
- Those directly affected, particularly underrepresented voices from women, young people and indigenous peoples, should be part of the MSI structure and decision-making process.

Taking stock of National Contact Point activities

National Contact Points have a mandate to promote the Guidelines and handle complaints regarding non-observance of the Guidelines in specific instances. The nature of specific instances brought to NCPs has varied over the years. This session aimed to look back at these specific instances and discuss outcomes and follow-up measures. In addition, the session included the views of National Human Rights Institutions, some of which are beginning to receive complaints related to business activities.

Over the past 15 years, NCPs have shown their potential and provided results. Stakeholders voiced support for NCP system and recognise it is in the interest of all for the mechanism to be fully functioning. However, more needs to be done to ensure their functionality as promoters of the Guidelines and as non-judicial grievance mechanisms.

Confidentiality and campaigning are topical issues. There are differences of opinion regarding confidentiality and the role of campaigning during specific instance processes. While some believe that campaigning is crucial to bring some companies to the table, others believe that campaigning during the mediation process erodes trust. Other areas for improvements include: improving visibility, protecting impartiality, increasing expertise, handling confidentiality, reviewing standards for accepting cases, and raising the quality of mediation processes.

There is scope to collaborate more on human rights issues. An increasing number of business–related human rights allegations are being brought to national human rights institutions (NHRIs) and there is scope for helpful collaboration between NCPs and NHRIs.

Key takeaways:

- Adequate resources and support from their governments are critical for NCPs to be able to fully function and meet their mandate. Governments should make NCPs a priority and increase the resources available to them.
- Dialogue is needed among stakeholders on the issues of confidentiality, campaigning, impartiality, standards for accepting cases, and parallel proceedings.

Measuring links between business performance and responsible business conduct

This session discussed the latest empirical evidence on the impact of responsible business conduct on business performance, such as improved financial returns, increased access to credit, employee retention, and the costs of implementing due diligence and other responsible business conduct actions. It addressed questions of what metrics and indicators are used to measure this impact, as well as challenges and strategies related to collecting the relevant information and establishing causality.

Whether responsible business conduct criteria should be considered in measuring business performance is not a debate any longer, the question is rather how. The business benefits of responsible business conduct are increasingly recognised and the question is no longer about whether there is a positive correlation between business performance and responsible business conduct but rather what are its drivers and how can it be better measured.

Better understanding how to reflect intangible impacts is needed, such as the quality of relationships between business and local communities, in measuring the impact of responsible business conduct.

It is important to develop a smart mix of regulatory and non-regulatory incentives for responsible business conduct because while there is some evidence that regulatory approaches can promote responsible business conduct there is also evidence that when more discretion is given to firms on how they meet policy objectives, these actions will be taken at a higher level of the organisation and be more integrated.

It is important to develop good incentives for small firms in order to help them integrate responsible business conduct as an element of their development strategy and as an intangible of their organisational capital.

Key takeaways:

- There is a need to get inside the ''black box'' to better understand which incentives drive management at companies to act responsibly.
- The insights shared during the panel will be useful to the OECD for ongoing work on designing methodologies for measuring the costs and benefits of responsible business practices.

Introduction to the Due Diligence Guidance on Responsible Business Conduct (consultation session)

To facilitate conformity with expectations of due diligence under international standards such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights as well as under domestic obligations, the OECD is developing a Due Diligence Guidance for Responsible Business Conduct for all sectors of the economy. The rationale for developing this Guidance is that a common approach to due diligence can help to mainstream responsible business conduct due diligence processes across business operations and facilitate responsible business conduct among diverse commercial actors. It may also provide a common reference point on due diligence for business subject to domestic obligations and international expectations and could help avoid a multiplication of expectations. A common framework for due diligence will also make the provisions of the Guidelines more accessible to businesses seeking to apply the principles of due diligence across all of the relevant chapters of the Guidelines.

Key takeaways:

- The OECD's draft Due Diligence Guidance on responsible business conduct received broad support from stakeholders for its approach, structure and relevance to all sectors of the economy.
- There is a need to involve all stakeholders and carry out broad-based consultation on key concepts and forthcoming drafts.

- The Office of the United Nations High Commissioner for Human Rights indicated its support for the project and its alignment with the UN Guiding Principles on Business and Human Rights.

Aligning fiduciary duty and responsible business conduct in institutional investments

Over the past decade, changes in investment practice and in public policy have created expectations on investors to integrate environmental, social and governance (ESG) issues into decision-making where they are indeed financially material. Some have argued that failing to consider all long-term investment value drivers, including ESG issues, is a failure of fiduciary duty. Others, however, continue to perceive a misalignment between the expectation of institutional investors to prevent and mitigate ESG risks and the duty to generate a return on client assets. This session explored how institutional investors can respond to the interests and expectations of their beneficiaries, while also considering ESG issues.

There is a spectrum with regard to how investment managers perceive their responsibility and ability to consider environmental, social and governance risk, according to a progress report by the OECD on integration of ESG factors into investment governance.

There remains large scope and flexibility for ESG criteria to be integrated into existing legal frameworks on fiduciary duty. Furthermore increasingly both asset owners and managers are recognising the material nature of environmental and social risks as well as the role of institutional investors to drive the global economy and take concrete action to promote responsible investment.

