



# Annual Report on the OECD Guidelines for Multinational Enterprises 2019



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# **Annual Report on the OECD Guidelines for Multinational Enterprises 2019**



# Foreword

The OECD Guidelines for Multinational Enterprises (“the Guidelines”), adopted in 1976, are the most comprehensive international standard on responsible business conduct (RBC), and provide recommendations on expected business behaviour in the key areas in which business activity impacts people and the environment. Evolving economic contexts, increasingly complex supply chains and growing expectations from society on business responsibilities lead to new challenges in the application of the Guidelines.

The 2019 Annual Report on the OECD Guidelines for Multinational Enterprises describes activities undertaken to implement the Guidelines during the period January 2019 to December 2019. The Report was discussed by the Working Party on Responsible Business Conduct (WPRBC) on 3-4 March 2020 and approved by the Investment Committee by written procedure on 21 April 2020. The report was approved by the OECD Council under written procedures on 16 October 2020.

The 2019 Annual Report describes work on implementation of the Guidelines and more broadly on responsible business conduct, with a focus on the key work streams of the WPRBC – i.e. the promotion of the Guidelines, support to the National Contact Points for Responsible Business Conduct (RBC), the implementation of due diligence tools in global supply chains and policies to enable RBC, as well as engagement with Adherents and non-Adherents. It also provides an overview of various legislative and policy developments on RBC.

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# Executive summary

## **The Guidelines for Multinational Enterprises: Responding to evolving contexts and expectations**

The OECD Guidelines for Multinational Enterprises (“the Guidelines”), adopted in 1976, are the most comprehensive international standard on responsible business conduct (RBC), and provide recommendations on expected business behaviour in the key areas in which business activity impacts people and the environment. Evolving economic contexts, increasingly complex supply chains and growing expectations from society on business responsibilities lead to new challenges in the application of the Guidelines.

## **Addressing impacts related to gender, digitalisation, indigenous peoples, environment**

In 2019, the OECD facilitated discussion among the 49 Adherents to the Guidelines on a range of priorities, including on the application of the Guidelines and related due diligence on impacts related to gender, digitalisation, and indigenous peoples. With increasing concerns by society about biodiversity loss and climate change, the year 2019 also saw a growing interest on the application of OECD RBC standards and tools to environmental impacts, in particular climate change and biodiversity loss.

## **Contributing to the implementation of the Sustainable Development Goals**

The 2030 Agenda for Sustainable Development calls for a robust involvement of the private sector in global development efforts. The implementation of RBC standards is essential for the private sector to maximise its contribution to the Sustainable Development Goals (SDGs). The Guidelines, as well as related due diligence guidance, were heavily featured in a report on ending child labour, forced labour and human trafficking in global supply chains, produced by OECD, ILO, IOM and UNICEF. The report represents the first-ever attempt by international organisations to measure these human rights abuses and violations in global supply chains and to overcome the challenges faced by conventional statistics and accounting methods in face of the complexity and interconnectedness in the global markets.

## **National Contact Points for Responsible Business Conduct delivering access to remedy in important new areas, while progress on capacity remains uneven**

In 2019, all countries adhering to the Guidelines (currently 49) had a National Contact Point (NCP) in place and of those, all but one submitted a report to the OECD Secretariat, providing information on activities related to implementation of the Guidelines in 2019. Just one country (Jordan) did not attend the two NCP

meetings at the OECD (compared to three in 2018) and the same NCP did not report on its 2019 activities (the same as in 2018).

The 2019 Progress Report on National Contact Points for Responsible Business Conduct which was released at the 2019 OECD Ministerial Council Meeting (MCM) set out a number of areas for attention and several recommendations for governments with regard to their NCPs. These recommendations are still relevant based on the data provided as at December 2019. For instance, ensuring that the financial and human resources provided to NCPs are commensurate with the scope of their role and the heightened complexity of their work. Ensuring that the NCP enjoys the necessary support and visibility within government to carry out their functions effectively and promote policy coherence on RBC. Ensuring that the composition of the NCPs is such that they can carry out their functions impartially and without risk of conflicts of interest – or perception thereof. And finally, if the government has not yet volunteered for a peer review of their NCP, all are encouraged to do so in order to meet the ambitious MCM target of all NCPs being peer reviewed by 2023 and for those that have, they should implement to the extent possible the recommendations, and report on progress made.

In 2019, the peer reviews of the NCPs in the United Kingdom and Argentina were completed taking the total of completed reviews to 18. One peer review is ongoing (Korea). Of the remaining 30 countries, 18 have committed to a peer review between 2021-2023, in line with the MCM commitment. This leaves a total of 12 countries not having yet committed to a peer review of their NCP of which 8 are OECD Members.

In 2019, NCPs closed 30 specific instances compared to 34 in 2018. Agreement was reached between parties in five specific instances out of seven that went into mediation, a higher rate of agreement than in the previous year. However, companies refused to engage in mediation at a significantly higher rate than in 2018. In the majority of these cases, the companies in question pointed to parallel proceedings as the reason they declined to participate. In 2019, final statements of concluded specific instances included recommendations and determinations, although at a lower rate than in 2018. Statements by the NCP constitute an important tool to support the effectiveness of the Guidelines, and NCPs have continued to show strong levels of monitoring and follow up provisions in the final statements of specific instances as well as publication of follow up statements. One example was the renewed cooperation agreement between parties in a specific instance handled by the German NCP. Overall, in 2019 there were important outcomes and co-operation between parties in concluded cases, including through agreements on environmental protection and climate impacts in both the internet service sector and banking.

In terms of submissions of new cases, 2019 saw 30 submitted to NCPs compared to 52 in 2018, a rate lower than the average submission rate between 2011-2018 (38 specific instance submissions per year). In addition, 15 NCPs received specific instance submissions compared to 25 NCPs in 2018. In 2019, Trade Unions and individuals were the primary submitters of specific instances. The Human Rights chapter was the most frequently referenced chapter in 2019, and, 2019 also saw an increase in submissions referencing the Tax chapter of the Guidelines.

## **Supporting alignment and effectiveness of certification and other schemes in global supply chains**

Governments and industry rely on supply chain certification and other schemes on responsible business conduct for a wide variety purposes, including to audit common suppliers, to provide assurance on the environmental or social conditions associated with certain products, to support effective industrial relations in global supply chains, or to assess conformance of businesses with government policies on RBC. These schemes, which may be led by governments, industry or multi-stakeholder groups, play a critical role in supporting business to carry out due diligence for RBC, although currently they are fragmented, duplicative and lack coherence.

In 2019, the OECD has responded to increasing market demand to scale up work to assess the alignment of such initiatives with the OECD's due diligence guidance in the minerals and garment sectors, in order to support global coherence and mutual recognition of RBC schemes. To date, the OECD has developed and published two Alignment Assessment tools<sup>1</sup> (targeted towards the minerals and garment & footwear sectors), an Alignment Assessment methodology of industry and multi-stakeholder initiatives<sup>2</sup> and completed pilot assessments of five major industry programmes focusing on gold, tin, tantalum and tungsten.<sup>3</sup> These schemes cover more than 90% of the global production in those metals, and so changes made as a result of the alignment process has a major impact on market practice. In 2019, the OECD published an assessment of the Sustainable Apparel Coalition's Higg Brand & Retail Module,<sup>4</sup> which contributed directly to revisions of the framework and how companies use it. In 2019, the OECD also launched two further assessments of government-led multi-stakeholder initiatives in the garment sector (in Germany and the Netherlands).

The work is also having an impact on policy and law. For example, in 2019, the EU Delegated Act on the recognition of industry schemes (2019/429), part of the EU Regulation on Responsible Mineral Supply Chains (Regulation (EU) 2017/821) entered into force in April 2019 and enshrined into EU law the OECD Alignment Assessment methodology.

## **Key markets and the finance sector are major multipliers of RBC standards and due diligence in global supply chains**

In 2019, the OECD deepened its engagement with other strategic multipliers for RBC standards globally, notably in key producing or trading markets, as well as in the financial sector.

In the context of the financial sector, in 2019 the OECD published a due diligence guidance for corporate lending and underwriting transactions, which is the first common global framework for financial institutions to carry out due diligence to identify, respond to, and publically communicate on environmental and social risks associated with their clients. Global nonfinancial corporate debt, including bonds and loans, more than doubled over the past decade, reaching 66 trillion USD in mid-2017. While many banks have adopted the [Equator Principals](#), a leading environmental and social management standard applicable to project finance, these only represent a fraction of most banks' lending activities, leaving a vacuum with respect to the vast majority of banking debt transactions. This work fills that gap and is expected to have a major impact on all sectors of the economy.

To support the practical application of the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance), the OECD and FAO concluded a pilot with over thirty global agri-business companies and industry initiatives. In-country outreach and technical seminars on due diligence in the agricultural and seafood sectors were organized in key producing regions, including Myanmar, the Philippines, Thailand and Viet Nam. A regional pilot was launched with over 20 agri-businesses operating in Southeast Asia in July 2019.<sup>5</sup>

In the context of engagement and outreach on the garment and footwear sector the OECD continued its partnership with the China National Textile and Apparel Council (CNTAC), by commencing research on the implementation of the OECD Due Diligence Guidance in China. The OECD also deepened its engagement with the India through its collaboration with the Confederation of Indian Industry (CII) and started to engage with the Vietnamese government and industry. In 2019 the OECD launched an informal network of manufacturers to provide a peer-led platform to build capacity on due diligence, share learnings and feed into OECD research.

## **Strengthening the evidence base for evaluating impact and effectiveness of due diligence and RBC policy responses**

As governments increasingly promote companies to carry out due diligence to address their impacts on people, planet and society, there is a corresponding need to establish a coherent and comparable global picture on the extent to which due diligence is being implemented by companies and the impact of those efforts within specific sectors, jurisdictions and across countries. While numerous benchmarks exist to measure and compare company practices, there lacks an authoritative, comprehensive, government-backed set of indicators for measuring and monitoring due diligence and their impacts.

A comprehensive understanding of these matters is necessary in developing meaningful capacity building and evaluating policy interventions over time. In 2019, the OECD began filling these gaps, starting with work in the minerals and garment sectors. The OECD launched a project to measure the global uptake of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. In parallel the OECD has been developing a monitoring and evaluation (M&E) framework to measure the outcomes of the implementation of the OECD Minerals Guidance in mineral-producing countries. The methodology will be finalized and then tested in 2020. A feasibility study on monitoring the uptake and impact of due diligence in the garment and footwear sector was also launched in 2019.

## **Strengthening government policies and policy coherence on RBC**

In 2019, the trend to integrate expectations on RBC in domestic and international policy commitments and regulations continued. This included adoption of legislation requiring companies to carry out supply chain due diligence, or to report on actions to deal with adverse human rights and environmental impacts through their supply chains. At the same time, RBC expectations are being mainstreamed in other policy areas that have the potential to make a significant impact, such as public procurement, trade and investment agreements, exports credits and state-owned enterprises. Developments at the national and regional levels often explicitly refer to OECD RBC instruments, thereby strengthening their reach and potential impact. Mirroring these developments, since 2019 the WPRBC's mandate also recognises the role governments play in promoting and enabling RBC.

The OECD launched a project on RBC and public procurement and work also started on RBC and investment treaties. These developments have helped foster the implementation of RBC standards globally, and thereby level the playing field. They have also strengthened the awareness among state agencies of the importance of promoting RBC standards and mainstreaming them into relevant policy areas. Adherents to the Guidelines have increasingly recognised that the effective implementation of RBC standards requires promoting complementarity in laws and regulations to ensure effective policy integration.

## **Engagement across the globe to promote and enable RBC**

The strength of the Guidelines and how far and deep in global supply chains they are implemented also rests on engaging key economic players for global supply chains. 2019 saw several breakthroughs in this regard. 2019 witnessed increasing political buy-in on RBC across the globe as well as strong engagement and demand for capacity-building by businesses. The OECD activities in Asia and Latin America and the Caribbean, particularly in the context of the ongoing projects funded by the European Union (see Chapter 5), resulted in increasing political buy-in as well as strong and clear demand by business to boost technical capacity on due diligence. Similar trends can be observed through sector-specific engagement. For example, through the engagement in Asia, the OECD collaborated on RBC with the Chinese Ministry of Industry and Information Technology (MIIT), which is responsible for development and regulation of China's industrial policies and standards and also oversees the Chinese electronics industry. In Latin America, the OECD collaborated with Peru on the first RBC policy review.

The OECD also supported the G20 and G7 international processes as well as joint work with other international organisations and key partners. The G7 Social Communiqué adopted on 9 June refers to the Guidelines and sends a strong signal on the importance of promoting RBC in global supply chains. The G20 also underlined the importance of RBC in two thematic areas, notably on quality infrastructure and ending child labour, forced labour and human trafficking in global supply chains (see section 4.4). Beyond G20 and G7, OECD also promoted wide engagement with stakeholders. For example, the 7th Global Forum on RBC took place for the first-time ever outside of Paris on 12-13 June 2019 in Bangkok, Thailand. The Forum was co-organised by the government, ASEAN Intergovernmental Commission on Human Rights (AICHR), International Labour Organisation (ILO), United Nations Development Programme (UNDP), and the United Nations Economic and Social Commission for the Asia Pacific (UN ESCAP), with several UN agencies actively involved, including the UN Office of the High Commissioner for Human Rights, UN Environment, UNFCCC, UNICEF and IOM. The Forum also attracted participants from 21 Adherents (including eight NCPs) and all 10 ASEAN Members. This level of coordination contributes to international policy alignment.

Engagement with Adherents and non-Adherents will continue to be a priority for the WPRBC beyond 2019, as underlined by the mandate of the WPRBC.

# 1. Introduction

The OECD Guidelines for Multinational Enterprises (hereafter the “Guidelines”), which are part of the OECD Declaration on International Investment and Multinational Enterprises (hereafter the “Investment Declaration”) [[OECD/LEGAL/0144](#)], are recommendations from governments to multinational enterprises on responsible business conduct (RBC). They are the most comprehensive set of government-backed guidance on responsible business conduct and cover a range of topics including human rights, labour rights, supply chain due diligence, the environment, anti-corruption, and more.

The 2019 Annual Report on the OECD Guidelines for Multinational Enterprises set out in the Appendix describes activities undertaken to implement the Guidelines during the period between January-December 2019. The Report was discussed by the Working Party on Responsible Business Conduct (WPRBC) on 3-4 March 2020 [DAF/INV/RBC(2020)5] and approved by the Investment Committee by written procedure on 21 April 2020 [DAF/INV(2020)32].

The 2019 Annual Report describes work on implementation of the Guidelines and more broadly on responsible business conduct, with a focus on the key work streams of the WPRBC – i.e. the promotion of the Guidelines, support to the National Contact Points for Responsible Business Conduct, the implementation of due diligence tools in global supply chains and policies to enable RBC, as well as engagement with Adherents and non-Adherents. It also provides an overview of various legislative and policy developments on RBC.

## 1.1. Ensuring the relevance of the Guidelines in light of evolving expectations, contexts and priorities

The year 2019 saw an intensified focus on ensuring that the Guidelines remain relevant in the evolving economic context, and in light of increasingly complex supply chains and growing expectations from society on business responsibilities. The Guidelines remain the only comprehensive international standard on RBC, covering all areas of business responsibility, and hence, the work of the WPRBC covers a broad array of issues. In 2019, this included examining the application of the Guidelines in relation to the digital economy; promoting the relevance of the Guidelines in addressing environmental issues; highlighting the relevance of RBC for the implementation of the Sustainable Development Goals (SDGs), and developing guidance on RBC for various actors in the financial sector.

The relevance of the Guidelines for the digital economy will only increase in the coming years, especially as a number of services and activities are expected to be conducted online as a result of the current COVID-19 pandemic. The digital economy is not only affecting existing business models and the workplace itself, but it is also challenging the fundamental understanding of what a “business” actually is. Additionally, while new digital tools can accelerate and enable businesses to act responsibly, the digital transformation can also lead to businesses causing or contributing to human rights and other social and environmental harms in new ways. To support the 49 Adherents in understanding and addressing the intersection between RBC and the digital economy, the WPRBC organised a workshop on digitalisation and RBC for its delegates<sup>6</sup> and produced a series of RBC papers, including on Artificial Intelligence,<sup>7</sup> Online Platform Companies<sup>8</sup> and the role of distributed ledger technology, including blockchain, in responsible supply chains.<sup>9</sup> Going forward, the WPRBC will consider new work on the impact of digitalisation on RBC to support the effective implementation of the Guidelines and as a contribution to the OECD’s Going Digital phase II project.



The application of the Guidelines to business-related impacts on the environment has also received growing attention. National Contact Points for Responsible Business Conduct (NCPs) have dealt with an increasing number of environment-related specific instances, particularly in the context of climate change.<sup>10</sup> In order to support Adherents with managing these issues, the WPRBC is developing practical tools on the application of the Guidelines and related due diligence guidance to addressing environmental impacts through companies' supply chains, with a focus on climate change, biodiversity, and circular economy. Working with international organisations, government and business partners, this work will inform the increasing trend in the incorporation of environment-related due diligence into various initiatives on voluntary and mandatory regulation and policy. This work will also support broader green economy policy objectives and help build resilience in responding to environmental emergencies. The emphasis on the environmental impacts of businesses, as well as disaster planning and supply chain resilience, is expected to increase as governments seek to tackle the COVID-19 crisis and prepare for future pandemics and crises.

RBC also has a critical role in the context of the implementation of the SDGs. Implementing RBC standards can help companies operationalise the SDGs. In 2019, the OECD – jointly with the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF) – released a report on [Ending child labour, forced labour and human trafficking in global supply chains](#) under the aegis of Alliance 8.7, which was set up in 2016 to contribute to the implementation of SDG 8: "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all". The report also supports the July 2017 call by G20 Labour and Employment Ministers to accelerate action to eliminate the worst forms of child labour, forced labour and modern slavery in global supply chains.<sup>11</sup> The report, for the very first time, combines data from OECD, ILO, IOM and UNICEF in order to measure these abuses and violations in global supply chains, and provides guidance on how governments and companies can use RBC standards and tools to address them.

In recent years there has been momentum for promoting RBC in the financial sector, and "sustainability" reporting more broadly. Driven by demand from regulators, beneficiaries, consumers and society, 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. Across the sector, there is a growing need and demand for better data, common benchmarks and metrics related to environmental social and governance (ESG) criteria for corporate reporting and impact measurement purposes.<sup>12</sup> As the only comprehensive, global, government-backed instrument on RBC, the Guidelines are already playing an important role in framing policies and laws on ESG reporting and the performance of corporations. In particular, they help foster coherence among different standards and thereby facilitate the implementation of RBC by the financial industry. Additional consideration of how the Guidelines can better contribute to improving the quality of ESG information for financial sector practitioners could also be helpful in overcoming some of the current data challenges.

In light of these developments, the theme of the *2020 OECD Business and Finance Outlook*, the flagship publication of the Directorate for Financial and Enterprise Affairs (DAF), will be "Sustainable and Resilient Finance". The publication will explore how ESG factors can contribute to creating long-term value and resilience and how policy approaches, including OECD standards, can help respond to some of the ongoing challenges to ESG integration in the sector.

Ensuring that the Guidelines remain fit for purpose in a post-COVID world will be critical in the coming years. The Guidelines themselves foresee that Adherents participate in appropriate reviews and consultation procedures to address issues concerning the interpretation of the Guidelines in a changing world.<sup>13</sup> Taking stock of the implementation of the Guidelines since their last update in 2011 [C/MIN(2011)11/FINAL] and discussions among Adherents on the relevance, timeliness and modalities of a possible review to ensure the Guidelines remain at the forefront of international standards on RBC might be timely.<sup>14</sup> This exercise could encompass a consideration of emerging areas and increasingly acute challenges, especially in light of the COVID-19 crisis, the increasing impact of the digital transformation on

the economy, and the growing focus on sustainability and RBC/ESG in markets, as well as consider whether an update of the Guidelines or other actions may be appropriate.

## 1.2. National Contact Points for Responsible Business Conduct

NCPs remained a centrepiece of the implementation of the Guidelines in 2019, with NCPs closing 30 cases, and facilitating agreement in five cases between the parties, out of seven that went into mediation. Of note are a number of cases involving the financial sector and the impacts to which their financing activities might be linked. For example, in the case of “ING Bank and NGOs concerning climate policy” submitted to the Dutch NCP, the bank notably agreed to measure and publish its direct and indirect carbon footprint, and to bring it into line with the Paris Agreement. Another case on “Credit Suisse and Society for Threatened Peoples Switzerland”, handled by the Swiss NCP, concerned the bank’s alleged affiliation with a project regarding the construction of a pipeline, whereby Credit Suisse agreed to include the concept of Free Prior Informed Consent (FPIC) in its internal sector specific policies for Oil & Gas, Mining and Forestry & Agribusiness.

However, as highlighted in the *Progress Report on National Contact Points for Responsible Business Conduct*, which was released at the 2019 OECD’s Ministerial Council Meeting (MCM) [C/MIN(2019)7], a number of challenges still limit the capacity of many NCPs. For instance, ensuring that the financial and human resources provided to NCPs are commensurate with the scope of their role and the heightened complexity of their work remains a challenge in a number of Adherents, despite this being an obligation under the Decision of the Council on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307]. In many countries, there is still room for improvement in ensuring that the NCPs are provided with the necessary support and visibility within government to carry out their functions effectively and promote policy coherence on RBC. There is also a need to ensure that the composition of every NCP is such that it respects neutrality, can carry out its functions impartially and without a risk of conflicts of interest – or its perception thereof. These challenges affect not only the performance of individual NCPs, but also result in the lack of functional equivalence, which in turn jeopardises the credibility of the NCP system as a whole. One of the consequences is that case submitters are being increasingly selective of NCPs, resulting in a few NCPs receiving significant numbers of submissions.

Ensuring that all NCPs undergo a peer review by 2023, in line with the commitment made at the 2017 MCM,<sup>15</sup> would help address these challenges. However, so far only 18 NCP peer reviews have been completed or are ongoing. An additional 18 Adherents have committed to undertaking a peer review of their NCP between 2021-2023, leaving 12 countries yet to commit, of which 6 are OECD Members.<sup>16</sup>

As the year 2020 marks the 20<sup>th</sup> anniversary of the NCP grievance mechanism, it is all the more essential that all Adherents give their NCPs the support they need to effectively provide access to remedy. The 2020 Global Forum on RBC [http://mneguidelines.oecd.org/global-forum/] brought focus to this issue and provided an occasion for an in-depth reflection on the NCP system. In addition, a reflection paper will be published in November 2020, highlighting the main achievements of NCPs during the last 20 years, and proposing ways to strengthen the mechanism further as it enters its third decade. Findings from this paper would help assess the effectiveness of the Guidelines as well as their implementation mechanisms, together with other related OECD RBC instruments.

## 1.3. Due diligence for Responsible Business Conduct

The implementation of the OECD instruments on due diligence for RBC<sup>17</sup> continues to have a positive impact on policy and practice. In response to the continuously growing demand for the assessment of how industry and multi-stakeholder initiatives align with and implement OECD due diligence guidance, the work



on alignment assessments, with a focus on the mineral and garment and footwear sectors, continued in 2019. These OECD alignment assessments, built on the basis of a unique methodology developed with the multistakeholder advisory boards that support the implementation of OECD due diligence guidance, provide important benefits to both governments and business. They are a means for checking how due diligence expectations – often voluntary but increasingly enshrined in regulations – are actually being implemented in practice and where gaps might exist. They are also a tool for getting whole sectors or segments of supply chains to carry out more meaningful due diligence. For example, the EU Regulation on Responsible Mineral Supply Chains, adopted in May 2017 and which will apply across the EU on 1 January 2021, enshrines the aforementioned OECD assessment methodology, and its provisions are rooted in the recommendations of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals.<sup>18</sup> The Regulation will come into force on 1 January 2021.

The availability of evidence on the uptake of due diligence by companies is important, not only for companies and investors, but also for governments. The work on a monitoring and evaluation (M&E) framework to measure the outcomes of the implementation of due diligence in the minerals and garment and footwear sectors is ongoing and will contribute to building comprehensive and empirically-based evidence.

In 2019, the WPRBC and the Investment Committee also approved new guidance on Due Diligence for Responsible Corporate Lending and Securities Underwriting [DAF/INV(2019)7/FINAL],<sup>19</sup> which was developed in close consultation with leading multinational banks, civil society and trade unions. It provides the first common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with these types of transactions.

The coming years will be particularly important for promoting OECD due diligence standards. EU Justice Commissioner Reynders announced in April 2020 that the EU is exploring issuing a mandatory human rights and environmental due diligence legislation for European companies. During the 2020 Global Forum on RBC held virtually on 19 May and 17 June 2020, European Trade Commissioner Hogan affirmed his support for cross-cutting due diligence policy, and underscored the value of OECD due diligence guidance in this regard. In parallel, several Adherents are considering national regulatory initiatives on due diligence, including Germany, the Netherlands and Switzerland. Supporting alignment of those initiatives with OECD standards will be crucial for establishing a level playing field globally and avoiding conflicting requirements, inefficiencies for business operating across borders and extra compliance costs.

The broader work on due diligence implementation will continue to be one of the core pillars of OECD engagement with businesses through consultations, trainings, implementation of pilot projects and the development of tools for companies of all sizes. This work is expected to further gain relevance as companies seek to address the negative impacts of the COVID-19 crisis and to enhance their disaster-preparedness. Supply chain due diligence in this regard fosters resilience and helps short and long-term recovery by companies hit by the crisis, as described in a policy brief on COVID-19 and RBC, published on the OECD Digital Hub on Tackling the Coronavirus (COVID-19).<sup>20</sup>

Over the past ten years, the engagement with stakeholders on due diligence implementation has gone from strength to strength. Participation by companies in the various programmes to support the implementation of OECD due diligence guidance has grown significantly. Currently, 244 companies directly participate as members of multi-stakeholder advisory groups for the minerals, garment and footwear, agriculture and financial sectors and whose discussions feed into the work of the WPRBC. Additional 43,300 companies and co-operatives as well as 150,000 manufacturers are represented indirectly in those groups through participating industry associations. OECD-led fora and workshops on due diligence attracted over 1,400 business participants in 2019. The collaboration with businesses is reinforced also through the regional RBC programmes in Asia and Latin America, which include numerous activities to promote the uptake of due diligence.

## 1.4. Government policies and policy coherence for Responsible Business Conduct

Adherents to the Guidelines have increasingly recognised that the effective implementation of RBC standards requires a policy environment that supports mainstreaming RBC standards into relevant policies, and ensures that RBC is leveraged through policies and practice. In 2019, the trend to integrate expectations on RBC in domestic and international policy commitments and regulations continued, including legislations requiring companies to carry out due diligence for RBC. Increasingly, governments are also seeking to lead by example on RBC through their own economic activities, leveraging their finance and buying power in order to help shape business behaviour. Public procurement, state-owned enterprises, export credits and trade and investment agreements are all areas that have seen an increase in the use of and reference to RBC standards.

In 2019, the WPRBC and the Working Party of the Leading Practitioners in Public Procurement launched a multi-year joint project on Leveraging Responsible Business Conduct through Public Procurement. Public procurement represents on average 12% of GDP and 29% of government expenditure.<sup>21</sup> Integrating RBC into the policies and practices of public procurement therefore presents a tremendous opportunity for achieving impact at scale. The project aims to promote the integration of RBC standards including due diligence in public procurement policies and practices through an evidence base of current purchasing practices, and establishing a platform for public procurement practitioner and policy makers to promote peer learning and develop relevant tools and frameworks. A report on how Adherents are implementing RBC considerations into public procurement policies and practices will be published in the last quarter of 2020.

The revised mandate of the WPRBC, which entered into force on 1 January 2019 [DAF/INV/RBC(2018)26], explicitly acknowledges the importance of RBC policy coherence. Subsequently the WPRBC held a series of discussions on how to best support Adherents in addressing this challenge in 2019.<sup>22</sup> In 2020, this work will focus on identifying the key elements of government policies aimed at ensuring policy coherence on RBC, with a view to providing guidance to governments, for example, in the form of an OECD legal instrument.

## 1.5. Engagement with Adherents and non-Adherents

The strength of the Guidelines and how far and deep in global supply chains they are implemented also rests on engaging with key economic players for global supply chains. Promoting dialogue and deepening engagement on RBC has been one of the top priorities of the WPRBC since the Guidelines were updated in 2011. Co-operation is maintained through regional, country, and sector programmes, the Global Forum on RBC, as well as the sector-specific fora and roundtables (e.g., the Forum on Responsible Minerals Supply Chains). Discussions on RBC also take place in the context of Investment Policy Reviews (IPRs), all of which contain a chapter on RBC (e.g., most recently, the IPRs of Thailand and Myanmar), as well as when new Adherents join the Investment Declaration. In 2019, Croatia became the 49<sup>th</sup> Adherent to the Investment Declaration. The procedures for the adherence of Uruguay and Bulgaria started in 2019 and are ongoing.

2019 witnessed an increasing political buy-in on RBC across the globe as well as strong engagement and demand for capacity-building by businesses, particularly in the context of the ongoing regional programmes on RBC in Asia and Latin America and the Caribbean funded by the European Union. For example, through its engagement in Asia, the OECD established collaboration at the technical level with the Chinese Ministry of Industry and Information Technology (MIIT), which is responsible for China's industrial policies, leading to an integration of RBC in MIIT's work programme for the next biennium (2020-2021). Under the RBC in Asia project, the OECD provided support to the development of Thailand's National Action Plan on

Business and Human Rights adopted in 2019. In Latin America and the Caribbean, the OECD collaborated with Peru on the first RBC policy review,<sup>23</sup> launched in June 2020, which is now serving as an input into the development of a National Action Plan on Business and Human Rights. An RBC policy review is planned to be undertaken in eight other countries in the region, promoting a race to the top and establishing a new body of policy evidence in the region.<sup>24</sup>

Engagement also expanded beyond country-specific work. Notably, the 7<sup>th</sup> Global Forum on RBC took place for the first time ever outside of Paris in Bangkok, Thailand, on 12-13 June 2019, co-organised with the Royal Thai Government, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and several UN agencies. The Forum attracted over 700 participants from 21 Adherents and all 10 ASEAN Members.

RBC was also included in the G20 and G7 processes. The June 2019 [G7 Social Communiqué](#) refers to the Guidelines and sends a strong signal on the importance of promoting RBC in global supply chains. The G20 also underlined the importance of RBC in two thematic areas, notably on quality infrastructure and ending child labour, forced labour and human trafficking in global supply chains.

Engagement with key economies in the global supply chain should continue to be a priority for all Adherents, as it helps levelling the playing field and brings far-reaching benefits to those economies and for Adherents alike. Integrating RBC in policy measures and initiatives that target trading partners (e.g., in trade and investment agreements and development co-operation) can be particularly efficient and strategic. For the effectiveness of the Guidelines and the functioning of the NCP system, it is important to ensure that candidate countries that want to adhere to the Investment Declaration are fully committed to the implementation of the Guidelines before they are invited to adhere, including setting up a NCP that meets the core criteria set out under the Guidelines and is sufficiently resourced to carry out its functions.

## 1.6. OECD Centre for Responsible Business Conduct

In recognition of the growth in relevance and volume of the OECD's work on RBC, an OECD Centre for Responsible Business Conduct (RBC Centre) was created in September 2019 within the Directorate for Financial and Enterprise Affairs. The RBC Centre implements the activities on RBC under the mandate of the WPRBC, which includes providing the Secretariat for the WPRBC and the Network of NCPs, and promoting and supporting the implementation of OECD RBC standards among Adherents and non-Adherents. The RBC Centre currently has a staff of 38, and is funded from the OECD's Part 1 budget (approx. 10% of the total budget of the RBC Centre for the biennium 2019-20) and voluntary contributions (accounting for approx. 90% of the RBC Centre's budget). Voluntary contributions are provided mainly by the EU, as well as some individual Members, including Canada, the Netherlands, Norway, and Sweden [DAF/INV/RBC(2019)14].

## 1.7. Proposed Action

In light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

### THE COUNCIL

- a) noted document C(2020)120, in particular the report set out in the Appendix and agreed to this its declassification;
- b) noted the continuous progress made by Adherents in implementing the Declaration on International Investment and Multinational Enterprises [\[OECD/LEGAL/0144\]](#) and the Decision of the Council on the OECD Guidelines for Multinational Enterprises [\[OECD/LEGAL/0307\]](#) and in promoting responsible business conduct;

- c) welcomed the work of the Working Party on Responsible Business Conduct to ensure that the Guidelines for Multinational Enterprises remain at the forefront of international standards on Responsible Business Conduct;
- d) welcomed the work to strengthen National Contact Points for Responsible Business Conduct on the occasion of their 20<sup>th</sup> anniversary and encouraged Members to provide them with sufficient support and resources, in line with the recommendations of the 2019 Progress Report on National Contact Points for Responsible Business Conduct; and, for those not having done so, to commit to a peer review of their NCP by 2023;
- e) encouraged Members to draw from OECD due diligence guidance when devising new policy or legislation on due diligence, and called for scaling up empirically based work to assess the impact of due diligence, including its impacts on business resilience, in particular in the context of the COVID-19 crisis;
- f) encouraged Members to continue strengthening and promoting engagement on RBC with non-Adherents and to consider how RBC could be integrated in existing policy initiatives and tools, notably in trade and investment policies as well as development co-operation;
- g) welcomed the work aimed at providing practical tools for companies to deal with environmental challenges;
- h) agreed to discuss the implementation of the OECD Guidelines for Multinational Enterprises and the related Decision of the Council on the occasion of the 2020 Annual Report on the OECD Guidelines for Multinational Enterprises.

## 2. The relevance of the Guidelines in light of evolving expectations, contexts and priorities

### 2.1. Introduction

The OECD Guidelines for Multinational Enterprises (“the Guidelines”)<sup>25</sup>, adopted in 1976, are the most comprehensive international standard on responsible business conduct (RBC), and provide recommendations on expected business behaviour in the key areas in which business activity impacts people and the environment. Evolving economic contexts, increasingly complex supply chains and growing expectations from society on business responsibilities lead to new challenges in the application of the Guidelines.

In 2019, the OECD facilitated a range of activities, including workshops and research to support discussion among adhering governments on how the Guidelines apply to a range of emerging expectations, new contexts and pressing issues. These included a workshop on RBC and gender at the March meeting of the WPRBC and one on RBC and digitalisation at the WPRBC’s November meeting. A paper discussing how the Guidelines address impacts on indigenous people was discussed at the November 2019 meeting of the NCP Network. With increasing concerns by society about biodiversity loss and climate change, the year 2019 also saw a growing interest on the application of the Guidelines to environmental impacts. Finally, the Guidelines, as well as related due diligence guidance, were heavily featured in a report on child labour, forced labour and human trafficking produced by OECD, ILO, IOM and UNICEF for the Alliance 8.7.

### 2.2. Gender issues in supply chains

As part of its March 2019 meeting, the Working Party on Responsible Business Conduct (WPRBC) held a workshop on Responsible Business Conduct (RBC) and Gender. The workshop focused on gender in supply chains and access to remedy.

Discussions coalesced around the need for a comprehensive approach to address gender discrimination and gender related risks. Governments can promote a gender perspective through regulation as well as trade agreements, and many companies are making gender a priority. However, company actions to operationalise a gendered approach in due diligence is still at an early stage. The lack of data on women in supply chains as well as good practices in a gendered perspective in due diligence is a gap which the OECD can help address.

Accessing remedy through the NCPs affect both men and women as the network of NCPs is still not well known. At the workshop it was highlighted that consideration should be paid to women human rights defenders and the disadvantages that women can face in communities or the workplace. NCPs can play

a role by highlighting gender considerations in their promotional activities as well as considering gendered aspects in their role as a grievance mechanism.

The workshop discussions also provided input into the UN Working Group on Business and Human Rights (UNWG) report on applying a Gender Lens to the UN Guiding Principles on Business and Human Rights<sup>26</sup>.

### 2.3. Responsible business conduct and digitalisation

The digitalisation of global business has had a profound impact on the international economic landscape. New phenomena such as online platforms, social media, distributed ledger technology (a.k.a. blockchain), big data and online service providers affect business models and our understanding of what a “business” is. Digitalisation also has a significant impact on the workplace and can affect production and distribution, both positively and negatively. It has driven innovation in all sectors, but also contributed to the transformation and disruption of traditional industries, making it imperative for incumbents to acquire new digital competencies rapidly.

The implications of digitalisation for responsible business conduct are manifold. New digital tools can accelerate development, and enable businesses to strengthen their efforts to act responsibly, in particular as it relates to responsible supply chain management (e.g. blockchain technology to manage supply chains, machine learning and analytics to track risk). At the same time, the digital transformation can also lead to business causing or contributing to human rights and other social and environmental harms in new ways (e.g. risk of bias and discrimination in the use of artificial intelligence, and human rights risks associated with surveillance technology and the misuse of online content platforms to spread disinformation and empower the black market).

Within this context, the OECD Secretariat, with the support of the government of the Netherlands, conducted a workshop on 4 November 2019 to build capacity of Adherents to the WPRBC on the implementation of the OECD Guidelines for Multinational Enterprises and the Due Diligence Guidance for Responsible Business Conduct in relation to the digital economy. To discussion was informed by issue papers on Artificial Intelligence<sup>27</sup> and Online Platform Companies<sup>28</sup>.

Additionally, as part of the broader OECD initiative to identify good policy on the use and development of blockchain, the Secretariat published a report on the Role of Blockchain for Supply Chain Due Diligence<sup>29</sup>. This report takes a critical look as to whether use of blockchain is the most appropriate solution to achieve due diligence objectives and includes considerations for policy makers and businesses on how responsible business conduct objectives can be integrated into emerging blockchain initiatives in a consistent and effective way.

### 2.4. Addressing business impacts on the environment

The OECD Guidelines are the only international standard on RBC that is comprehensive in nature – covering all areas of business responsibility and including a dedicated chapter on the Environment (chapter VI), in addition to a chapter on Human Rights (Chapter IV), amongst others. Importantly, a number of the expectations within the OECD Guidelines capture business action on climate change. These expectations include, for example, setting targets that are consistent with international commitments (chapter VI), disclosure of social and environmental risk reporting with a particular focus on GHG emissions (chapter III), providing accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions. Following the last update of the OECD Guidelines in 2011, the sectoral due diligence guidance instruments, as well as the Due Diligence Guidance for RBC, specifically refer to environmental impacts. For example, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector includes modules on hazardous chemicals, water and greenhouse gas emissions.<sup>30</sup>

Environmental protection, including protecting watersheds, and maintaining biodiversity and sustainable management of natural resources, and promoting good agricultural practices to improve soil fertility, avoid soil erosion, and minimise greenhouse gas emissions are some of the risk mitigation measures recommended to companies in the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance).<sup>31</sup>

The application of the Guidelines to business-related impacts on the environment has received growing attention. An indicator for this is the increasing number of environment-related specific instances submitted to National Contact Points (NCPs). As of the end 2019, approximately 20% of specific instances submitted to NCPs relate to environmental impacts. The Final Statement by the Dutch NCP issued in March 2019, related to the submission of four NGOs against ING, is of particular relevance to understand the expectations on business to mitigate and address impacts on climate. The Statement reaffirms the application of the “cause, contribute, directly linked” language of the OECD Guidelines to business responsibility to address climate impacts and draws attention to the specific recommendations of the Guidelines which frame this responsibility.<sup>32</sup>

The Dutch NCP was invited to discuss the case in a session on human rights and climate change at the Business and Human Rights forum held in Bangkok in June (see chapter 5). The case was also discussed in sessions on the links between human rights and climate change held at the Regional Consultation on Business and Human Rights in Santiago (Chile) in September, and at the UN Forum on Business and Human Rights in Geneva, in November. The increasing interest in the use of due diligence to address climate change impacts was also reflected in sessions held at the Forum on due diligence in the Garment and Footwear Sector in February, and in the Responsible Minerals Forum in April.

Building on the growing awareness of the relevance of the Guidelines and due diligence guidance to addressing global environmental impacts, the OECD organised various sessions on this topic at the 2019 United Nations Climate Conference (COP 25) held in Madrid in December 2019. One session, organised in partnership with the Office of the High Commissioner of Human Rights (OHCHR), on the business and human rights dimension of climate change: addressing access to remedy,<sup>33</sup> included remarks by the UN High Commissioner for Human Rights and the OECD Secretary General. The panel highlighted the continued relevance of the OECD Guidelines for both human rights and climate change, as well as the role of the NCPs. A second session, in partnership with UNFCCC, discussed Global Climate Action and Responsible Business Conduct: What does it mean for business to act responsibly in the face of a climate emergency?<sup>34</sup> which included remarks by the UNFCCC Executive Secretary Director and OECD Deputy Secretary General. The panel highlighted the importance of RBC to climate action, with a wide range of applications, including reducing emissions, building resilience of supply chains and investing in nature-based solutions. The OECD and UNFCCC were called on to continue collaboration in this regard.

The relevance of the Guidelines to addressing impacts on biodiversity was explored in the OECD report on Biodiversity: Finance and the Economic Business Case for Action,<sup>35</sup> which was prepared for the G7 Environment Ministers’ Meeting on 5-6 May 2019 at the request of the French G7 Presidency. The report includes a recommendation to develop a set of practical actions on due diligence and biodiversity to support efforts by business drawing on the OECD Due Diligence Guidance for Responsible Business Conduct.

## 2.5. Impacts on indigenous peoples

In recent years, NCPs have handled a growing number of specific instances that concern business-related impacts on the rights of indigenous peoples. To date 24 specific instances have been submitted to NCP involving adverse impact to indigenous peoples across Latin America (e.g. Mexico, Guatemala, Ecuador, Chile, Peru), Africa (e.g. Cameroon, Ethiopia, Nigeria, Kenya) Asia (e.g. the Philippines, Indonesia, India, Malaysia) and Europe (Sweden). In 2019 the OECD developed a note addressing some of the key



challenges that NCPs have faced or are likely to face in their handling of specific instances that involve the rights of indigenous peoples. It provides an overview of international standards regarding the rights of indigenous peoples and the key topics being raised with NCPs and provide guidance on good practice in engaging in dispute resolution on issues involving indigenous peoples. Secure land and resource tenure is a key feature of international standards on the rights of indigenous peoples where indigenous peoples' customary land tenure is impacted, and NCPs are encouraged to consult the OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector and the OECD-FAO Guidance for Responsible Agricultural Supply Chains, which contain useful considerations for the private sector in engaging with indigenous communities over impacts on land tenure. The guides are also useful in dealing with consultation processes or free prior and informed consultation/consent (FPIC).

## **2.6. The contribution of RBC to the implementation of the Sustainable Development Goals**

The critical role of RBC for the implementation of the Sustainable Development Goals (SDGs) has been highlighted in a range of papers and discussions, including in the context of various editions of the Global Forum on RBC. Implementing RBC principles and standards can help companies operationalise the SDGs.<sup>36</sup> RBC standards touch upon most of the areas covered by the SDGs and provide a clear and practical framework for business to act, including in contexts where systemic issues may be out of a company's direct control. RBC can help companies prioritise and address their most significant impacts, which is particularly important considering that in a complex business environment, it may not always be feasible to address all environmental and social issues at once. The Guidelines provide a framework for companies to consider their entire footprint, including in the supply chain.

In 2019, the OECD - jointly with the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF) – released a report on Ending child labour, forced labour and human trafficking in global supply chains. The report was elaborated under the aegis of the Alliance 8.7, set up in 2016 to contribute to implementation of SDG 8.<sup>37</sup>

The commitment of G20 governments to eradicate child labour, forced labour, human trafficking and modern slavery in the world of work, including through fostering sustainable global supply chains, provided the rationale, mandate and background to this report. For key findings, see Box 2.1

The report represents the first-ever attempt by international organisations to measure these human rights abuses and violations in global supply chains and to overcome the challenges faced by conventional statistics and accounting methods in face of the complexity and interconnectedness in the global markets. Using mixed datasets, the OECD, ILO, IOM and UNICEF combined and tested a methodology so far applied only for economic indicators and in a limited way for environmental indicators. This is the first time has been applied in such a wide range of countries by international organisations. The results offer an initial quantitative picture of the supply chains and reinforce that child labour, forced labour and human trafficking affect the whole of the global supply chain. They also provide a critical foundation for further data collection efforts aimed at generating a more granular picture of the extent, nature and location of these violations in global supply chains.<sup>38</sup>

The OECD also published two brochures: RBC and the Sustainable Development Goals<sup>39</sup> and The OECD-FAO Guidance for Responsible Agricultural Supply Chains: How it can help achieve the Sustainable Development Goals<sup>40</sup>. Furthermore, the Secretariat provided technical advice to Adherents on the links between RBC and implementation of the SDGs. Notably, the Social and Economic Council of the Netherlands has issued an advisory report at the request of the Dutch Government on the relationship between the SDGs and RBC, which underlines that RBC provides the basis for businesses to make an effective, efficient and coherent contribution to achieving the SDGs.<sup>41</sup>



### Box 2.1. Key Findings – Report on *Ending child labour, forced labour and human trafficking in global supply chains*

This report, elaborated under the aegis of the Alliance 8.7, presents joint research findings and conclusions by the ILO, OECD, IOM and UNICEF on child labour, forced labour and human trafficking in the context of global supply chains.