Environmental and social risk analysis is still viewed as ''an extra'', which comes at a cost and is difficult to carry out due to a lack of easily quantifiable and comparable information. Overcoming these challenges will require a widespread change in behaviour.

Key takeaway:

- The OECD will consider insights shared in the panel in the context of its project on Responsible Business Conduct and the Financial Sector which seeks to promote application of the OECD Guidelines by financial service providers.

Pharmaceutical industry and responsible business conduct (organised with the Access to Medicine Foundation)

According to the World Health Organisation, three of the world's most fatal communicable diseases - malaria, HIV/AIDS and tuberculosis - disproportionately affect the world's poorest populations, placing a tremendous burden on the economies of developing countries. In light of the newly agreed Sustainable Development Goals, and in particular, Goal 3 to ensure healthy lives and promote well-being for all, this session discussed what responsible business conduct means for pharmaceutical companies, in particular as related to their responsibility to facilitate access to medicine for vulnerable individuals.

Responsible business conduct touches several aspects of the pharmaceutical business model (from R&D to intellectual property management, from pricing to ethical marketing). The framework of measurement of the Access to Medicine Foundation clarifies what society should expect from pharmaceutical companies.

Access to medicine is a multifaceted problem, and no actor alone can solve it. It is important to define responsibilities of different actors (from companies to governments) and ensuring engagement from multiple stakeholders (from investors to NGOs). The Dutch NCP recent concluded a Specific Instance involving a pharmaceutical company. This raises the expectation that NCPs may become an important instrument to diffuse responsible business conduct in the pharmaceutical industry.

Responsible business conduct in the pharmaceutical sector is context dependent. Individuals can lack access to medicine for very different reasons, from high prices to shortages. There are several ways in which pharmaceutical companies can be progressive and facilitate access to medicine in low and middle income countries, from participation in patent pools to equitable pricing strategies. The challenge of access to medicine is not only about availability and affordability but also about quality of medicines.

Investors can play an important role in convincing pharmaceutical companies that there is a business case of responsible business conduct, as shown by past examples in the field of clinical trials transparency and access to medicine.

Key takeaways:

- The relevance of the OECD Guidelines for the pharmaceutical sector and in particular the value of the NCP system for resolving issues related to the sector was highlighted.
- The OECD could consider developing a sector-specific due diligence guidance for the pharmaceutical industry.

Accountability of Mega-Sporting Events (with the Institute for Human Rights and Business)

This session discussed new efforts to address human right and labour issues throughout the life-cycle of sporting events, including questions related to building accountability measures for the events; the role of independent oversight, peer reviews, National Contact Points, arbitration, as well as stronger national legal mechanisms; and human rights and labour accountability mechanisms, as related to wider measures needed to fight corruption and restore trust in sport.

Large sporting events carry great potential and great risks. They have the potential to create jobs and support local development. However, they carry high risks related to labour and human rights, population displacement, corruption and collusion in public procurement.

Despite increased awareness, remediation solutions have not always been found. Since last year's Global Forum on Responsible Business Conduct, there has been a significant amount of discussion on accountability mechanisms in relation to Mega-Sporting Events (ex. UK anti-corruption summit, IOC's 2020 agenda proposed accountability measures, new FIFA oversight body related to Qatar 2022, etc.). However, although progress has been made in defining better safeguards for future sporting events, remedy is still lacking in terms of the events that are currently being organised.

There is debate around which criteria should be included in consideration of countries' bids for sporting events. Some panellists called for special attention to adherence to international standards on human rights. It would be important that the events are used for spur change more broadly and are not just "safe havens" of good practice.

Key takeaways:

- Reinforcing local and national accountability mechanism should be the focus of efforts.
- The OECD Guidelines and the grievance mechanism offered by the National Contact Points have a very important role to play, particularly in the absence of effective accountability mechanisms.

Closing plenary: ensuring that the Guidelines continue making an impact

This session highlighted key takeaways from the Forum and provided suggestions on future focus areas to ensure that the OECD Guidelines continue making an impact.

There is a need to build on successes, such as the G7 leaders' commitments and the OECD guidances on due diligence and find the resources to live up to the ambition of the OECD Guidelines. Multi-stakeholder engagement and cross-regional cooperation are essential to achieve measureable results.

Transparency is essential to advance responsible business conduct, prevent adverse impacts in the global supply chain, encourage compliance with both the letter and spirit of tax laws and engage with the civil society.

A balance need to be found between voluntary standards and mandatory measures. Though mandatory elements can be effective in enforcing responsible behaviours, the voluntary nature of the OECD Guidelines is a powerful instrument to build a culture of trust and foster long-term, cultural change.

Promoting responsible business conduct is about making the right choice: the debate around responsible business conduct goes beyond voluntary and mandatory measures - governments can choose to promote responsible business conduct through targeted policies, investors can choose to support responsible companies, and consumers can make more responsible choices. The availability of data and meaningful information is essential to help make the right choices and support responsible business conduct.

Find the programme, webcast, documents, photos and more online at mneguidelines.oecd.org mneguidelines.oecd.org

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