The report shows that nine percent of child labour from Northern Africa and Western Asia is estimated to contribute to exports (either directly or indirectly) to other regions. This figure is more than twice as high for Eastern and South-Eastern Asia, which are estimated to contribute 26 percent. While the results demonstrate that a child in child labour is far more likely to be involved in production for the domestic economy, there is however a non-negligible risk that this child will be contributing to global supply chains. Across regions, between 28 and 43 percent of the estimated child labour that contributes to exports does so indirectly, through preceding tiers of the supply chain (for example, extraction of raw materials or agriculture).

Efforts against child labour in global supply chains will be inadequate if they do not extend beyond the downstream suppliers to comprise actors in the upstream segments of supply chains, in production activities such as raw material extraction and agriculture. Addressing child labour in production for both domestic consumption and export will clearly be critical for achieving SDG target 8.7 by the 2025 target date.

The report's conclusions and recommendations set out five key priority areas for action, namely 1) addressing child labour, forced labour and human trafficking through a whole-of-supply-chain approach; (2) public measures to protect workers and mitigate vulnerability to child labour, forced labour and human trafficking; (3) public governance measures to regulate business conduct and the business environment; (4) responsible business conduct for labour and human rights; and (5) advancing collaboration and inclusive business approaches to address child labour, forced labour and human trafficking. The important role of RBC principles and standards, as well as ongoing due diligence efforts by stakeholders, is critical across the five measures.

## 3. National Contact Points for RBC

### 3.1. Introduction

Governments adhering to the Guidelines are required to set up a National Contact Point (NCP) to further the implementation of the Guidelines.<sup>42</sup> NCPs have two main functions: 1) to promote the Guidelines and handle enquiries, which means that NCPs ensure that the Guidelines and the role of the NCP are known among relevant stakeholders and across government agencies; and 2) provide a grievance mechanism to resolve cases ("specific instances") relating to non-observance of the recommendations of the Guidelines.<sup>43</sup> The Council Recommendations relating to the due diligence guidance tools provide that NCPs should contribute to their dissemination and active use by enterprises.<sup>44</sup> This unique implementation mechanism distinguishes the Guidelines from other international RBC instruments and continues to play a critical role in ensuring that commitments under the Guidelines are met. There are currently 49 Adherent countries, and 48 NCPs are in place. Croatia, which became an Adherent in 2019 is in the process of establishing an NCP.

Handling specific instances is a core pillar of the mandate of NCPs and a key feature of what makes the Guidelines unique.<sup>45</sup> This mechanism has been part of the mandate of NCPs since the 2000 review of the Guidelines. By end 2019, NCPs had handled over 500 specific instances.<sup>46</sup>

### 3.2. Overview of specific instances handled in 2019

In 2019, NCPs closed 30 specific instances and received 30 new specific instances. Closed specific instances refers both to concluded cases and those that are not accepted for further examination (see Box 3.1). The sections below give an overview of the outcomes of closed specific instances and trends identified for the new ones.

#### Box 3.1. Terminology for the status of specific instances

Specific instances closed during the year include both specific instances that have been concluded during the year and those that were not accepted during the year.

- Specific instances **concluded** during the year are those that the NCP found to merit further examination after the initial assessment and that have subsequently been closed. For such specific instances the NCP will have offered its "good offices" (e.g. mediation/conciliation) to both parties.
- Specific instances **not accepted** during the year are those that the NCP found not to merit further examination and that have therefore been closed.

Specific instances that are in progress are those that are not yet closed. These include submissions received by the NCP and under consideration, as well as those accepted by the NCP.

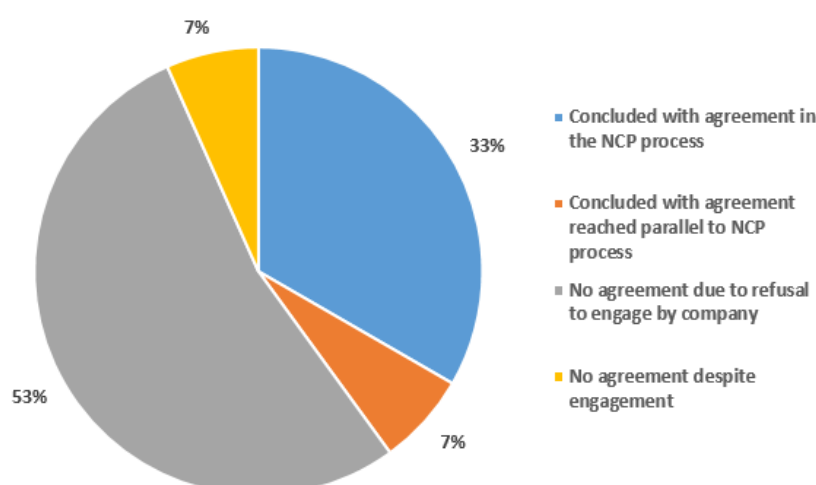
### Key outcomes of specific instances

Among the 30 specific instances that were closed in 2019, 24 were already in progress as of January 2019 and six new ones which were submitted during the year. Of the specific instances in progress as of January 2019, 10 were submitted prior to 2018. Table 3.1 provides an overview of closed specific instances in 2019. Out of the 30 specific instances closed in 2019, 15 were concluded and 15 were not accepted. Of the 15 concluded cases, one was withdrawn.

Of the 15 concluded specific instances, seven underwent mediation (47%). Out of these seven cases, five resulted in some form of agreement between the parties through the NCP process<sup>47</sup> and one resulted in some form of agreement between the parties in parallel to the NCP process. This accounts for 40% of all concluded cases (Figure 3.1) and 86% of all cases where mediation occurred, compared to 36% in 2018 and 83% respectively in 2017. One specific instance that underwent mediation did not result in agreement despite the engagement of both parties in the process.

For eight concluded specific instances no mediation took place as the companies in question declined to participate. In the majority of these situations the companies in question pointed to parallel proceedings as the reason they decline to participate.

Figure 3.1. Outcomes of specific instances concluded in 2019



#### Box 3.2. Examples of agreement attained through the National Contact Point mechanism

**Eni and Egbema Voice of Freedom:** On 15 December 2017, Egbema Voice of Freedom, an NGO, and Chima Williams Associates, a law firm, submitted a specific instance to the Italian NCP alleging that since 1970, construction undertaken as part of oil drilling operations by ENI S.p.A., and its affiliate ENI International BV and local subsidiary Nigeria Agip Oil Company Limited (NAOC), caused violent flooding and has had significant adverse impacts on local communities in Mgbede, Nigeria. The specific instance was filed on behalf of residents which were affected by the flooding. The NCP accepted the case and organised a conciliation procedure amongst the parties. On 8 July 2019, the parties signed [Terms of Settlement](#) which includes a detailed list of actions which will be undertaken to prevent and mitigate flooding in the local community.

- Grupa OLX and Frank Bold Foundation: On 9 April 2018, the Frank Bold Foundation, an NGO, submitted a specific instance to the NCP of Poland alleging that Grupa OLX, an internet service company, did not observe the OECD Guidelines by allowing customers to advertise the sale of furnaces used to burn processed oil and discarded wooden railway sleepers on its portal. The submitter asserted that the burning of these objects violates environmental protection provisions, as they are considered hazardous waste.
- The NCP accepted the case and offered good offices which resulted in agreement between the parties. As part of the agreement Frank Bold Foundation will monitor the content of advertisements and Grupa OLX will remove advertisements which run counter to environmental protection. Furthermore, Frank Bold Foundation will support the company in its actions aimed at protecting the environment, aligned with environmental protection and sustainable development principles.
- ING Bank and NGOs: On 8 May 2017 Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) submitted a specific instance to the Dutch NCP asking them to examine ING's climate policy and to urge ING to align its climate and other policies with the Guidelines. The NCP accepted the case and oversaw a dialogue between the parties resulting in agreement. As part of the agreement the parties agreed that the methodology employed by ING for measuring, target setting and steering the bank's climate impact is a positive development. The parties also agreed to jointly call on the Dutch Government to request the International Energy Agency to develop two 1.5 degrees scenarios, one with and one without the use of Carbon Capture and Storage (CCS).
- Credit Suisse and Society for Threatened Peoples: On 28 April 2017, the Society for Threatened Peoples (STP) submitted a specific instance to the Swiss NCP concerning Credit Suisse's business relationship with companies involved in the construction of the Dakota Access Pipeline in the United States. The NCP organised five mediation meetings between the parties with the assistance of an independent mediator. On 13 September 2019, the parties reached an agreement on several substantial points. Most notably Credit Suisse agreed to include the concept of Free Prior Informed Consent (FPIC) in its internal sector specific policies for Oil & Gas, Mining and Forestry & Agribusiness. Credit Suisse also agreed to inform the STP and the Swiss NCP about the entry into force of the policy.

### ***Type of companies involved in specific instances***

The specific instances closed in 2019 involved primarily large enterprises (defined as companies employing over 250 employees), accounting for 23 (77%) of all closed specific instances.<sup>48</sup> Information is unavailable with respect to the size of the companies involved in three specific instances (10%), as three final statements do not identify the name of the enterprises involved, while in two other specific instances, non-corporate parties were involved (International Ice Hockey Federation and Roundtable on Sustainable Palm Oil). Two (7%) specific instances concerned small enterprises.

Companies involved in specific instances were predominantly publically listed entities representing 17 (57%) of all closed specific instances, while privately held companies represented 9 (30%). Information on the identity of two of the companies is unavailable (see Figure 3.2).

Fourteen specific instances (47%) involved Fortune Global 500 companies.<sup>49</sup> The known headquarter locations of companies involved in specific instances cover 16 countries (Table 3.1).

Figure 3.2. Type of companies/organisations involved in specific instances in 2019

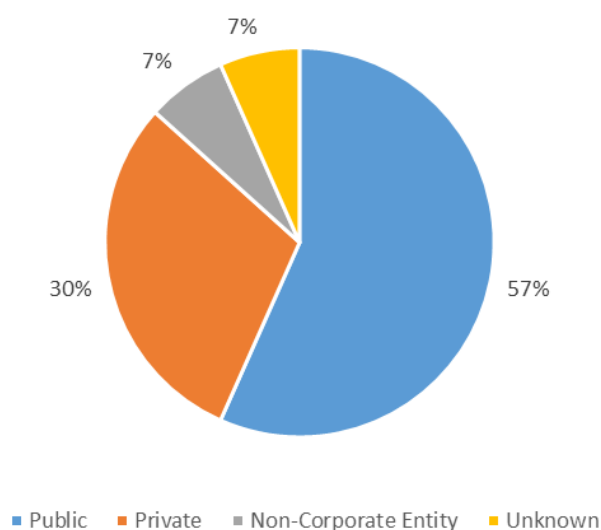


Table 3.1. Known headquarter locations of companies/organisations involved in specific instances closed in 2019

Headquarter location of company/organisation	Number of specific instances	Headquarter location of company/organisation	Number of specific instances
United States	4	Belgium	1
Luxembourg	3	Brazil	1
Netherlands	3	Canada	1
Switzerland	3	Denmark	1
Australia	2	Korea, Republic of (South)	1
France	2	Poland	1
Germany	2	Spain	1
Italy	2	United Kingdom	1

### Final statements

The Procedural Guidance provides that NCPs will "at the conclusion of the [specific instance] procedures and after consultation with the parties involved, make the results of procedures publically available [...]"<sup>50</sup>. In particular, the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides that when the NCP "decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved"<sup>51</sup> and "if the parties fail to reach agreement or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith the NCP will make recommendations as appropriate in the public statement."<sup>52</sup> Determinations (to indicate that a company has or has not observed the recommendations of the Guidelines) can also be made by NCPs.

Statements constitute an important tool to support the effectiveness of the Guidelines and enhance transparency, accountability and visibility of NCPs. Substantiated decisions, recommendations and determinations by the NCP can help companies and stakeholders better understand the Guidelines and what steps, actions, policy measures they can take to fully observe them. Some NCPs have also shared that, in certain contexts, the prospect of the NCP issuing a determination could be a disincentive for companies to engage with the NCP.

Final statements were published for 29 (97%) specific instances that were closed in 2019.

Ten of the 15 final statements published for concluded cases included recommendations (67%).<sup>53</sup> Recommendations are especially useful in cases where parties have not been able to engage or reach agreement (see Box 3.3).

### Box 3.3. Examples of recommendations in NCP final statements

**MAERSK and Trade Union:** On 27 June 2018, Trade Union N°1 of MAERSK Container Industry submitted a specific instance to the NCP of Chile alleging that, MAERSK Container Industry, did not observe the Guidelines in the context of its decision to close its plant in the port city of San Antonio, which led to the dismissal of 1,200 workers.

The company declined the NCP's offer of good offices. Consequently, the NCP published its final statement summarising the proceedings and recommending that the company:

- Evaluate its procedures and policies related to decisions that have significant impacts on the livelihood of its workers, such as the closure of a plant leading to a collective dismissal.
- Implement improvements in consultation and cooperation procedures between the enterprise and its employees, especially on issues that have impacts on the employees' functions and their livelihood.

**Mercer PR and Australian Women Without Borders:** On 27 October 2016, Australian Women Without Borders (AWWB), an NGO, submitted a specific instance to the Australian NCP alleging that Mercer PR had breached the Human Rights chapter of the Guidelines through distribution of the personal information of an alleged sexual assault victim.

A joint facilitated discussion was originally agreed to, but Mercer PR later withdrew its agreement to participate. On 9 July 2019, the NCP concluded the case and issued a final statement. The final statement notes that while Mercer PR is a very small enterprise, the Australian Government expects that all Australian enterprises operating overseas meet its standards, including the OECD Guidelines and recommends that Mercer PR's executive undertake human rights training.

**DIAM and Birlesik Metal-Is:** On 2 August 2017 the French NCP received a specific instance from the Turkish trade union Birlesik Metal-Is concerning the alleged non-observance of the Guidelines by the DIAM INTERNATIONAL SAS Group (DIAM Group). The case was concerned an industrial dispute that allegedly resulted in the dismissal of a large number of workers and anti-union bias.

The NCP determined that following the dialogue, DIAM Group improved its due diligence policy, however shortcomings still existed with respect to a number of the Guidelines' recommendations. The NCP concluded that DIAM Group "must strengthen its due diligence vis-à-vis its Turkish subsidiary to achieve full compliance with the Guidelines." The NCP also recommended improved social dialogue, establishment and contribution to remediation schemes and rapid implementation of an action plan which would allow workers to elect their own representatives and begin consultations on matters of mutual concern.

Determinations of whether an enterprise observed or did not observe the Guidelines were included in three final statements (20% of all final statements published for concluded cases and 10% of all final statements published in 2019).<sup>54</sup>

### Box 3.4. Examples of determinations in NCP final statements

British American Tobacco (BAT) and IUF: On 27 April 2016, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Farm Labor Organizing Committee (FLOC) submitted a specific instance to the UK NCP alleging that British American Tobacco (BAT) was linked to abuses of migrant farmworkers in the United States and did not meet its obligations to help end these abuses.

In its final statement the UK NCP determined that BAT met the obligations set out under chapter II, paragraph 10 and 12 (calling on enterprises to carry out due diligence and avoid causing or contributing to adverse impacts through their activities) and chapter IV, paragraphs 1, 3 and 5 of the Guidelines (calling on enterprises to respect human rights and carry out human rights due diligence).

The UK NCP also recognised that while BAT has met the obligations which were the basis of IUF and FLOC's complaint, there were still issues which need to be addressed by the company to ensure that these are acted on appropriately. In this respect it recommended that if it had not already done so BAT should establish objective standards of living and working conditions for migrant workers, ensure Responsible Investment in Agriculture and Food Systems (RAI) processes for managing the well-being of agricultural workers employed in its supply chain are fit for purpose, and use the OECD Due Diligence Guidance for Responsible Business Conduct for this purpose.\*

\* A request for a procedural review of the handling of this case was submitted by IUF and FLOC in April 2019. A review committee was established from among the members of the UK NCP Steering Board which did not uphold the grounds for the complaint made about UK NCP procedure. See <https://www.gov.uk/government/publications/iuf-and-floc-complaint-to-uk-ncp-about-bat/review-of-final-statement-iuf-and-floc-complaint-to-uk-ncp-about-bat>

### Follow-up

Following up on recommendations in final statements can be a valuable exercise in ensuring agreements reached through specific instance proceedings are implemented and in tracking whether recommendations are being implemented. In some situations, follow-up has resulted in stronger relationships between the parties and additional positive outcomes

In 2019, the NCPs of Australia, Belgium, Canada, Denmark, Germany, and the United Kingdom issued follow-up statements relating to seven specific instances. In many of them the NCPs noted positive changes and that their recommendations had been implemented. In one case, the NCP introduced potential consequences for non-action of the company (see Box 3.5). In addition, plans for follow up or monitoring of recommendations was included in final statements for 10 out of 15 concluded specific instances (67%).

### Box 3.5. Examples of Follow-up in NCP specific instances

Banro and former employees: On 26 February 2016, a specific instance was submitted to the Canadian NCP by a group of five former employees of the Société Minière et Industrielle du Kivu (SOMINKI) located in the Democratic Republic of Congo (DRC). The submitters claimed that Banro failed to settle the final accounts of 4,987 former employees of SOMINKI following the creation of SAKIMA SARL (93% owned by Banro) in 1997 and transfer of SOMINKI's mining assets to SAKIMA. The NCP concluded and made a series of recommendations, including that the company make all efforts to engage with the government of the DRC to resolve the issues raised. Despite persistent efforts from the NCP, the



company failed to provide adequate information that it implemented the recommendations. In its follow up statement the NCP notes that due to corporate restructuring it is unclear whether the company retains meaningful economic ties to Canada. However, it notes that should the company qualify as a Canadian Trade Commissioner Service (TCS) client in the future, its lack of constructive engagement during this follow up stage of the process should be taken into consideration.

DPDHL Group and ITF and UNI: On 25 November 2019, the German NCP signed a revised cooperation between Deutsche Post DHL and global union federations International Transport Workers Federation (ITF) and UNI Global Union. The structured cooperation between the parties has been ongoing since the successful conclusion of a specific instance handled by the German NCP involving the parties in 2014. According to a press release by the DPDHL Group “[t]he DPDHL Group, ITF and UNI believe that being under the auspices of the German National Contact Point [...] has provided an exceptional framework to build mutual trust and foster positive relationships over the years [...] The collaboration between all parties has been significant in 2019 and relationships continue to develop and strengthen. In addition to the regular dialogue between the parties, several workshops were conducted to evolve the existing OECD Protocol and include reference to potential future challenges in Employee Relations.’

### ***Specific instances not accepted for further examination***

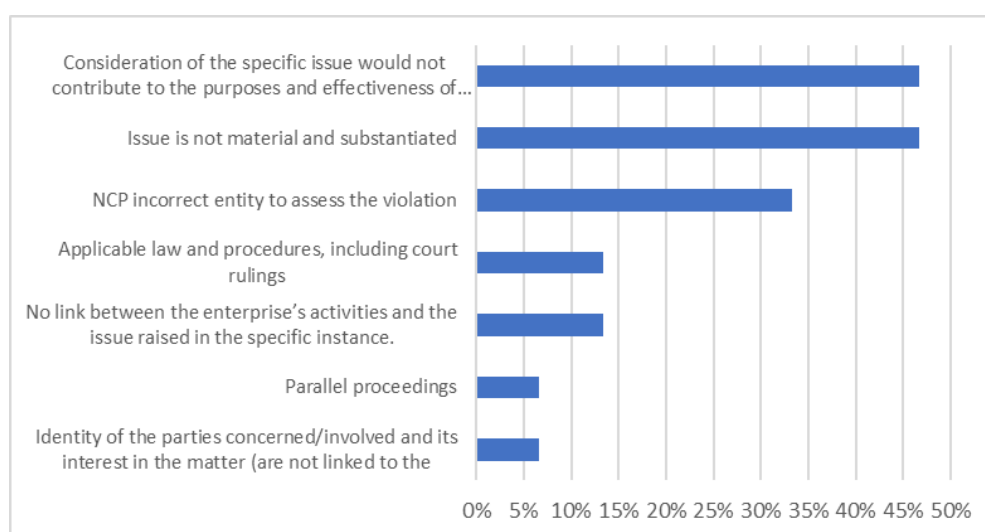
As noted above, 15 specific instances (50%) of specific instances closed in 2019 were not accepted for further examination. This represents a decrease from the record 58% in 2018, but is still the second highest rate of non-acceptance since 2000.

The main reason for not accepting specific instances in 2019, in 7 specific instances, (47%) was that the NCP considered that the submission would not further the purpose or effectiveness of the Guidelines.

In some instances non-accepted specific instances raised issues already considered by other NCPs. In others they related to issues arising many years back.

Stakeholders have noted that accessibility is a particular challenge for complainants bringing forward specific instances to NCPs. One of the principal ways in which accessibility is perceived to be restricted is through imposing a high threshold for acceptance of specific instance for further examination at the initial assessment stage.

**Figure 3.3. Reasons for non-acceptance of specific instances in 2019**





### ***Duration of procedures***

The Commentary on the Implementation Procedures provides an indicative timeframe of three months for completing the initial assessment<sup>55</sup>. Of the 30 specific instances closed in 2019, an initial assessment was completed within three months in only 4 cases (13%). In 10 specific instances (33%) the initial assessment took between 3-6 months. In 7 specific instances (23%) it exceeded one year. NCPs have identified this timeframe as a challenge. On the other hand, stakeholders have identified delays in the assessment as a shortcoming of the mechanism, and noted that completing this process sooner would make the system more impactful and effective.

The Commentary on the Implementation Procedures provides that “as a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.”<sup>56</sup> In 2019, in 13 (43%) closed specific instances, proceedings were concluded within a year. In 16 specific instances (53%), proceedings lasted for over a year, and in 8 of these cases they lasted several years. In some cases the delay can be attributed to the complexity of the issues raised and need for multiple mediation meetings.

### ***Summary of closed specific instances***

An overview of all closed specific instances including the leading NCP, host countries, duration and final outcomes is available in Table 3.2 below.

**Table 3.2. Status of closed specific instances in 2019**

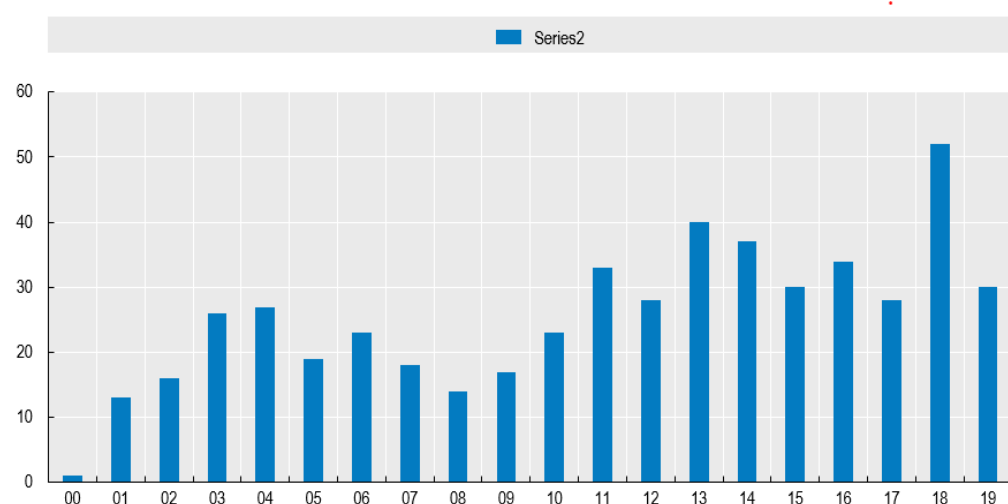
	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status
1	Tenaris S.A. and Flavia Di Cino	Argentina	Argentina	2017-2019	Concluded without agreement between the parties.
2	Mercer PR and Australian Women Without Borders	Australia	Republic of Nauru	2016-2019	Concluded without agreement between the parties.
3	Deutsche Bank Australia and Mr. Robert Palin	Australia	Germany	2019-2019	Not accepted for further examination.
4	Coca-Cola Amatil and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	Australia	Indonesia	2019-2019	Not accepted for further examination.
5	KBL European Private Bankers S.A. Luxembourg and KBC Belgium, and Open Secrets, and CALS	Belgium	South Africa	2018-2019	Not accepted for further examination.
6	Vale and BHP Biliiton and SITICOP, CNQ-CUT, BWI, and IndustriALL	Brazil	Brazil	2018-2019	Concluded without agreement between the parties.
7	Murchison Minerals Ltd. and three Former Employees	Canada	Burundi	2018-2019	Not accepted for further examination.
8	MAERSK Container Industry and Trade Union Number 1 of MAERSK Container Industry	Chile	Chile	2018-2019	Concluded without agreement between the parties.
9	Subsidiary of a French bank and an individual in Cameroon	France	Cameroon	2018-2019	Not accepted for further examination.
10	DIAM International and Birlisik Metal-Is in Turkey	France	Turkey	2017-2019	Concluded without agreement between the parties.

	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status
11	German company and individuals concerning employment and environmental issues in the Democratic Republic of Congo	Germany	Democratic Republic of the Congo	2019-2019	Not accepted for further examination.
12	ENI S.p.A., ENI International BV, and CWA and ACA	Italy	Nigeria	2017-2019	Concluded with agreement between parties.
13	Intesa Sanpaolo S.p.A. and Lady Lawyer Foundation (LLF)	Italy	Italy	2019-2019	Not accepted for further examination.
14	Ball Beverage Packaging Italia and FIOM-CGIL	Italy	Italy	2018-2019	Not accepted for further examination.
15	KEXIM, Daewoo E&C and JRPM, PSPD, KTNC WATCH	Korea, Republic of (South)	Philippines	2018-2019	Not accepted for further examination.
	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status
16	KBC Belgium and KBL European Private Bankers S.A. Luxembourg, and Open Secrets, and CALS	Luxembourg	South Africa	2018-2019	Not accepted for further examination.
17	PHARMAKINA SA and PHARMEG SA, and former employees	Luxembourg	Democratic Republic of the Congo	2019-2019	Not accepted for further examination.
18	ING Bank and NGOs concerning climate policy	Netherlands	Netherlands	2017-2019	Concluded with agreement between parties.
19	Bralima, Heineken N.V., and Kajangu	Netherlands	Democratic Republic of the Congo	2018-2019	Not accepted for further examination.
20	Doe Run Peru S.R.L., The Renco Group Inc., and Cooperacion, Oxfam America in Peru and Oxfam America in Washington and other NGOs	Peru	Peru	2011-2019	Concluded without agreement between the parties.
21	Human rights and bribery issues involving a U.S. multinational in the hotel industry in Peru (Marriot International Inc. and Quechua People)"	Peru	Peru	2018-2019	Not accepted for further examination.
22	Grupa OLX and Frank Bold Foundation	Poland	Poland	2018-2019	Concluded with agreement between parties.
23	Group PZU S.A. and Development YES – Open-Pit Mines NO Foundation	Poland	Poland	2018-2019	Concluded with agreement between parties.
24	Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational	Spain	Guatemala	2017-2019	Concluded without agreement between the parties.
25	Human Resources policy of a multinational firm operating in Spain	Spain	Spain	2018-2019	Not accepted for further examination.
26	Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia	Switzerland	Indonesia	2018-2019	Concluded with agreement between parties.
27	International Ice Hockey Federation (IIHF) and the Polish Ice Hockey Players Association	Switzerland	Poland	2019-2019	Not accepted for further examination.
28	Crédit Suisse and Society for Threatened Peoples Switzerland (North Dakota Access Pipeline)	Switzerland	United States	2017-2019	Concluded with agreement between parties.
29	Putzmeister Makina San ve Tic. A.S. and the Turkish Metal Union (Türk Metal)	Turkey	Turkey	2017-2019	Concluded without agreement between the parties.

### 3.3. Trends of new specific instances

A total of 30 new specific instances were submitted to NCPs in 2019 compared to 52 submitted in 2018. This represents a decrease in submissions based on historical rates of submissions since 2000 (see Figure 3.4.)

**Figure 3.4. Number of specific instances submitted annually 2000-2019**



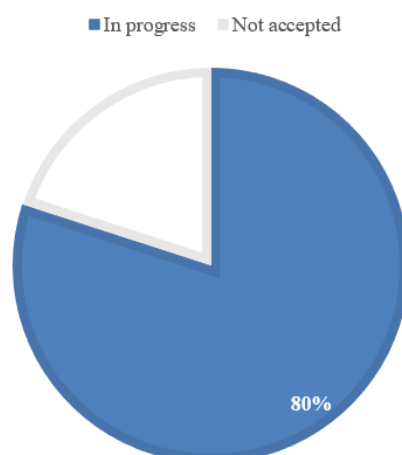
In 2019, 16 NCPs received specific instance submissions, representing 36% of all NCPs (Table 3.3). This is a significant decrease from 2018 where 25 NCPs (52%) received new submissions.

**Table 3.3. Number of specific instances received by NCPs in 2019**

National Contact Point	Number of specific instances	National Contact Point	Number of specific instances
Chile	8	France	1
Netherlands	4	Germany	1
Korea, Republic of (South)	3	Hungary	1
Australia	2	Italy	1
Switzerland	2	Luxembourg	1
Belgium	1	Morocco	1
Denmark	1	Turkey	1
Finland	1	United Kingdom	1

At the end of 2019, the status of the 30 specific instances submitted was the following: 24 were in progress (initial assessment had not yet been completed) and 6 had been closed and not accepted for further examination (see Figure 3.5).

**Figure 3.5. Status of specific instances submitted in 2019**

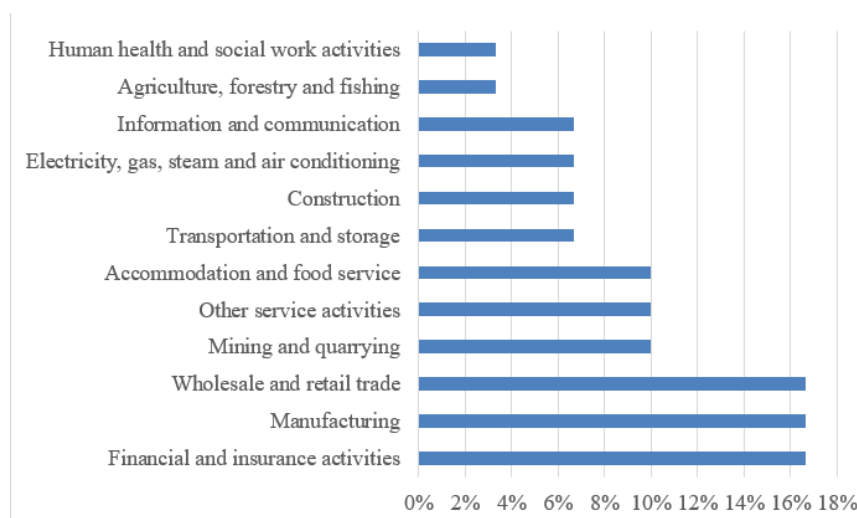


The Commentary on the Implementation Procedures provides that the NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues.<sup>57</sup> It also provides that when issues arise from an enterprise's activity that takes place in several Adherent countries or from the activity of a group of enterprises organised as a consortium, joint venture or similar form, based in different Adherent countries, the lead NCP should consult with other NCPs.<sup>58</sup> Currently, 16 specific instances (53%) submitted in 2019 are being handled with the help of supporting NCPs.

### ***Specific instances by industry sectors***

The most prevalent sectors referenced in specific instances submitted in 2019 were financial and insurance activities, manufacturing and wholesale retail and trade accounting for five submissions each (17% of all submitted cases respectively), followed by accommodation and food service, mining and quarrying and other service activities accounting for 3 submissions each (10% of all submitted cases respectively). The high rate of submissions from the financial, extractives and manufacturing sectors reflect recent trends (See Figure 3.6.)

**Figure 3.6. Specific instances submitted in 2019 by industry sector**

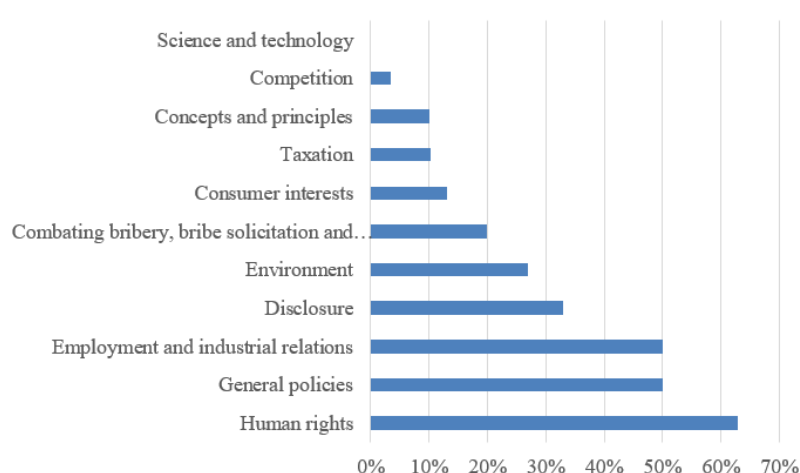


### ***Chapters of the Guidelines cited in specific instances***

The chapter on Human Rights was the most frequently referenced chapter: 19 of the specific instances submitted (63%), followed by the chapters on General Policies (which includes recommendations on due diligence), and on Employment and Industrial Relations. The Human Rights chapter has been the chapter most often referenced in specific instances since its introduction in 2011 review of the Guidelines (see Figure 3.7.)

This year saw a decrease in submissions referencing the chapter on General Policies, accounting for 50% of new submissions, down from 63% last year. This year also saw an increase in submissions referencing the Tax chapter of the Guidelines: 3 submission (10%) compared to about 2% of all specific instances handled from 2000-2018.

**Figure 3.7. Specific instances by Guidelines chapter in 2019**



### ***Host countries***

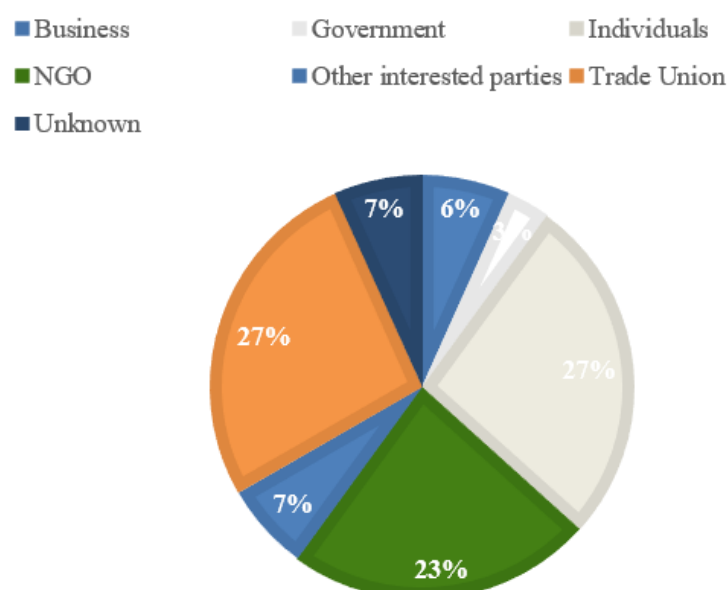
Specific instances submitted in 2019 dealt with issues involving companies in 20 host countries. 10 (33%) of the specific instances submitted in 2019 address issues arising in one of the 49 Adherent countries and 19 (63%) address issues arising in non-adherent countries. Information on the host country is not available for one specific instance. In total, since the year 2000 NCPs have handled specific instances involving issues arising in over 100 countries and territories.

### ***Submitters of specific instances***

Trade Unions and individuals were the primary submitters accounting for 8 (27%) submissions each. NGOs accounted for 7 (23%) of submissions (Figure 3.8.)

). This year submissions were also filed by companies regarding the conduct of other companies, and in one situation, a specific instance was initiated by a government actor. Information about affiliation of submitters is missing for two cases.

Figure 3.8. Submitters of specific instances in 2019



### 3.4. NCP structures and activities

#### *Structures and locations*

As established by the Decision on the Guidelines, while Adherent governments have flexibility in how to structure their NCP, they are under an obligation to make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities.<sup>59</sup> Key among these responsibilities is:

- seeking the active support of social partners;
- dealing with the broad range of issues covered by the Guidelines;
- operating in an impartial manner; and
- developing and maintaining relations with stakeholders.<sup>60</sup>

Governments are also expected to ensure that their NCP can operate in accordance with the core criteria of visibility, accessibility, transparency and accountability.<sup>61</sup> When handling specific instances, NCPs should also observe the principles of impartiality, predictability, equitability and compatibility with the Guidelines.<sup>62</sup>

#### *Overview of NCP structures*

In 2019, most NCPs were set up according to the following types of structure:<sup>63</sup>

- **Single agency NCP:** The NCP is composed of one individual in a single ministry, or by a group of individuals belonging to the same service in the same ministry.
  - In 2019, there were 19 single agency NCPs: Argentina, Austria, Chile, Colombia, Estonia, Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Mexico, New Zealand, Peru, Poland, Turkey, Ukraine, the United Kingdom, and the United States.

- **Inter-agency NCP:** The NCP is composed of a group of representatives from several ministries or government agencies.
  - In 2019, there were 13 inter-agency NCPs: Brazil, Canada, Costa Rica, Egypt, Germany, Hungary, Japan, Morocco, Portugal, Romania, Slovenia, Spain, and Switzerland.
- **Multipartite NCP:** The NCP is composed of a group of government officials and stakeholder representatives.
  - In 2019, there were nine multipartite NCPs. Five were tripartite, i.e. they include representatives of government, business and trade unions (Belgium, France, Latvia, Sweden and Tunisia). Four were quadripartite, including representatives of civil society organisations (Czech Republic, Finland, Kazakhstan and the Slovak Republic).
- **Expert-based NCPs:** The NCP is composed of experts who are appointed by, but external to, the government. These NCPs are generally set up as entities independent of the government, although they are dependent upon the government for funding. Experts may be required to act in a personal capacity and not to represent particular interests or on the contrary may represent the views of the organisations that nominated them.
  - In 2019, there were four expert-based NCPs: Norway, Denmark, Lithuania and the Netherlands.

In addition, the NCPs of Australia and Korea were set up under a hybrid structure composed of elements derived from different models above (see Box 3.6. below), namely single-agency and expert-based (Australia), or inter-agency and expert-based (Korea).

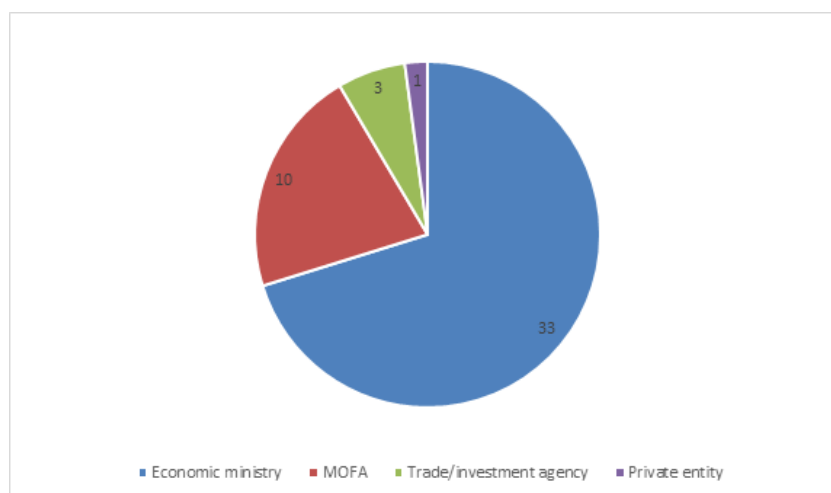
Each Adherent government can also decide on the location of its NCP, bearing in mind the core criteria for functional equivalence. This location is either that of the NCP itself (for single-agency NCPs) or, for NCPs that are set up as committees meeting intermittently (inter-agency, multipartite, expert-based), the location of their permanent office or Secretariat handling the daily management of NCP affairs (receiving inquiries and specific instances, organising or participating to promotional events, preparing NCP decisions, etc.). In 2019:

- 33 NCPs were located in Ministries with an economic portfolio (i.e. Ministries of Economy, Trade, Industry, Investment, Business, etc.);
- 10 NCPs were located in Ministries of Foreign Affairs;
- 3 NCPs were located in Investment Promotion Agencies (Figure 3.9)

In addition, the Secretariat of the NCP of Korea is located in a private entity, the Korea Commercial Arbitration Board (see Box 3.6).

Over the course of 2019, two NCPs made changes to their structure. Australia completed the reform of its NCP, so that cases are now handled by an independent examiner, whereas the rest of the mandate of the NCP is exercised by a team of government officials from the Department of Treasury (Box 3.6). The Kazakh NCP transitioned from an inter-agency structure to a multipartite structure composed of ministries, business, trade union and civil society organisations, as well as an independent research centre. The secretariat of the NCP is now located in the trade and investment promotion agency (QazTrade).

**Figure 3.9. Locations of NCPs**



In 2019, Tunisia continued with the setting up of its tripartite NCP, which was formally re-established in 2018 by decision of the Minister for Development, Investment and International Cooperation.

In addition, five Adherents (Brazil, Greece, Poland, Slovenia and Chile) reported changes to the location of their NCP.

### **Box 3.6. 'Hybrid' NCP structures**

#### **Australia's hybrid single agency/expert-based NCP structure**

Following changes in 2019, the Australian NCP is managed by a senior official and supported by a Secretariat, in the Department of the Treasury. The senior official is responsible for all decision-making on behalf of the NCP except for specific instances.

In 2019, an individual Independent Examiner was appointed to handle all Specific Instance-related work. The Independent Examiner also undertakes promotional activities.

The Australian NCP now also has a Governance and Advisory Board, which oversees the work of the NCP, provides advice on its activities, and contributes to promotional work.

#### **Korea's hybrid inter-agency/expert-based NCP structure**

The Korean NCP is set up as a hybrid inter-agency/expert-based body chaired by an official from the Ministry of Trade, Industry and Energy, and composed of officials from various ministries and experts. The body is complemented by a Mediation Committee composed of three to five members of the NCP or other relevant external experts elected by the NCP. The chair of the NCP appoints the chair of the Mediation Committee among the NCP members.

The NCP's Secretariat is located in the Korean Commercial Arbitration Board (KCAB), a private alternative dispute resolution institution.

### ***Rules of procedure for the handling of specific instances***

Having clear rules of procedure is an important way to ensure a predictable process to resolve cases and to build trust among stakeholders. NCPs have made important progress in this regard over the years. 39 NCPs have made rules of procedures available online, compared to 38 in 2018, with Slovenia making their



rules of procedure available online in 2019. Moreover, 11 NCPs modified their rules of procedure (Australia, Chile, Finland, France, Germany, Israel, Morocco, Poland, Slovenia, Turkey and the United Kingdom), indicating that many NCPs are also refining their rules of procedure to ensure a more consistent approach to case-handling across the NCP network.

### ***Reporting***

As part of the core criteria for functional equivalence, NCPs are required to be accountable. Under the Procedural Guidance, NCPs must report annually to the OECD Investment Committee<sup>64</sup> and may communicate on a regular basis to Government and/or Parliament. Such reporting can be an important means to raise the internal profile of NCPs within their Governments and to ensure that budgetary challenges that the NCPs may face can be addressed. In 2019:

- 34 NCPs reported on their activities to their Government, and 13 reported to Parliament.<sup>65</sup>
- All except one NCP (Jordan) reported on their activities in 2019 to the OECD; this was also the case for Jordan in 2018.

### ***Meeting attendance***

NCPs are required to meet regularly to share experience, in particular by attending the two annual meetings of the NCP Network at the OECD.<sup>66</sup>

In 2019, a total of 45 NCPs attended the meeting of the NCP Network in June and 41 attended in November. One NCP (Jordan) did not attend either of the two NCP meetings in 2019, compared to three in 2018 (including Jordan).

### ***Stakeholders as part of the institutional arrangements***

Stakeholders can be formally integrated into the institutional arrangements of the NCP, for example as members of the NCP or on the NCPs' advisory or oversight bodies. Including key stakeholders – such as workers' organisations, civil society organisations and the business community – as part of the NCP's institutional arrangement can serve to enhance the expertise available to the NCP and may render it easier to maintain relations with stakeholders, to seek their support, and ultimately to gain and retain their confidence.

### ***Oversight and advisory bodies***

To promote impartiality of the NCPs, the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises recommends that NCPs establish multi-stakeholder advisory and/or oversight bodies.<sup>67</sup> While these do not normally form part of the NCP and do not have decision-making power on accepting or concluding specific instances, they can provide important advice to the NCP on a range of issues, including general strategy of the NCP, promotional plan, stakeholder engagement, general guidance on handling specific instances (e.g. advice on rules of procedure, updates on cases received and concluded, etc.).

In 2019, 20 NCPs had an advisory body, compared to 18 in 2018. This shows that NCPs are increasingly including stakeholders in their structure, and thereby creating opportunities for strengthening engagement and building confidence with stakeholders. Four of these advisory bodies also provided oversight to the NCP (Australia, Austria, Chile, and the United Kingdom).<sup>68</sup>

In practice, the structures and mandates of current advisory and oversight bodies across the NCP Network vary significantly. For instance, NCP advisory bodies are composed of different types of stakeholders: some are composed only of government representatives, others are composed of 'external' stakeholders

(business alone; business and workers' organisations; business, workers' organisations and civil society organisations), and others are composed of both government and stakeholders. Certain NCPs also include other actors such as National Human Rights Institutions or 'unaffiliated' independent experts (such as academics) on their advisory boards.

Argentina, Australia and Slovenia reported having established an advisory body in 2019 (Table 3.4), whereas Kazakhstan discontinued its advisory body in 2019 due to its transition to a multi-stakeholder structure (see above).

**Table 3.4. NCP advisory bodies created in 2019**

NCP	Composition	Substance of advice	Frequency of meetings
Argentina	Business, Trade unions NGOs Academia	Specific instances Promotion	Biannually
Australia	Government Business Trade unions NGOs	General matters Promotion Specific instances Oversight	Biannually (at least)
Slovenia	Business Trade unions NGOs Academia	General matters	3 times a year

### ***NCP resources***

As established by the Decision on the Guidelines, adhering Governments have a legal obligation to establish an NCP and to ensure that it has the human and financial resources to effectively promote the Guidelines and handle the broad range of specific instances that it may receive. In June 2017, the OECD Ministerial Council Statement, entitled "Making globalisation work: better lives for all" committed to "having fully functioning and adequately resourced National Contact Points".<sup>69</sup> In 2019, the Ministerial Council discussed a Progress Report on National Contact Points for Responsible Business Conduct that presented key facts and figures, as well as recommendations, in relation to that commitment (see Box 3.7).

In 2019:

- 17 NCPs reported having both dedicated full-time and part-time staff
- 7 NCPs reported having full-time staff only
- 21 NCPs had part-time staff only
- 1 NCP had no dedicated staff<sup>70</sup>

Furthermore, frequent turnover of staff continues to present a challenge to NCPs in terms of ensuring institutional memory and handling ongoing specific instances. In 2019:

- 28 NCPs reported that 44 new staff members had joined
- 24 NCPs reported that 29 staff members had left

Therefore, even though absolute staff resources throughout the network have increased in 2019, turnover has remained frequent, as the majority of NCPs reported staff changes.

With regards financial resources:

- 18 NCPs had access to a dedicated budget for their activities.

- 11 NCPs reported that the financial resources available to them were not sufficient to conduct promotional activities.
- One NCP that handled specific instances in 2019 also reported that resources available were not sufficient to handle cases in a timely and effective manner.
- 45 NCPs noted that funds were available to them for attending NCP meetings at the OECD.

As noted by the Progress Report on National Contact Points for Responsible Business Conduct delivered to the OECD Ministerial Council in 2019, insufficient human and financial resources continues to be a major concern for NCPs.<sup>71</sup> The lack of full-time staff, and the fact that many NCP officials have other duties and only devote a portion of their time to NCP work, was highlighted in the report as an issue. Even though working on other RBC-relevant issues alongside NCP duties may be beneficial in terms of policy coherence, this may also limit the official's ability to actively promote the Guidelines and the NCP, or to handle cases in a timely and efficient manner as mandated by the Guidelines, particularly as case complexity is only set to increase. As a result, the Progress Report recommended that governments “ensure the provision of financial and human resources commensurate with the scope of the role of NCPs and the heightened complexity of their work.”<sup>72</sup>

### Box 3.7. Progress report on National Contact Points for Responsible Business Conduct

The Progress Report on National Contact Points for Responsible Business Conduct submitted to the 2019 OECD's Ministerial Council Meeting (MCM) addresses the need for more government support and resources to ensure that National Contact Points for Responsible Business Conduct (NCPs) reach their full potential.

The report responds to a commitment made by Ministers at the MCM in 2017 to have “fully functioning and adequately resourced National Contact Points, and to undertake a peer learning, capacity building exercise or a peer review by 2021, with the aim of having all countries peer reviewed by 2023”. It documents progress made and sets out recommendations to Adherent governments that act as a useful roadmap for action:

- Ensure that financial and human resources match the scope of the role of NCPs and the heightened complexity of their work.
- Ensure that NCPs enjoy the necessary support and visibility within their government to carry out their functions effectively and promote policy coherence on RBC.
- Ensure that the composition of NCPs is such that they can carry out their functions impartially and without risk of conflict of interest – or a perception thereof.

In addition, all governments are encouraged to volunteer for a peer review of their NCP and those governments whose NCPs have undergone a peer review are called on to implement to the extent possible the recommendations, and report on progress made.

## 3.5. Promotion of the Guidelines

Ensuring that NCPs are visible requires sustained efforts to raise awareness among the business community, worker organisations, civil society organisations and other interested parties. An important function of NCPs is to promote awareness of the OECD Guidelines and the due diligence guidance that offers tools to the private sector on how to do business responsibly.

NCPs also play a critical role in supporting the wide dissemination of the 2018 OECD Due Diligence Guidance for Responsible Business Conduct which provides practical guidance on the key elements of

supply chain due diligence. In particular, the Council Recommendation specifically recommends that NCPs “ensure the widest possible dissemination of the Guidance and its active use by enterprises, as well as promote the use of the Guidance as a resource for stakeholders”.<sup>73</sup> To facilitate the broad uptake of the guidance several NCPs are also in the process of translating it into other languages (Box 3.8).

### **Box 3.8. Examples of events organised by NCPs to promote the Guidelines and due diligence guidance**

#### **Launch events of the OECD Due Diligence Guidance for Responsible Business Conduct in Japanese and Spanish**

In 2019, two large scale events were organised to launch the Spanish and Japanese versions of the Due Diligence Guidance for RBC. On 3-4 June, the government of Argentina organised the first Regional Forum on National Action Plans and Public Policies on Business and Human Rights, where the Argentinian NCP and the OECD Secretariat collaborated in launching the Spanish version of the OECD Due Diligence Guidance on RBC before an audience of more than 400 participants, representatives from the regional and national level of governments, businesses, academia and civil society organizations. The Spanish NCP and NCPs from Latin America collaborated with the OECD Secretariat in translating the Guidance. On 7 June, the Japanese NCP and the OECD Secretariat collaborated with Business Policy Forum Japan in organising a symposium on ‘implementing Responsible Business and Human Rights expectations and standards in Japan’, where the Japanese version of the OECD Due Diligence Guidance for Responsible Business Conduct was launched in front of a large audience of large and mid-cap companies. Other OECD due diligence tools, notably guidance developed for the financial sector were presented. The Japanese NCP and the OECD Secretariat collaborated in translating the Guidance. These two events were supported by the RBC LAC project, and the Responsible Supply Chains in Asia project.

#### **Radio show by the Lithuanian NCP**

As part of the Lithuanian CSR Action Plan coordinated by Ministry of Social Security and Labour and in which the Lithuanian NCP is closely involved, the Chair of the NCP appeared in October in a 20 minute segment on the national News Radio on the theme “What is a socially responsible company”. Questions addressed were the definition of RBC (including the difference with philanthropy) and the role of the NCP under the Guidelines, how companies can use RBC to gain a market advantage, the reason why RBC is becoming an increasingly important concern across society, and the RBC performance of Lithuanian companies as compared to those of other countries. This event allowed to inform a large national audience on RBC and the NCP at minimal cost.

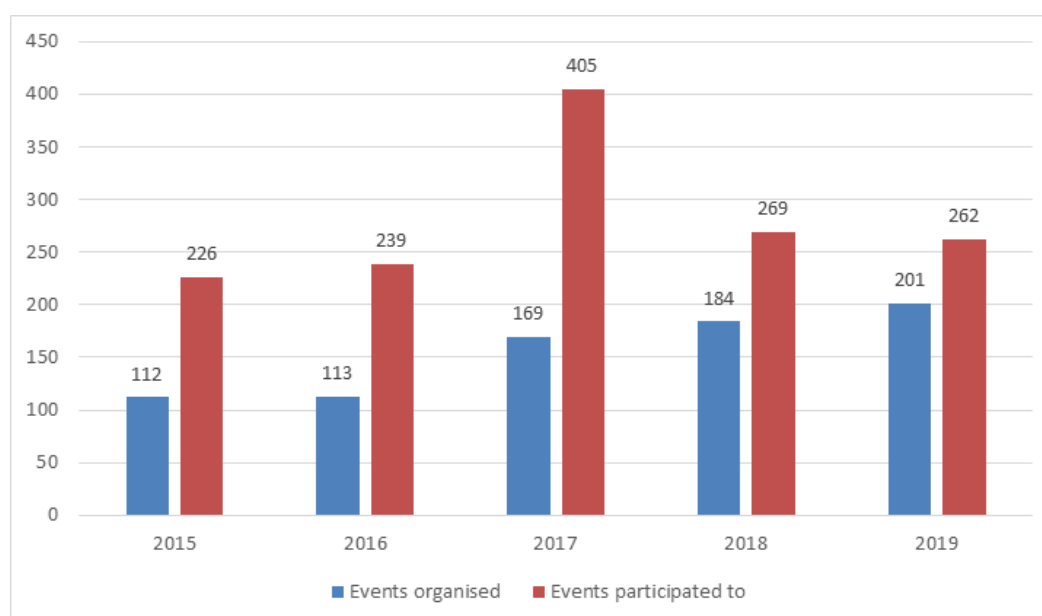
#### **Partnership of the Costa Rican NCP with the ‘Essential Costa Rica’ Country Brand**

In 2019, the Costa Rican NCP partnered with the Export Promotion Agency (PROCOMER) in order to advise SMEs applying for the ‘Essential Costa Rica’ Country Brand, which requires firms to integrate sustainability and RBC in their business models. In the second semester of 2019, the Costa Rican NCP joined PROCOMER’s missions in the country to reach SMEs outside the Metropolitan Area and developed a dedicated brochure and specific information for SMEs.

In 2019, NCPs continued to take important steps in promoting both the Guidelines and due diligence guidance. In 2019, a total of 201 events were organised or co-organised by 35 NCPs. This represents an increase from 2018, when 184 events were organised or co-organised by 34 NCPs (see Figure 3.10 below for evolution since 2015).

Twelve NCPs did not organise or co-organise any promotional events in 2019, compared to fourteen in 2018.<sup>74</sup>

Figure 3.10. Promotional events organised by or involving NCPs (2015-2019)



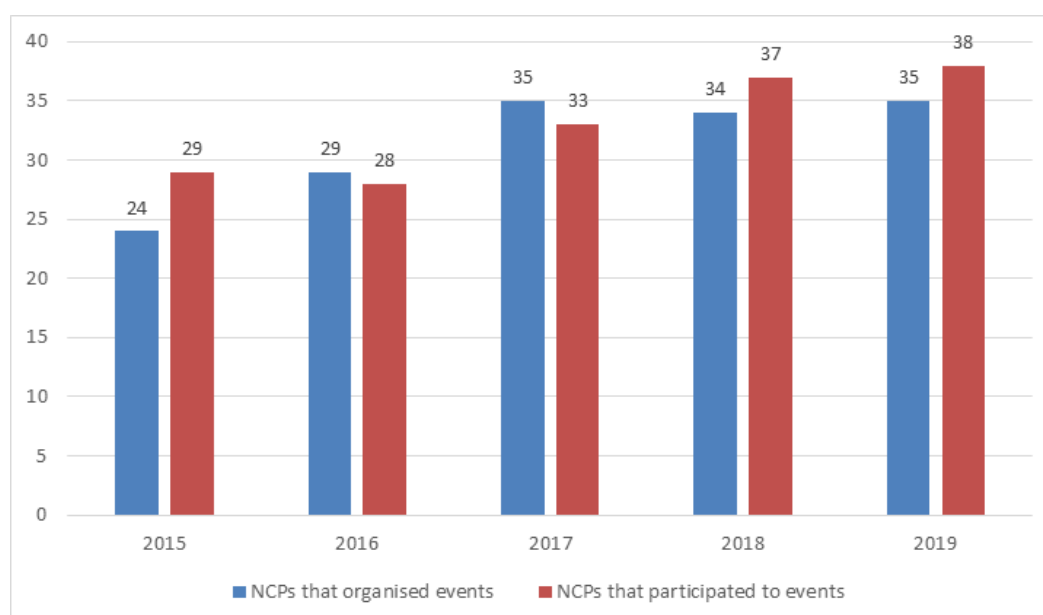
The types of events ranged from training, official meetings with stakeholders, annual meetings with stakeholders to report on NCP activities, meetings with government or stakeholder representatives on a specific topic, larger conferences on topics such as due diligence and responsible supply chains across different economic sectors, radio interviews or even responsible fashion shows. In 2019, 26 NCPs (55% of NCPs) hosted an annual meeting with stakeholders, similar to 2018.

In addition to organising or co-organising events, 38 NCPs reported taking part in a total of 262 events organised by others, during which they participated in presentations, panels and discussions. This is relatively stable compared to 2018, when 37 NCPs participated to 269 events, but still significantly less than the 405 events in which NCPs participated in 2017. A total of eight NCPs did not participate in any promotional event, compared to 11 in 2018.

Five NCPs did not organise, co-organise, nor participate in any promotional event (Egypt, Estonia, Iceland, Kazakhstan, and the Slovak Republic), compared to six in 2018.

Since 2015, the number of NCPs that organised promotional events grew from 24 in 2015 to 35 in 2019 (see Figure 3.11). The number of NCPs participating in events has also increased, although the number of events in which NCPs participated decreased. In 2019, 38 NCPs participated in events, up from 29 in 2015 (see Figure 3.11).

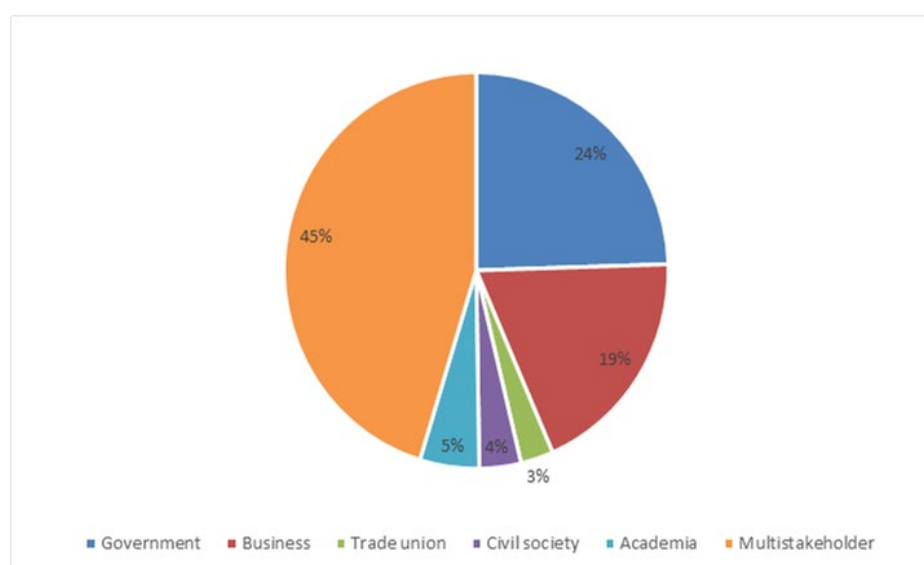
**Figure 3.11. Number of NCPs that organised or participated in events (2015-2019)**



In 2019, 45% of reported events organised or co-organised by NCPs or in which NCP participated, were targeted to a multi-stakeholder audience. 24% of all events were targeted to government representatives and 19% to business representatives. Academia, civil society and trade unions were more marginally targeted by NCPs, with respectively 5, 4 and 3% of all events addressed to these groups (Figure 3.12), although some NCPs organised large-scale events targeted at minority groups (see Box 3.9).

The large majority of reported NCP events had an audience size of 10 to 50 participants (45%), followed by events with 50 to 100 participants (22%) or less than 10 participants (19%). Interestingly, 14% of events (i.e. a total of 57 events) had an audience of more than 100 (Figure 1.13). This represents a significant increase in the reach and impact of NCP promotion compared to 2018 when, out of a comparable number of events, 40% had an audience of less than 10, 37% of 10 to 50, 14% of 50 to 100 and 9% of more than 100.

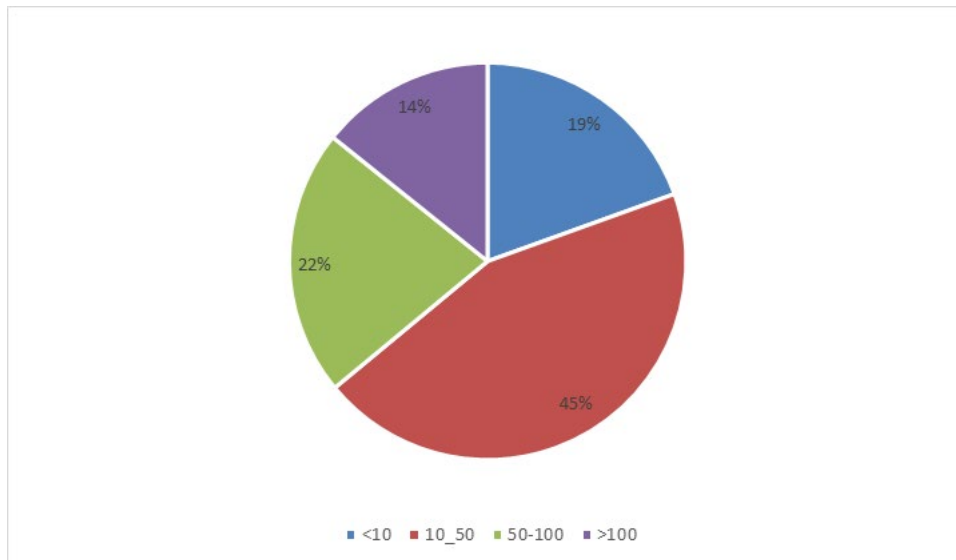
**Figure 3.12. Target audience at NCP events**



### Box 3.9. NCP engagement with minority groups

In June, the Norwegian NCP and NHRI together arranged a seminar to discuss natural resource development, business and the rights of indigenous peoples. The seminar was held in Karasjok, Norway, the seat of the Sámi parliament. The event, and brought together a diversity of perspectives with representatives from business, Sami communities, local governments and other stakeholders. Drawing from concrete cases, including the case relating to Statkrafts' construction of wind parks in the Sámi village of Jijnjevaerie in Sweden, handled by the Swedish and Norwegian NCPs, concrete examples of how conflicts and dialogue are dealt with in practice were presented, both from the perspective of business and of the impacted Sámi communities. Challenges, lessons learnt and best practices for RBC and consultation with Indigenous peoples on mitigation measures were also discussed. Additionally, the Norwegian NCP launched the Norwegian and Sámi language versions of the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.

Figure 3.13. Size of audience at NCP events



A total of 27 NCPs reported having a promotional plan in place for 2020, setting out target activities and audiences over the coming year. This number represents a sharp decrease from the previous year, when 38 NCPs reported having a promotional plan.

In addition to promotional events, several NCPs also participate in advisory groups supporting sector projects on responsible business conduct led by the OECD. See Table 3.5 below and Chapter 2 for further information.

Table 3.5. NCP participation in advisory groups to OECD sector projects

RBC Sector Projects	NCP Participation in Advisory Groups
Agriculture	Belgium, Chile, Costa Rica, France, Germany, Italy, Norway, Peru, Switzerland
Financial	Canada, Sweden, Switzerland, UK
Garment and Footwear	Canada, France, Italy, Sweden
Minerals	Belgium, Switzerland



### ***Accessibility of information – NCP websites***

Although there is no specific requirement for NCPs to have a website, an important aspect of being visible is online presence through a dedicated website where rules of procedures and regular updates about NCP activities and specific instance outcomes are made public. For many stakeholders, NCP websites have served as a principal point of contact for submitting specific instances.

- A total of 44 NCPs have dedicated websites or dedicated webpages on the Ministry's website that provide information about the Guidelines and the NCP, including contact information for reaching the mechanism.<sup>75</sup>
- 18 NCPs reported creating new or improved websites in 2019.

### ***Peer-learning***

The Commentary on the Implementation Procedures provides that "NCPs will engage in joint peer learning activities."<sup>76</sup> Peer learning takes place in a variety of forms. NCPs typically engage in peer learning at the June and November meetings of the network of NCPs at the OECD headquarters, or during peer learning events hosted by one or several NCPs. In 2019, the practice of forming regional networks of NCPs for the purpose of peer learning intensified (Box 3.10).

#### **Box 3.10. Regional NCP networks**

The 2019-21 Action Plan to Strengthen NCPs (see below) proposes to take advantage of regional networks of NCPs to complement NCP-organised peer learning events, or meetings of the NCP network. This allows NCPs from the same region can gather to discuss issues of joint interest and build capacity together. To date regional networks in the German-speaking, Nordic-Baltic, Central and Eastern European (CEE), and Latin American (LAC) regions have been created, the last two in 2019.

In 2019:

- The German-speaking network (comprising the NCPs of Austria, Germany and Switzerland) met in Berne in October and shared experiences on dealing with specific instances (e.g. final statements and follow up), promoting the implementation of due diligence by companies and furthering policy coherence regarding responsible business conduct.
- The Nordic-Baltic network met in Oslo in May and exchanged expertise on handling specific instances and tools for promoting due diligence for responsible business conduct, with a focus on the financial and garment sectors.
- The CEE network met in June and November in Paris and engaged in peer-learning about diversity in structures and common challenges related to handling specific instances and promotion.
- The LAC network met in March, June and November in Paris and notably held a workshop on NCP engagement with business. This network is supported by, and complements the activities of the RBC in LAC project.

In 2019, six NCPs reported having hosted a peer learning event, while 16 reported participating in one (Box 3.11).



### Box 3.11. Examples of NCP hosted peer learning events

#### Vienna mediation academy

The Austrian NCP organised a mediation academy in Vienna, Austria in April 2019, facilitated by the Consensus-Building Institute (CBI). The programme was organised around key mediation moments (bringing parties to the table, initial assessments and preparing for mediation, implementation and follow up, final statements and processes that do not end with agreement) and key mediation issues (transparency v. confidentiality, using external mediators, mediating human rights issues). The programme also allowed participants to exchange on their experiences, questions and concerns, and to 'think outside the box' regarding stakeholder mapping. 20 participants from 14 NCPs and the OECD Secretariat took part in the academy.

#### Rabat workshop on managing specific instances and mediation

The Moroccan NCP organised and hosted a workshop in Rabat, Morocco in October 2019 on 'Managing specific instances in the context of the OECD Guidelines', also led by the Consensus-Building Institute (CBI). The workshop focused around 'key moments' in case-handling, such as initial assessment, mediation, reaching agreement, and drafting final statements. For each of these key moments, four learning pillars were used: (i) identifying why these key moments pose challenges; (ii) peer reflection on how to address these challenges, referring to best practice; (iii) role play and scenario analysis to strengthen NCP problem-solving capacity; (iv) learning consolidation through the formulation of guidance. Seven NCPs and the OECD Secretariat participated in the event.

### ***NCP participation in the UN Forum on Business and Human Rights***

The eighth annual UN Annual Forum on Business and Human Rights took place on 25-27 November 2019 in Geneva, Switzerland. Under the theme "Time to act: Governments as catalysts for business respect for human rights", the Forum focused on the state duty to protect human rights and on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect against business-related human rights abuse and strengthening accountability. Ensuring access to effective remedy was also highlighted as part of the State duty to protect, and the forum included discussions on government action need to address the full spectrum of measures from prevention to remediation. Representatives from several NCPs attended the event and participated in panels.

### 3.6. NCP participation in Global Forum on Responsible Business Conduct

Several NCPs participated in the Global Forum on Responsible Business Conduct organised in Bangkok in June 2019 (see also Chapter 4). Dedicated sessions involving NCPs included:

- *Learning from Practice: Accountability and Access to Remedy.* This panel included civil society actors and representatives of two types of mechanisms active in facilitating remedy for harm resulting from business activities: NCPs and National Human Rights Institutions (NHRIs). Panellists discussed the respective mandates of NCPs and NHRIs in facilitating access to remedy, as well as the interplay between their operations as non-judicial grievance mechanisms in the field of business and human rights, with a focus on cooperation in ensuring the widest possible access to remedy for victims of corporate abuse. Panellists gave examples of cases in which NHRIs and NCPs have contributed to providing access to remedy, and highlighted instances in which NHRI-NCP cooperation has or could have improved such access.

- *Introducing National Contact Points for Responsible Business Conduct and the OECD Due Diligence Guidance for Responsible Business Conduct.* This session (co-organised by the Secretariat and the Australian NCP) provided an introduction to the OECD Due Diligence Guidance for Responsible Business Conduct, as well as National Contact Points for RBC, and provided an opportunity to companies and stakeholders operating in supply chains in Thailand or the region to learn about NCPs and the Guidance and their relevance for the region. NCPs from Australia, Canada and Switzerland shared concrete examples of their work and interacted with participants.

### 3.7. Action Plan to strengthen NCPs (2019-2021)

After the completion of the first Action Plan to strengthen NCPs (2016-2018), a second Action Plan (2019-2021) was adopted in December 2018. It contains four overarching priority areas: peer reviews and capacity-building, building functional equivalence, building and improving tools, and promoting policy coherence.

Subject to availability of funding, the Action Plan will deliver additional peer support to NCPs facing challenges meeting the core criteria, sharing of expertise and skills among the NCPs, capacity-building among peers through regional and thematic NCP networks, Secretariat support to NCPs to assess and address capacity-building needs among key stakeholders, developing websites and other support tools, and supporting the mechanisms to identify and engage with national-level opportunities to provide their expertise to developments on RBC.

#### ***Tools and capacity building***

The Secretariat's practice of developing reports jointly with NCPs will continue under the second Action Plan. Publications issued in 2019 are listed in Box 3.13. In addition, in 2019 the Secretariat prepared a note on legal challenges faced with NCPs such as defamation suits or requests for judicial review of case-statements, and facilitated discussions with NCPs on how to address these challenges. In addition, as alleged incidents of undue pressure being put on submitters of specific instances are reportedly on the rise, NCPs held discussions on possible measures to protect submitters, notably based on a fact sheet submitted by OECD Watch in June 2019.<sup>77</sup>

Additionally, the Secretariat prepared several presentations on issues of interest to NCPs such as a presentation on the Guidelines and NCPs for new NCP officials, and a presentation on due diligence. The Secretariat also presented in June and November 2019 respectively a concept note and draft syllabus for an online training tool for NCPs, designed to serve as an on boarding tool for new NCP officials and as a repository of information to help NCPs in their daily work. In 2020, the secretariat will present a feasibility study and development plan for the tool.

In addition, the Secretariat facilitates peer learning, including meetings of regional networks of NCPs (see above Box 3.11) and technical trainings on specific issues (Box 3.12).

### Box 3.12. ILO Turin technical training on international labour standards

From 23 to 27 September, 20 participants from 13 NCPs attended a technical training organised by the ILO Training Centre in Turin and funded by the European Union on the theme ‘Labour issues in RBC: The guidance provided by International Labour Standards and the ILO. Through multiple interactive sessions, this week-long training allowed NCPs to deepen their knowledge of ILO RBC labour standards such as the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, and to build expertise in relation to the impacts of business on labour rights. This training was considered to be relevant to their daily practice, given that labour issues and Chapter V of the Guidelines are recurrent themes in specific instances. Sessions included in particular the following topics: business and wages and working hours, business and non-discrimination, opportunities for improved synergies and coherence, business and collective bargaining, or termination of employment, including restructuring or closing of local operations, among various others.

### *NCP peer reviews*

NCP Peer reviews offer an important opportunity to appreciate and share the internal workings of an NCP and any barriers the NCP may face in realising its objectives, as well as achievements and good practices in discharging its functions. The peer reviews also include an examination of the NCP’s procedures and approach to handling of specific instances which can help improve consistency going forward.

In 2019, the peer reviews of two NCPs (United Kingdom and Argentina) were concluded and the on-site visit of the peer review of the NCP of Korea was held. Additionally, the NCPs of Chile, Germany, Austria, the United States and Canada reported on the implementation of peer review recommendations.

Of the 48 NCPs,<sup>78</sup> 16 have been peer reviewed with one review ongoing (Korea). In addition, the NCPs of two Adherents underwent significant reviews as part of the process of the countries’ accession to the OECD. An additional 18 Adherents have committed to a peer review of their NCP by 2023 (Table 3.6). This leaves a total of 12 Adherents, of which 6 are OECD members, not having yet committed to a peer review, (Table 3.7).

Peer reviews are funded by the government of the NCP under review. The amount of the contribution is as established in the Action Plan to Strengthen National Contact Points for Responsible Business Conduct (2019-2021) and in the Revised Core Template for voluntary peer reviews of NCPs. For some governments, providing funding has been an obstacle to committing to a peer review or to delivering on their commitment, as noted in the Progress Report on NCPs discussed by the OECD Ministerial Council in 2019.

**Table 3.6. NCP peer reviews completed, ongoing and committed**

Peer review completed	Peer Review ongoing	Peer review commitment made	Review completed for the accession process
Netherlands	Korea	Sweden (2020, funds permitting)	Costa Rica
Japan		Spain (2020, funds permitting)	Lithuania
Norway		Australia (2021)	
Denmark		Ireland (2021)	
Belgium		Greece (2021)	
Italy		Luxembourg (2021)	
Switzerland		Colombia (2022)	

Peer review completed	Peer Review ongoing	Peer review commitment made	Review completed for the accession process
France		Slovenia (2022)	
Germany		New Zealand (2022)	
Chile		Tunisia (2022)	
United States		Portugal (2022)	
Austria		Mexico (2023)	
Canada		Latvia (2023)	
United Kingdom		Kazakhstan (2023)	
Argentina		Romania (2023)	
		Estonia (2023)	
		Hungary (2023)	
		Slovak Republic (2023)	

**Table 3.7. NCP peer reviews: not yet committed**

OECD member countries	Czech Republic, Finland, Iceland, Israel, Poland, Turkey (6)
Adherent countries	Brazil, Egypt, Jordan, Morocco, Peru, Ukraine (6)

Recommendations from peer reviews completed in 2019 are set out in Annex II. The peer reviews of the NCPs of Spain and Sweden are scheduled for 2020, provided these countries can secure the necessary funding.

Since 2015, peer reviews were carried out using a Core Template for assessing NCP performance. This template addressed core criteria (visibility, accessibility, transparency and accountability) and the guiding principles for handling cases (impartiality, predictability, equitability, and compatibility with the Guidelines). On the basis of feedback from peer review participants (including NCPs, representatives from governments as well as business, trade unions and NGOs), the Core Template was revised in 2019. The main improvements to the Core Template include streamlined questionnaires for input by NCPs and stakeholders, a clarified procedure for peer review commitment by countries, provisions for better dissemination of the peer review report, and clarification of the modalities under which stakeholders provide written or oral input.

### Box 3.13. NCP publications

In 2019 several reports were developed regarding NCP activities and functioning:

#### **Progress report on National Contact Points for Responsible Business Conduct**

At the OECD Ministerial Council in May 2019, a Progress Report on National Contact Points for Responsible Business Conduct was published. This report assessed progress against the commitments made by the OECD Ministerial Council in 2017 to having fully functioning and adequately resourced NCPs and to undertake a peer learning, capacity building exercise or a peer review by 2021, with the aim of having all countries peer reviewed by 2023. The report flagged a number of challenges facing the network of NCPs, in particular on resources and support from government, and made recommendations.

#### **Guide for National Contacts Points on the Initial Assessment of Specific Instances**

This Guide considers challenges in initial assessment processes across NCPs and identifies good practice to help ensure consistency and encourage resolution of issues as well as functional equivalence. NCPs discussed the Guide at the June meeting of the NCP network. The Guide also contains a section on stakeholder perspectives on initial assessments.

#### **Guide for National Contact Points on Follow up to Specific Instances**

The Guide maps the practice of NCPs regarding follow up on agreements or recommendations emerging from cases. It shows a steady increase of this practice in recent years and provides an overview of best practices in this regard. NCPs discussed the Guide at the June meeting of the NCP network. The Guide also contains a section on stakeholder perspectives on follow up.

#### **New Flyer on National Contact Points**

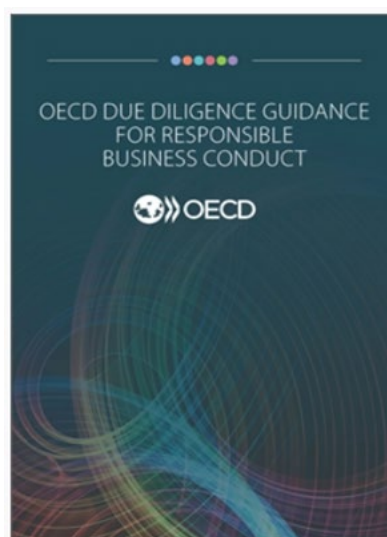
In 2019 the Secretariat updated and expanded the information flyer on NCPs. The new flyer gives a definition of NCPs and explains in detail the unique grievance mechanism that is the specific instance procedure, providing insights into its scope, the themes and sectors covered, the outcomes to be expected and the range of case submitters to which the mechanism is available, through concrete case examples. It insists on the global reach of the mechanism, and presents the efforts of governments and NCPs to continuously improve, notably through the Action Plan to Strengthen NCPs (2019-2021).

## 4. Due Diligence for Responsible Business Conduct

The expectation that enterprises carry out due diligence to identify, prevent and mitigate real and potential adverse impacts across their operations and business relationships, and to account for how those impacts are addressed are clearly set out in the Guidelines. Due diligence for responsible business conduct helps businesses contribute to economic and social growth without causing or contributing to adverse impacts. It is thus a critical approach to help business put into practice actions to achieve the Sustainable Development Goals and numerous targets associated with the Agenda 2030. Due diligence also contributes towards holding businesses accountable for adverse impacts where they do occur, and as such helps contribute to the effectiveness of the OECD's National Contact Point network and access to remedy.

A range of due diligence tools support company implementation of the Guidelines: The OECD Due Diligence Guidance for Responsible Business Conduct sets out expectations for all companies operating in all countries and sectors of the economy by setting out practical, clear explanations for how to implement due diligence as recommended in the Guidelines.<sup>79</sup> OECD due diligence guidance for the agriculture, finance, garment & footwear, minerals and stakeholder engagement in the extractives sector set out specific expectations for carrying out due diligence and risk-mitigation in those sectors; implementation programmes for those sectors, adopted by multi-stakeholder steering groups including their Adherents, facilitate multi-stakeholder implementation of the sector guidance.

**Figure 4.1. OECD Due Diligence Guidance for Responsible Business Conduct**



Source: OECD.

Related to the OECD work on due diligence, a range of important legislative developments emerged in 2019; these are described in more detail in Chapter 4 of this report. One regulation that is particularly strongly linked to the OECD work on due diligence is the EU Delegated Act on the recognition of industry schemes (2019/429) that entered into force in April 2019. This Delegated Act is part of the EU Regulation on Responsible Mineral Supply Chains (Regulation (EU) 2017/821) which is based on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Minerals Guidance)<sup>80</sup> and enshrines into EU law the OECD Alignment Assessment methodology (see below for detail).

The Delegated Act is the basis for the OECD's continued involvement with the European Commission in the assessment and recognition of industry schemes, which have the potential to shape business actions and make an impact at scale. 'Recognition' in this context means that companies that are members of recognised industry schemes do not need to undergo additional audits or assessments to demonstrate compliance with the EU regulation, as those schemes already carry out annual third party audits against the OECD standard. This recognition process was conceived as a way of avoiding duplication of audits and unnecessary compliance burdens.

Demand for the OECD to lead on further alignment assessments has continued strongly throughout 2019 (Box 4.1.). To date, the OECD has developed and published two Alignment Assessment tools<sup>81</sup> (targeted towards the minerals and garment & footwear sectors), an Alignment Assessment methodology of industry and multi-stakeholder initiatives<sup>82</sup> and completed pilot assessments of five major industry programmes focusing on gold, tin, tantalum and tungsten<sup>83</sup> and one industry programme in garment and footwear<sup>84</sup>. In 2019, two further assessments of multi-stakeholder initiatives in the garment sector were launched and will be published in 2020. 2019 also saw the launch of an extended Alignment Assessment pilot in the garment and footwear sector to test the methodology with programmes carrying out different activities (e.g. certifications, grievance mechanisms, capacity building, and trade union agreements) and operating at different segments of the supply chain.

#### Box 4.1. OECD Alignment Assessments of Industry and Multi-Stakeholder Programmes

The objective of OECD Alignment Assessments is to evaluate the alignment of an industry or multi-stakeholder programme (a programme) with the recommendations of the corresponding OECD due diligence guidance.

Specifically, Alignment Assessments seek to determine:

- Whether key overarching due diligence principles have been incorporated into the procedures and implementation of a programme.
- Whether a programme's requirements for companies and the activities it undertakes itself are aligned to the specific recommendations of the OECD due diligence framework.

This is achieved by analysing a programme's standards and implementation against detailed "core criteria" of due diligence included in an OECD Alignment Assessment Tool (AAT). Each core criterion is linked to discrete recommendations within corresponding due diligence guidance. Programmes are evaluated as being 1 (not aligned) to 3 (aligned) against each due diligence criterion, contributing towards an overarching alignment score. In addition to the categories of alignment (overarching due diligence principles and the due diligence framework), Alignment Assessments may also evaluate collaboration within a programme and the programme's governance. These aspects, however, do not inform the judgement on the alignment of the programme. Alignment Assessments follow a 5-step process that starts with a detailed scoping of the programme against OECD due diligence processes. Desktop review, interviews and shadow assessments then form the basis of data collection and analysis. Based on its review, the OECD develops a findings report, which is shared with the



programme and an informal advisory group, which includes stakeholders from governments, the initiatives and civil society prior to publication. Fact checking and discussions with the programmes that are being assessed provides an extra layer of quality control as well as a forum for discussions on the findings.

The Alignment Assessment process:



## 4.1. Due diligence in the financial sector

Promoting responsible business conduct in the financial sector is vital to building a sustainable global economy. However, the inherent complexities in the sector such as extensive and complex business relationships or the rapidity of transactions make practical application of effective due diligence systems challenging. OECD work on RBC in the financial sector seeks to explain the application of the Guidelines to financial service providers and define good practices for due diligence to identify and respond to environmental and social risks linked to clients and investment portfolios.

### ***Guidance on corporate lending and underwriting transactions***

In 2019 the OECD finalised guidance on Due Diligence for Responsible Corporate Lending and Securities.<sup>85</sup> Broadly recognised environmental and social standards had previously not existed for corporate lending and underwriting transactions, although the latter represent the vast majority of banking finance activity. The Guidance was developed in close consultation with leading global banks, civil society and trade unions, and approved by all Adherent governments. It provides a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients. The Guidance was launched during the sixth OECD Forum on Green Finance and Investment in Paris.

### ***Integration of OECD standards in law and non-regulatory standards***

In 2019 the OECD also actively engaged with government and private sector initiatives on sustainable finance to promote alignment with OECD recommendations on due diligence for institutional investors and other financial service participants. This includes providing inputs to the revision of the Equator Principles (EP4), IPOS Supervisory Guidelines on the integration of ESG factors in the Investment and Risk management of Pension Funds and processes related to the EU Sustainable Finance Action Plan. Notably in 2019 the European Parliament approved an EU Regulation for Sustainability-related Disclosures in the Financial Services Sector which calls on financial actors in the EU to report on their due diligence approaches and the EU Regulation on the establishment of a framework to facilitate sustainable investment (i.e. the Taxonomy Regulation) which notes that sustainable activity should be subject to minimum safeguards including the OECD Guidelines (See Chapter 4 for more information). The OECD has been working with EU agencies tasked with developing the accompanying technical standards to the respective regulations.



The 2019 edition of the Business and Finance Outlook,<sup>86</sup> the flagship publication of the OECD's Directorate for Financial and Enterprise Affairs included a chapter on Trust in Financial Institutions, which featured analysis of trends in responsible investment and recommendations based on the OECD's work on RBC for institutional investors. The Chapter found that the role of RBC in trust building for institutional investors can only be expected to become more significant in the coming years and called on policy makers to facilitate institutional investors in responding to this trend through:

- Supporting investment governance frameworks that are compatible with and support ESG objectives.
- Fostering common and widespread expectations with respect to responsible investment, for example due diligence processes for responsible business conduct.
- Supporting efforts to promote quality ESG data and disclosures.

### ***Launch of work on RBC in project and asset based transactions***

In 2019 the OECD also began development of guidance on RBC in project and asset based finance transactions. This work will provide guidance to commercial banks, export credit providers, and development finance institutions on how to carry out due diligence as recommended by the Guidelines in the context of these transactions. It will also consider:

- Current practice in identifying and responding to real and potential impacts associated with specific assets and projects.
- Challenges in balancing mandates and priorities, and managing low margins, high competition and highly standardized processes.
- Best practices in cooperating in remediation and developing grievance mechanisms for financial institutions.

Throughout 2019 the OECD organised various strategic outreach and consultation events to engage relevant stakeholders in this work and collect initial inputs on key questions. Two expert workshops will be organised in 2020 to feed into the guidance with a view to launching it in early 2021.

## **4.2. Responsible agriculture supply chains**

To support the practical application of the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance)<sup>87</sup>, the OECD and FAO conducted a pilot with companies and industry initiatives to assess how companies in the agricultural value chain interpret the recommendations of the guidance and due diligence. Over thirty global agri-business companies and industry initiatives operating at different parts of the value chain and across a diversity of food and non-food commodities took part in the pilot which launched in February 2018 and was concluded in October 2019. In October 2019, a final report<sup>88</sup> highlighting the progress made by the pilot group in meeting the recommendations of the OECD-FAO Guidance over the year was published. Overall, while many companies in agricultural supply chains have a sophisticated approach to RBC, gaps remain in how companies translate policy commitments into implementation actions. In particular, systemic challenges require closer collaboration with key stakeholders. The final report also included examples of company strategies in meeting due diligence as well as useful tools to support due diligence in practice (Annex II of the report).

Companies are eager to continue to engage with the OECD and FAO on responsible agricultural supply chains and acknowledged that the focus should now be on implementation at scale. A Roundtable on Responsible Agricultural Supply Chains, organised by the OECD and FAO in October 2019, convened over 60 participants including policy makers, investors, businesses, standard setters, worker groups, civil society, researchers and international organisations. The Roundtable reviewed the findings of the pilot and

discussed opportunities to support uptake and implementation of the OECD-FAO Guidance including its contribution to achieving the Sustainable Development Goals (SDGs). Potential next steps include integrating due diligence recommendations into national legislation as well as global communiques, working with market operators such as standards setters and traders, conducting alignment assessments of industry certification programmes and developing due diligence promotional materials and training for all stakeholders.<sup>89</sup>

A range of activities under the EU-funded Responsible Supply Chains in Asia (RSCA) programme aim to promote responsible agricultural supply chains, particularly in Myanmar, the Philippines, Thailand and Viet Nam. In addition to in-country outreach and technical seminars on due diligence in the agricultural and seafood sectors, a regional pilot was launched with over 20 agri-businesses operating in Southeast Asia in July 2019.<sup>90</sup> Participants in the pilot include companies operating along agricultural and seafood supply chains in Myanmar, the Philippines, Thailand and Viet Nam. The pilot aims to promote understanding and uptake of supply chain due diligence recommendations of the OECD-FAO Guidance and facilitate a community of learning among participants. A baseline report will be available in early 2020. Next steps include the organisation of webinars with pilot companies with external expert stakeholders. Topics will include issues germane to supply chain due diligence based on gaps and challenges highlighted in the baseline report. A final report is expected to be published at the end of 2020.

### 4.3. Responsible minerals supply chains

Companies involved in responsible mining and trade in minerals have the potential to generate economic and social development, even at the local level in conflict-affected and high-risk areas. However, companies operating in or sourcing from such areas are also at risk of contributing to or being associated with significant adverse impacts. By implementing the recommendations of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Minerals Guidance), companies can avoid contributing to serious human rights abuses, support to non-state armed groups, public or private security forces, bribery and fraudulent misrepresentation of the origin of minerals, money laundering and improper payment of taxes, fees and royalties due to governments.

Work on the implementation of the OECD Minerals Guidance dates back to its adoption in 2011 and is governed through a multi-stakeholder steering group, which approves work plans and sets the agenda for the annual Forum on Responsible Mineral Supply Chains.

#### Box 4.2. 2019 Forum on Responsible Mineral Supply Chains

The Forum on Responsible Mineral Supply Chains is one of OECD's largest events and in 2019 gathered over 1300 participants: roughly 25% from governments (29 members and 49 non-member countries), 50% from business, including large multinationals and small mining cooperatives, and 25% from civil society.

The Forum featured more than 25 sessions covering a wide variety of topics, from responsible cobalt, diamonds and gold, to thematic issues on responsible mineral sourcing like measuring impact of due diligence practices, corruption and integrity in the supply chain, the gender perspective to responsible mining, and the role of financial institutions in responsible business conduct.

More than 50 side meetings were organised by partners, including the Church of England, the International Council on Mining & Metals, the Alliance for Responsible Mining, informative sessions on responsible mineral sourcing in Mongolia, Colombia, and DRC, and a closed-door meeting of international donors aimed at coordinating programmes on responsible mineral supply chains.

The Forum achieved a number of concrete outcomes:

- Building on the 2018 London Metal Exchange (LME) responsible sourcing paper, the LME proposed market-wide rules for the application of responsible sourcing principles to all LME-listed brands in line with the OECD Minerals Guidance
- The Forum adopted a gender statement that provides a call to action for governments, civil society and companies. The OECD Secretariat was invited to track these commitments and report back next year on results.
- Jointly with the World Bank the OECD hosted a day of meetings on responsible artisanal and small-scale mining (ASM) for the third year. This year the World Bank launched the 2019 State of the Artisanal and Small-Scale Mining Sector, exploring the origins and impact of the 'global data gap' on ASM, which employs an estimated 40 million people globally.
- The OECD convened a meeting of 130 practitioners in the global cobalt supply chain, including large and small-scale producers from the DRC, multiple Chinese traders and refiners, global component manufacturers and consumer products companies to discuss practical responsible sourcing challenges for cobalt.
- Jointly with the World Customs Organisation the OECD hosted a law enforcement meeting to improve the detection, investigation and enforcement of minerals-related crimes. The meeting was attended by 21 customs, intelligence, police and policy officers from 13 countries as well as Interpol, the FATF Secretariat and various UN sanctions monitoring groups, including the Group on ISIL.

### ***Due Diligence uptake and impact measurement***

In 2019, the OECD launched a project to measure the global uptake of the OECD Minerals Guidance. While researchers have compiled and examined disclosures made in line with the Guidance in certain industries and jurisdictions, there has been little effort to date to measure the global uptake of the Guidance in a comprehensive way. This project aims to address this gap by measuring uptake of the Guidance through capturing meaningful data points on the extent, quality, trends and circumstances characterising its implementation by companies, presenting uptake through varied lenses (including supply chain relationships, mineral, geography and industry sector).

As part of a complementary line of work to measuring global uptake of the OECD Minerals Guidance, the Secretariat launched in 2018 a project to develop a monitoring and evaluation framework to measure results of the implementation of the Guidance. Increased awareness is emerging among stakeholders that companies have a responsibility to cut the link between the mineral trade, serious human rights abuses and conflict. However, despite anecdotal reports of various results, there appears to be a continued lack of comprehensive and empirically based evidence.

The aim of this project is to establish a monitoring and evaluation (M&E) framework to measure the outcomes of the implementation of the OECD Minerals Guidance in mineral-producing countries. To this end, the OECD Secretariat set up an Informal Advisory Group made up of M&E experts and, with the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), held a first in-person meeting of the Group. Throughout 2019, work progressed on the development of the monitoring framework, including the theory of change, indicators and related contextual studies. The methodology will be finalised and tested in 2020. The findings will help improve understanding of the contribution of due diligence efforts to social and economic development in mining communities, inform decisions about future interventions in mineral producing countries, and identify potential implementation gaps.

The distinct methodologies and approaches to managing the projects related to uptake and the measurement and evaluation framework in the minerals sector provide opportunity to develop a varied,

versatile and coherent set of results measurement practices applicable across the minerals, garments, agriculture and finance sectors. The uptake measurement work is helping enable this by pioneering the application of data mining and relationship mapping to improving understanding of the implementation of the OECD Minerals Guidance. Moreover, the iterative process of developing the measurement and evaluation framework, for its part, is building critical knowledge about the possibilities and limitations in empirically measuring a broad spectrum of due diligence responses by companies in mineral supply chains.

### ***Development of a Knowledge Portal for Supply Chain Risk Information***

The OECD is in the process of developing a Knowledge Portal for Supply Chain Risk Information (Risk Portal). The Risk Portal envisions being a free-to-access website that companies can use to gain an initial understanding of the risks in their supply chains and to guide them towards further research resources. The pilot version of the Risk Portal will cover 40 mineral supply chains and risks mentioned in the OECD Minerals Guidance. An example of the type of information that will be included is the report *Interconnected supply chains: a comprehensive look at due diligence challenges and opportunities sourcing cobalt and copper from the Democratic Republic of the Congo* (see text Box 4.3. for detail).

As the website is currently under development, the Secretariat is compiling its first review of risk information covering the period from 1 January 2017 to 31 December 2019. This report, to be launched in the April 2020 OECD Forum on Responsible Mineral Supply Chains, will include information on reporting trends of risks and will be broken down by mineral, risk, and geographic location. In the long term, the Risk Portal scope will expand to include raw materials and risks in other sectors.

#### **Box 4.3. Linking research to action, in producer countries and globally**

In November 2019, the OECD published the report *Interconnected supply chains: a comprehensive look at due diligence challenges and opportunities sourcing cobalt and copper from the Democratic Republic of the Congo*. The report challenged assumptions that industrial and artisanal mining are part of separate supply chains. It also raised concerns about the low level of scrutiny of some risks and called upon copper and cobalt users to extend due diligence beyond child labour to include corruption and human rights risks associated with security forces. Cobalt and copper are crucial for the low carbon transition as they make up important components of batteries used for electric vehicles and mobile telecommunications. An electric car contains four times more copper than a comparable internal combustion engine car and about 10kg of cobalt.

The release of the report coincided with an international stakeholder meeting in the Democratic Republic of the Congo, leading to several commitments to improve governance of the sector. In the same month, the Prime Minister of the Democratic Republic of the Congo signed Decree 19/15 on Safeguarding Activities Relating to Strategic Mineral Substances Produced by Artisanal Mining. The Decree established a state-owned enterprise with the mandate to purchase raw materials designated as strategic and produced using artisanal methods, notably including artisanal cobalt production. With implicit reference to the OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the Decree mandates that all production of such materials adhere to human rights directives of the OECD. A parallel decree issued the same month, Decree 19/16, establishes a new regulator to enforce all relevant legislation governing the sector.

The OECD Secretariat is continuing further engagement with the global cobalt industry and investors to integrate findings of the report into the sourcing, financing and due diligence practices of companies.

### ***Due diligence training and capacity building***

In 2019, training activities on the OECD Minerals Guidance were finalised in Colombia and undertaken in West Africa and the Democratic Republic of the Congo. In Colombia, the project saw 25 workshops for a total of over 800 participants from government (Police, Financial Intelligence Unit, Customs and other law enforcement agencies, Ministry of Mines, Ombudsman), private sector (artisanal and small-scale miners, large scale miners, traders, banks) and civil society organisations. The project also saw the development of a booklet to facilitate the implementation of the OECD Minerals Guidance in the Colombian context, through consultation with representatives from government, civil society and private sector organisations.

In West Africa, the trainings were carried out in the three member States of the Integrated Development Authority of the Liptako-Gourma (Burkina Faso, Mali, Niger), with a focus on artisanal and small-scale gold mining. The inaugural workshop was held in Ouagadougou 2019, and six additional workshops are foreseen in the course of 2020. A simplified guidance for upstream actors developed for the project (currently in French and English) will be translated to haoussa, mooré et dioula, and disseminated in the 2020 trainings. In Central Africa, capacity building has targeted actors in the cobalt supply chains, with a specific emphasis on Chinese market operators, as well as Congolese agencies involved in the mining sector and civil society organisations.

Lessons learnt from the capacity building programmes have been applied to the development of sectoral training on risk-based due diligence in 2019. The result is a modular training programme designed to provide stakeholders, in particular business, information on RBC, understanding the key concepts within due diligence, implementation actions which companies can take to implement due diligence in supply chains and detail on each of the due diligence steps. The “OECD Master Class on Risk-Based Due Diligence for RBC” is designed using an interactive, small-classroom Train the Trainer approach, and takes place over two days. The Master Classes will be launched under the EU-funded “Responsible Supply Chains in Asia” programme<sup>91</sup>.

### **4.4. Responsible supply chains in the garment and footwear sector**

In 2019 the OECD continued its implementation programme for the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (Garment and Footwear Guidance) through a range of activities supported by the European Commission and Germany. 2019 also saw the commencement of some sector-specific activities under the EU-OECD-ILO programme on Responsible Supply Chains in Asia, particularly for the initial engagement in Viet Nam.

The overall objective of the implementation programme is to promote responsible supply chains in the garment and footwear sector by helping drive greater implementation of supply chain due diligence in line with the Garment and Footwear Guidance.<sup>92</sup> The key priorities in 2019 included: driving policy coherence on due diligence within the sector, convening and building consensus amongst stakeholders on pressing issues within the sector and within select geographies, and assessing alignment of due diligence initiatives and supporting the measurement of the uptake and impact of due diligence. Small and medium-sized enterprise remain a key priority, and initial steps were taken to address the needs of SMEs with the launch of a research survey.

### ***Engagement in key markets***

#### *China*

In 2019 the OECD partnered with the China National Textile and Apparel Council (CNTAC), with whom it has a Memorandum of Understanding (2018), to carry out research on the implementation of the Garment and Footwear Guidance in China by Chinese firms across the apparel and textile supply chain (Box 4.4).

The study, to be published in 2020, considers the extent to which Chinese companies have taken up due diligence considerations in their sourcing practices, which barriers they face when carrying out due diligence, and which practices have been successful.

#### **Box 4.4. The Chinese textile and garment sector**

China currently dominates world trade in textiles and garments. The Chinese textile and garment sector comprises the entire supply chain, from cotton field and synthetic fibre production, through to finished garments centred on key manufacturing areas, such as Shenzhen and Shanghai. Increasingly many Chinese manufacturing companies have grown to have their own global supply chains, investing in established garment manufacturing countries such as Viet Nam and Cambodia, as well as new emerging markets for garments, for example in Ethiopia. Chinese textile and apparel brands likewise remain important in the Chinese market. In 2019 China overtook the US as the world's largest fashion market with Chinese consumers responsible for more than a third of luxury goods sales worldwide.

#### *India*

In 2018, the OECD partnered with the Confederation of Indian Industry (CII) to establish an industry platform on responsible business conduct bringing together Indian manufacturing businesses and global brands sourcing from India. The objective of the platform is to address due diligence challenges and opportunities in Indian supply chains through shared research and capacity building activities. This collaboration was instrumental in leading to the prominent inclusion of RBC themes (transparency, sustainable value chain) in the CII Vision 2030 report, released at the 2019 OECD Forum on Due Diligence in the Garment and Footwear Sector.

In 2019, the OECD deepened its engagement with the Indian industry and global business through co-hosting with CII a third regional roundtable, held in Bangalore in July 2019, and speaking on a panel on RBC at the CII annual textile industry conference in November 2019. The OECD also launched a consultative assessment of the Indian apparel supply chain, which aims to establish a mutual understanding of the current context on due diligence impacts and risk in the Indian apparel supply chain. The report is due to be published in 2020.

#### *Viet Nam*

In 2019, the OECD started to engage with the Vietnamese government and industry on due diligence in the garment and footwear sector. This included engagement with the Ministry of Industry and Trade, the Vietnam Textile and Apparel Association (VITAS), the Vietnam General Confederation of Labour (VGCL) and civil society. The OECD Secretariat provided technical input to the Vietnamese government on its draft national textile strategy, as it relates to responsible business conduct and enabling responsible supply chains, and worked with IndustriALL Global Union to hold a session on wage due diligence in the garment and footwear sector in Viet Nam.

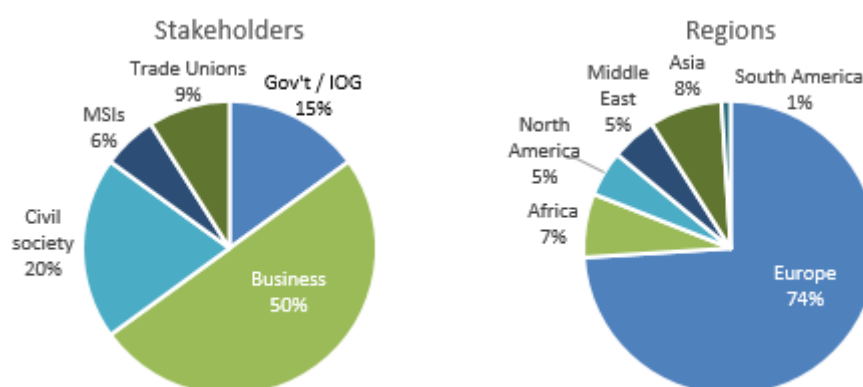
#### **2019 Forum on Due Diligence in the Garment and Footwear Sector**

The OECD Garment and Footwear Forum has evolved as a key event for governments, business, trade unions and civil society.<sup>93</sup> In the 2019 edition, held on 13-14 February, 50 percent of participants represented business, 20 percent civil society, 15 percent government and international organisations, 9 percent trade unions and 6 percent MSIs, representing over 50 countries (Figure 4.1). Key discussions included communicating responsibly with consumers on the sustainability of garment and footwear products; the link between national collective bargaining and international purchasing practices;



addressing climate change in the fashion sector; responsible recruitment; harmonised due diligence disclosure, due diligence on upstream production, integrating a gender lens into due diligence, a due diligence approach to responsible chemicals management and the future of work. The Forum also included partner-sessions hosted by third-parties, including by the ILO and UNICEF.

**Figure 4.2. 2019 Participation at the OECD Garment and Footwear Forum**



In 2019, the first Roundtable for Policy Makers on Due Diligence in the Garment and Footwear Sector was held in the lead-up to the OECD Garment and Footwear Forum. The Roundtable convened 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. Key topics discussed included: capacity building for and information sharing within government; raising awareness with industry on responsible business conduct; handling grievances; emerging supply chain legislation; government-backed multi-stakeholder initiatives; investment and trade regimes and enabling transparency.

The OECD also launched an informal network of manufacturers to provide a peer-led platform to build capacity on due diligence, share learnings across geographies (including Adherent countries and non-adherents) and feed into OECD research (Box 4.5). Seventeen apparel, textile and footwear manufacturing associations from across the value chain participated in the network.

#### **Box 4.5. Manufacturers network on RBC in the garment and footwear sector**

The manufacturers network created in 2019 identified the following key issues for discussion: purchasing practices, audit and standard fatigue, SMEs, and traceability. Following an inaugural meeting at the Garment and Footwear Forum, the OECD organised two further webinars in September and November with presentations led by network members, on topics including micro-plastics, SMEs and audit and standard fatigue. The Manufacturers network was also instrumental in supporting the roll out of the OECD's SME survey for the Garment and Footwear sector, launched in December 2019, both through providing translations of the survey into relevant languages (including Italian and Japanese) as well as disseminating the survey amongst their members. This research will contribute to a paper on facilitating the implementation of the due diligence guidance amongst SMEs, planned for 2020/21.

### ***Measuring the uptake and impact of due diligence***

One of the activities under the implementation plan of the Garment and Footwear Guidance is to monitor progress on due diligence in the sector. To this end, in 2019, the OECD launched a feasibility study on

monitoring the uptake and impact of due diligence in the sector. The feasibility study seeks to identify existing data sources in the sector, such as industry initiatives and benchmarks, and existing indicators that could be used in aggregate to paint a global picture of the sector. The feasibility study will also identify key data gaps and provide guidance on how these gaps could be met and by whom. The study will be finalised in 2020 and will feed into related efforts undertaken in the context of responsible mineral supply chains (see above).

#### **4.5. Monitoring the implementation of the OECD Council Recommendations on due diligence**

The five OECD Recommendations on due diligence, including the OECD Due Diligence Guidance for RBC, as well as the sector specific guidance for minerals, stakeholder engagement, agriculture, and garment and footwear, call on Adherents to take measures to actively support and monitor the adoption of the due diligence framework by enterprises operating in or from their territories.<sup>94</sup> The Recommendations also call on Adherents to “regularly report on any dissemination and implementation activities.” In addition, the Investment Committee (together with partner committees where appropriate) is instructed to report to the Council on implementation of the Recommendation. So far, the OECD Secretariat has monitored activities by Adherents primarily through their participation in implementation programmes, sectoral meetings (fora and roundtables) for minerals, agriculture and garment & footwear sectors, and through the participation of Adherents in the Multi-Stakeholder Steering Groups or Advisory Groups for each of the initiatives. However, only a limited number of Adherents participate in these activities, and little information is available about activities by other Adherents.

To broaden the collection of information on Adherents’ activities, the Secretariat circulated a first questionnaire to Adherents to the Recommendation on the OECD Due Diligence Guidance for Responsible Minerals Guidance in January 2018 and again in January 2019. Adherents to the OECD Minerals Guidance have acknowledged the value of completing the questionnaires, specifically with regards to understanding commitments and fostering intra-governmental communication and policy coherence. The information collected has also been useful in shaping outreach and promotional activities, understanding new and developing regulatory measures, and in gathering evidence for reporting on implementation to the OECD Council. In November 2019 the WPRBC discussed a concept note for a consolidated questionnaire to be launched in 2020 to collect information under the five Recommendations.



## 5. Government action to promote RBC

### Strengthened government action on responsible business conduct

The past decade has seen an increased demand on businesses to comply with international principles and standards on responsible business conduct (RBC) in order to contribute to sustainable development and avoid harm to people, the planet, and society. There has also been growing recognition that RBC practices cannot be successfully adopted by businesses without government action. Governments are now increasingly expected to take an active role in promoting and enabling RBC. This includes not only creating a strong RBC policy framework that fosters responsible business practices but also observing RBC principles and standards when acting as economic actors (i.e., as owners of enterprises, purchasers, export and trade promoters, investors for development, etc.) in order to ensure policy coherence.

Fostering policy coherence implies aligning domestic legislation, regulation and policies related to RBC, as well as ensuring their coordinated implementation by all government bodies, ministries, departments, and agencies. It thus requires that governments take action at the domestic level, not only in their role as policy-makers but also as economic actors. Enhancing policy coherence also entails collaborating with other governments to make sure that international RBC principles and standards, as well as initiatives on RBC developed at the international level, are coordinated and consistent.

The Working Party on Responsible Business Conduct (WPRBC) has an important role to play in strengthening the coherence of government policies on RBC. Its revised mandate, which entered into force on 1 January 2019 provides a basis to strengthen the work of the OECD towards this goal.

This chapter summarises policy action by governments in support of RBC in 2019 and gives an overview of the efforts undertaken by the OECD to promote national and international policy coherence on RBC.

#### 5.1. Promoting RBC through government policies

##### *Regulatory developments*

Governments are increasingly adopting legislation to promote RBC in their jurisdiction and abroad. In the past years, Adherents (notably France, the United Kingdom and Australia) have adopted regulations requiring companies to carry out supply chain due diligence, or to report on actions to deal with adverse human rights and environmental impacts through their supply chains.

In 2019, other Adherents also took steps towards the adoption of specific legislations requiring businesses to carry out due diligence or disclose information. The nature, type and scope of these regulatory efforts vary considerably. Some focus on the mandatory disclosure and transparency of information; others relate to mandatory due diligence and other conduct requirements.

In the Netherlands, the Senate adopted a draft child labour due diligence act requiring companies selling goods or services to Dutch consumers to identify and prevent child labour in their supply chains. According to this act, any company which sells products or services to Dutch consumers must carry out due diligence to determine whether “a reasonable suspicion” exists that the goods or services supplied have been produced using child labour and take subsequent remediation steps as necessary.<sup>95</sup>

The Australian government published Guidance for Entities Reporting under the 2018 Australian Modern Slavery Act. The Act mandates certain large businesses and other entities (with an annual turnover of AUD\$100 million or more) to prepare annual Modern Slavery Statements which identify modern slavery risks in their supply chains and any actions taken to address those risks. The reporting guidance aligns with and makes reference to recommendations of the OECD Due Diligence Guidance for RBC.<sup>96</sup>

In Switzerland, the Parliament examined counterproposals to the 2016 popular initiative seeking to establish mandatory human rights and environmental due diligence requirements combined with legal liability for Swiss companies.<sup>97</sup>

Government action also focused in some instances specifically on non-financial disclosure. For example, Norway appointed an expert committee to investigate a law on ethics information and examine whether companies should be required to disclose information to consumers about production sites, RBC, and supply chain management.<sup>98</sup> Denmark launched a review of the Danish rules on non-financial reporting to examine how such rules should be amended.<sup>99</sup>

In 2019, a number of regulatory developments also culminated at the level of the European Union. In April 2019, the European Parliament approved an EU Regulation for Sustainability-related Disclosures in the Financial Services Sector.<sup>100</sup> The Regulation is the second legislative agreement reached under the EU Sustainable Finance Action Plan.<sup>101</sup> It introduces transparency rules for financial institutions on the integration of sustainability risks and impacts in their processes and financial products, including reporting on adherence to internationally recognised standards for due diligence. It also notes that when reporting on due diligence, practitioners “should consider the due diligence guidance for responsible business conduct developed by the OECD.” In calling on financial institutions to disclose sustainability risks and impacts, the Regulation represents a milestone in efforts to encourage financial institutions to take into account impacts to society and the environment. In December 2019, a political agreement was also reached on the EU Regulation on the Establishment of a Framework to Facilitate Sustainable Investment, also known as the Taxonomy regulation. The Taxonomy regulation articulates environmental objectives and standards that should be met when evaluating how sustainable an economic activity is. Additionally, it notes that “economic activities should only qualify as environmentally sustainable where they are carried out in alignment with the OECD Guidelines for Multinational Enterprises [...]”<sup>102</sup>

Several other countries launched consultations/studies regarding the possibility of adopting due diligence laws. Norway took initial steps towards the adoption of a law to combat modern slavery.<sup>103</sup> Canada concluded public consultations on possible legislative measures to address labour conditions in global supply chains.<sup>104</sup> Finland committed to carry out a judicial study on mandatory business and human rights due diligence to analyse the possibility of embedding due diligence in its judicial system as well as alternative options.<sup>105</sup> The European Union, for its part, launched a study with the aim of assessing regulatory options to require companies to conduct human rights and environmental due diligence.<sup>106</sup>

### ***National Action Plans on Business and Human Rights***

Governments have also promoted RBC and sustainable global supply chains in overarching policy frameworks and plans, such as National Action Plans on RBC or on Business and Human Rights (NAPs). Some of these Plans go beyond human rights issues and have become important tools through which governments have tried to unify national efforts on RBC and ensure coordination and coherence within the government.

In 2019, 23 countries, 20 of which are Adherents, had adopted a NAP. The most recently adopted NAPs on Business and Human Rights were those of Kenya and Thailand, in June and October 2019, respectively.<sup>107</sup> Additional countries were in the process of developing their first NAP or committed to do so in 2019. For example, Morocco after issuing its NAP on Democracy and Human Rights in 2017,<sup>108</sup> undertook to develop a NAP on Business and Human Rights.<sup>109</sup> Other countries proceeded to review and/or update their existing NAPs in 2019. Switzerland completed the revision of its Action Plan on Responsible Business Conduct and NAP on Business and Human Rights, which were published in early 2020.<sup>110</sup> Colombia<sup>111</sup> and Chile<sup>112</sup> started the process of developing a second NAP on Business and Human Rights in 2019.

In terms of monitoring and implementation of existing NAPs and/or overarching policy frameworks on RBC, Sweden published a follow-up report to its NAP on Business and Human Rights.<sup>113</sup> Germany continued the monitoring of its NAP on Business and Human Rights to evaluate to what extent companies based in Germany are meeting the due diligence expectations anchored in the NAP.<sup>114</sup> Canada started evaluating its CSR policy with a view to establishing a new RBC policy.<sup>115</sup>

### ***Sectoral initiatives aiming at promoting RBC considerations***

Adherents also reviewed and/or adopted specific RBC policies aimed at promoting and enabling RBC in specific sectors.

The Netherlands concluded the evaluation of its International Responsible Business Conduct (IRBC) policy. This policy, which includes semi-voluntary sector-based agreements on how to address risks relating to IRBC, was reviewed to determine whether it had had an impact and how a new policy should be framed.<sup>116</sup>

In Germany the Ministry for Economic Cooperation and Development launched the “Green Button”, a label for the textile sector regulated by the ministry that requires products and companies to comply with several social and environmental criteria in line with the Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.<sup>117</sup>

The United Kingdom issued a “Green Finance Strategy” aimed at ensuring, among others, that current and future financial risks from climate and environmental factors are integrated into mainstream financial decision making.<sup>118</sup>

### ***Increasing links between RBC and other policy areas***

Governments are also increasingly seeking to promote the implementation of RBC by leading by example on RBC and using their leverage as economic actors, as well as by incorporating RBC considerations in policies areas that shape business conduct. These initiatives include ensuring that state-owned enterprises act in accordance with RBC principles and standards, integrating RBC criteria in public spending (e.g., public procurement, export credits, and development finance), but also incorporating RBC in corporate governance regulations or trade and investment agreements.

The trend to include RBC considerations in public procurement processes and policies continued throughout 2019. For instance, in Brazil, several stakeholders (Brazil’s NCP, a unit linked to the Presidency and in charge of infrastructure projects, and the government agency responsible for public procurement) took steps towards the inclusion of references to the Guidelines in rules governing public procurement procedures and bidding processes for major infrastructure projects.<sup>119</sup> In Costa Rica, Congress discussed a new public procurement law including considerations on social and environmental sustainability.<sup>120</sup>

A growing number of governments also took steps to reinforce the connections between export credit policies and RBC. The Finnish export credit agency launched a review of its environmental, social and governance policy to focus on a risk-based approach and raise the importance of human rights concerns in due diligence.<sup>121</sup> Sweden launched a joint review and update of its policy for sustainable business and export strategy.<sup>122</sup>

Some governments incentivise the adoption of RBC practices through economic diplomacy. The Netherlands, for example, finalised a new policy framework requiring companies to demonstrate compliance with the Guidelines in order to be allowed to participate in trade missions.<sup>123</sup>

Other policies adopted in 2019 consisted in incorporating RBC considerations in development cooperation. In its 2019 Development Cooperation Plan, Poland included the promotion and implementation of RBC standards as one of the priority areas of policy coherence for development.<sup>124</sup> In Norway, the Minister of International Development requested a mapping of modern slavery and the elaboration of recommendations for the government's development programme to combat such phenomenon.<sup>125</sup>

Another important policy area for RBC is corporate governance. France, for instance, enacted the Law for Business Growth and Transformation, which provides that companies shall be managed taking into account social and environmental issues linked to their activities.<sup>126</sup>

The trend to integrate RBC considerations in trade and investment agreements also continued. A number of bilateral investment treaties (BITs) signed in 2019 contain a general reference to internationally recognised RBC principles and standards in their preambles.<sup>127</sup> Other investment treaties include provisions on RBC in the main body of the agreement. This is notably the case of the investment chapter of the Australia-Indonesia Comprehensive Economic Partnership Agreement (CEPA) signed in March 2019, and in which the signatories reaffirm the importance of encouraging enterprises to incorporate RBC principles and standards in their internal policies.<sup>128</sup> A similar provision is included in the Investment Agreement signed by Australia and Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong) in March 2019.<sup>129</sup> Another example is the Cooperation and Facilitation Investment Agreement (CFIA) concluded by Brazil and the United Arab Emirates in March 2019, which states that investors and their investments shall strive to contribute to the sustainable development of the host State and the local communities by adopting socially responsible practices based on the principles and standards of the Guidelines. It also provides that investors and their investments shall endeavour to comply with a long list of RBC principles and standards detailed in the provision.<sup>130</sup>

The Free Trade Agreement (FTA) and the related Investment Protection Agreement signed by the EU and Vietnam in June 2019 both contain provisions relevant to RBC. The FTA contains a chapter on "Trade and Sustainable Development" including a provision on "Trade and Investment Favouring Sustainable Development" through which the signatories agree to promote RBC on the basis of internationally agreed instruments, such as the Guidelines.<sup>131</sup> A general reference to other internationally recognised instruments in the field of environmental and labour protection is also included in the preamble of the Investment Protection Agreement, in which the signatories reaffirm their commitments to the principles of sustainable development mentioned in the FTA.<sup>132</sup>

Finally, in 2019, several governments also sought to promote the inclusion of RBC in other policy areas by building public officials' capacity on RBC. Israel, for instance, worked on translating the Guidelines into "plain language" for government officials.<sup>133</sup> The United Kingdom published a guidance on tackling modern slavery in supply chains for the government's commercial and procurement professionals.<sup>134</sup>

## 5.2. Promoting coherent government policies on RBC

### *The need for policy coherence*

The above developments help foster the implementation of RBC standards globally, and thereby level the playing field. They also strengthen awareness among a growing number of state agencies of the importance of promoting RBC standards and mainstreaming them into relevant policy areas.

However, although references to RBC and international RBC instruments in national legislations and regulations have increased, they tend to be isolated and vary in both scope and content. While these

developments can support the implementation of RBC standards globally, a 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 legislations that deal with business conduct. A further challenge is for governments to coordinate efforts in the promotion and implementation of different international standards on RBC, which are often the responsibility of a range of Ministries (Economy, Labour, Foreign Affairs, Justice, Environment, etc.)

The need for policy coherence at all levels (national, regional and international) is internationally acknowledged. In 2019, this theme was the main subject of the report of the UN Working Group on Business and Human Rights addressed to the UN General Assembly in July 2019.<sup>135</sup> The report highlights that, while some governments have taken steps to enhance coherent policy with the aim of preventing business-related human rights abuses, in practice the lack of policy coherence is widespread and deeply concerning.<sup>136</sup>

The 2019 edition of the UN Forum on Business and Human Rights had the overarching title “Time to act: Governments as catalysts for business respect for human rights”.<sup>137</sup> This theme reflects concerns that, despite an increase in government policies to prevent harm resulting from business activities, strengthened government action is required to improve policy coherence, set clear expectations, and create incentives for businesses to act responsibly by leading by example.<sup>138</sup>

### ***Mainstreaming RBC across policy areas***

The revised mandate of the WPRBC in force since 2019 explicitly recognises the importance of promoting national and international policy coherence on RBC. Over recent years, an expanding body of OECD instruments has recognised the role that governments play in building strong RBC policy frameworks and their responsibility to embed RBC concerns in policy areas that shape business conduct.

First, the OECD Guidelines promote RBC across the entire spectrum of issues where business operations intersect with society, including corruption, environment, consumer protection, taxation, etc., which are all areas in which the OECD has extensive policy programmes and expertise. Second, the OECD has also set international standards relating to economic policies in which RBC considerations have been progressively integrated, such as on governance of state-owned enterprises<sup>139</sup> and on export credits.<sup>140</sup> In addition, through the Policy Framework for Investment (PFI),<sup>141</sup> the OECD supports governments in strengthening policy coherence efforts for RBC.

The recommendations on RBC contained in chapter 7 of the PFI are an integral part of OECD Investment Policy Reviews (IPRs). The IPRs systematically integrate a review of the policies developed and implemented by governments to promote and enable RBC, and have become an important tool to strengthen domestic policy coherence.<sup>142</sup> Following the review of Cambodia<sup>143</sup> and Viet Nam<sup>144</sup> in 2018, the review of Croatia<sup>145</sup> was completed in 2019 as part of the adherence of Croatia to the OECD Declaration on International Investment and Multinational Enterprises. The IPR of Egypt which includes an RBC Chapter was discussed in the meeting of the Investment Committee in October 2019 (see also Chapter 5).

The RBC chapter of the PFI is also used as a basis for RBC policy-related work, including RBC policy reviews, under the projects “Responsible Supply Chains in Asia”<sup>146</sup> (the RBC in Asia Project) and “RBC in Latin America and the Caribbean” (the RBC-LAC Project)<sup>147</sup>. These reviews have helped not only to build knowledge and expertise on the development of RBC policy frameworks and the coordination of government efforts on RBC but also to identify gaps and good practices. The NCPs – given their role in promoting coherence – are also important actors for collecting and sharing evidence of effective policy approaches to foster policy coherence.

Discussions at the OECD on the effective design, promotion and implementation of policies and instruments to promote RBC in a coherent manner have also paved the way for the launch of new projects linking RBC to other policy areas.

### *RBC and public procurement*

It is increasingly recognised that public procurement can be used as a policy lever to foster RBC practices. In 2019, the WPRBC and the OECD Working Party of the Leading Practitioners on Public Procurement launched a joint programme to advance the integration of RBC considerations in public procurement policies and processes.<sup>148</sup> The first step of this programme consists in conducting research and taking stock of relevant policies and practices in place within Adherent countries with the aim of identifying needs and challenges for the effective inclusion of RBC concerns in public procurement. These research and stocktaking exercises will serve as the basis for several outputs, including a compendium of good practices, and policy briefs on the economic benefits of the integration of RBC considerations in public procurement, and on lessons learnt from other policy areas relevant for the inclusion of RBC concerns in public procurement.

### *RBC and investment treaties*

Investment treaties have the potential to influence domestic legal and regulatory frameworks and foster the adoption and implementation of RBC policies, to affect businesses' behaviour, and to promote the adoption of RBC practices. Following a call for further work on RBC and investment treaties by the Freedom of Investment (FOI) Roundtable<sup>149</sup> in March 2019, the Secretariat prepared a scoping paper on investment treaties and business responsibilities (covering both RBC and Business and Human Rights approaches).<sup>150</sup> After engaging in initial discussions on the paper in October 2019, FOI participants requested additional work on investment treaties and business responsibilities, which was also adopted as the topic for the 2020 OECD Investment Treaty Conference.<sup>151</sup> As a result, a public consultation was launched in early 2020 to give business, trade unions, civil society and experts the opportunity to comment on the scoping paper and inform future discussions to be held in the framework of the FOI Roundtable and the 2020 OECD Investment Treaty Conference.<sup>152</sup>

### ***Joining forces with other international organisations***

The OECD maintained close collaboration with other international actors to enhance international coherence on RBC. For instance, the 2019 Global Forum on RBC included a high-level plenary session entitled "Governments Taking Action: Deepening Policy Coherence", which explored how governments can deepen policy coherence and ensure cohesive action on responsible business and human rights (see also Chapter 5).<sup>153</sup>

Collaboration and coordination between the OECD and other international organisations also strengthened in the framework of the projects on RBC in Asia and in LAC. These two regional projects, supported by the EU, aim to enhance the construction of strong and coherent RBC policy frameworks at the country level while fostering international policy coherence through the alignment of the organisations' instruments and implementation programmes (see also 0).

One of the main challenges and opportunities of these projects relates to the importance of speaking with one voice among different international organisations on what RBC means, as well as ensuring the development of a common narrative and the alignment of activities in order to promote coherent implementation across countries and different stakeholder groups. To this effect, the OECD, ILO, and UNOHCHR partnered to develop a joint brochure with key messages from their respective instruments on RBC: the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines.<sup>154</sup>

## 6. Engagement with Adherents and non-Adherents

The strength of the Guidelines for Multinational Enterprises rests on the engagement with major and emerging economic players to create a fair, level playing field. Deepening engagement with Adherents and non-adherents around the Guidelines has been one of the top priorities of the Working Party on Responsible Business Conduct (WPRBC) since the Guidelines were updated and has remained an integral part of its revised mandate.

In 2019, the WPRBC continued to engage in a dialogue with a wide range of Adherent and non-adherents around the world both bilaterally and through regional programmes as well as sector specific and other activities. Outreach activities play an important role for anchoring and increasing the effective implementation and monitoring of the Guidelines in different parts of the world, including in non-Adherent countries that are part of global supply chains. A key purpose of outreach activities is to level the global playing field and to promote the implementation of OECD instruments on RBC, including through regional programmes.

### 6.1. Adherence to the Guidelines for Multinational Enterprises

OECD Ministers, on several occasions, have reaffirmed the importance of promoting broad adherence to the Declaration on International Investment and Multinational Enterprises (hereafter the Declaration) [[OECD/LEGAL/0144](#)], which includes the OECD Guidelines. Benefits of adherence comprise not only the government's commitment to RBC, but also the process of the adherence review itself, which provides a unique opportunity to engage and foster dialogue within government agencies, and with business organisations and civil society on integrating RBC in investment policy. Non-OECD Members that adhere to the Declaration participate as *Associates* in the meetings of the Investment Committee on issues relating to the Guidelines and in WPRBC meetings, with rights that broadly place them on equal footing with OECD Members.

In 2019, the WPRBC welcomed Croatia as the 49th Adherent to the Guidelines. The adherence procedure of two additional countries, Bulgaria and Uruguay, started in 2019. The WPRBC carried out a review in relation to Uruguay's request for adherence to the Declaration in November 2019 [DAF/INV/RBC(2019)13/REV1]<sup>155</sup> The review of Bulgaria's RBC policies by the WPRBC is expected to take place in 2020.

In addition, the WPRBC, through its parent Committee, the Investment Committee, continued to monitor the commitments made by Kazakhstan and Ukraine upon adherence to the Declaration. The two recent Adherents presented follow-up reports on implementation of the recommendations made in the context of their adherence to the Declaration, in particular with respect to fulfilling their commitment and obligations under the Guidelines.<sup>156</sup>

The year 2019 also marked a comprehensive review of Egypt's investment policies. This included an assessment of Egypt's RBC policies and NCP. Egypt has been Adherent since 2007; however, it still faces challenges with promoting and enabling RBC and the effective functioning of the NCP.<sup>157</sup>

Some Adherents are still facing a weak understanding of the commitments undertaken under the Guidelines and of the role that their National Contact Points can play or lack the resources and support necessary to carry out their functions. The review of RBC policies in the context of IPR can help build knowledge and ensure that relevant Ministries and government agencies in Adherent countries are aware of the various requirements set out in the Decision on the Guidelines and of recent international developments on RBC. Increasingly, Adherents expect new governments adhering to the Declaration to implement their commitments relating to implementation of the Guidelines and not only setting up an NCP at the time of adherence, but also providing it with the necessary resources over the longer term.

## **6.2. Engagement with non-Adherents**

Promoting dialogue and deepening engagement on RBC with governments that have not adhered to the Guidelines has been one of the top priorities of Adherents since the Guidelines were updated in 2011. In line with OECD rules, the WPRBC can invite certain non-Member governments to participate in its meetings as Invitees. So far, however, it has primarily pursued cooperation with these countries through regional, country, or sector programmes as well as the Global Forum on Responsible Business Conduct, favouring this type of engagement over formal participation in WPRBC meetings.

Co-operation in 2019 was maintained with a number of countries, either through country, regional, or sector programmes. By working with these countries at different levels the WPRBC helps non-Adherents understand the benefit of being engaged with the Working Party, of adherence to the Guidelines, and of the reforms and measures needed for eventual adherence to them.

### ***Engagement in the context of Investment Policy Reviews and RBC Reviews***

Engagement with non-Adherents continued to take place in the context of Investment Policy Reviews (IPRs), in which RBC considerations are now systematically included. Several IPRs were undertaken in 2019: Georgia, Indonesia, Myanmar, and Thailand as well as a regional IPR covering six Eastern European and Southern Caucasus countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The reviews are expected to be completed in 2020. IPRs have become an important tool for outreach on the Guidelines and dialogue with non-Adherents on levelling the playing field for responsible investment. 2019 was also the year of the launch of RBC policy reviews under the RBC in Latin America and the Caribbean project (see below)). Reviews of RBC policies and practices are also being undertaken in the context of the Asia programme (see below). These reviews help share the WPRBC's knowledge and expertise on government approaches to developing RBC policy frameworks and coordinating efforts on RBC and to identifying gaps and good practices.

### ***Promoting responsible supply chains in Asia***

The programme on Promoting Responsible Supply Chains in Asia (2018-2020) includes activities to promote policy coherence on RBC and increase stakeholders, notably businesses, civil society, worker representatives and academics understanding of OECD recommendations on due diligence and responsible supply chains. The programme, implemented by OECD in collaboration with the ILO and funded by the European Union, covers activities in six countries: Japan (OECD Member), China (Key Partner country), Thailand, Myanmar, the Philippines, and Viet Nam.

In 2019, activities focused primarily on promoting implementation of OECD RBC instruments with business and reinforcing partnerships. The programme witnessed political buy-in increasing across the board; strong



buy-in by businesses, and identified a clear need for training on due diligence; emergence of new strategic opportunities, particularly as related to RBC in the financial sector and the environment; as well as a chance to reinforce international coherence and partnerships.

In Japan, OECD engagement has spanned workshops, roundtables, technical seminars, presentations and policy briefings with both business and government, including working closely with Japan's National Contact Point. There has been continuing strong business engagement across the target sectors as well as engagement in cross cutting initiatives including the work of the Business and Human Rights Lawyers Network Japan and Global Compact Network Japan in developing "Engagement" and "Remedy" Guidelines for Promotion of Responsible Business Conduct and Supply Chains. The OECD has also been working closely with the Ministry of Foreign Affairs (MOFA) and the Ministry of Economy Trade and Industry (METI), in particular with respect to: stakeholder consultations related to the development of the National Action Plan on Business and Human Rights; launching the Japanese version of the OECD Due Diligence Guidance for Responsible Business Conduct; and convening a high-level roundtable for business and governments on international collaboration to address supply chain risks in the Asia region.

The year 2019 witnessed increased engagement in China, including with the Chinese Ministry of Industry and Information Technology (MIIT) and the China Electronics Standardisation Association (CESA). Several exchanges were organised in this context, including a high-level policy roundtable organised in May 2019 at the OECD and chaired by the EU Ambassador to the OECD and the OECD Director for Financial and Enterprise Affairs. At the invitation of MIIT, the OECD delivered a training session on RBC policies and international trends for Chinese policy makers from all over the country responsible for industrial development and RBC/CSR policy implementation in Qingdao in September 2019. Engagement with the Ministry of Commerce (MOFCOM) and partner industry associations continues.

Engagement with Southeast Asian countries was equally strong. Thailand hosted the 2019 Global Forum on RBC (see below) and supported organisation of several key events, including with industry in the context of preparation of Master Classes on Due Diligence and the launch of the OECD Southeast Asia Agriculture Pilot (see chapter 3). The OECD also provided technical support to the Thai government during the development of the Thailand National Action Plan on Business and Human Rights, as in the context of the RBC chapter of the ongoing Investment Policy Review of Thailand.

The OECD was also asked to include a review of RBC policies and practices in the ongoing second Investment Policy Review of Myanmar which started in 2019. This work is being undertaken in a complex political and humanitarian context that has attracted international scrutiny as to how investments may impact rights in the country. Against this background, RBC has increasingly become a priority for both businesses and policy makers. The OECD participated and co-hosted several events, notably the Responsible Business Forum held in Nay Pyi Taw in December 2019, co-hosted with ILO and EuroCham Myanmar. At the request of the government, OECD also co-hosted several trainings and a policy dialogue on RBC. In particular, in December 2019, the policy dialogue included a dedicated session on National Action Plans on Business and Human Rights where Thailand shared their experience with developing a NAP.

In 2019, the OECD Council approved the start of discussions with Viet Nam to sign a Country Programme, following the successful example of the Thailand Country Programme, which includes a component on RBC. Activities in Viet Nam supported these strategic objectives and included sharing of technical expertise in several different ways. Notably, the Ministry of Industry and Trade (MOIT), as well as the Vietnam Textile and Apparel Association (VITAS), invited the OECD to provide support on RBC during the ongoing elaboration of a new National Textile Strategy (see chapter 3). Engagement in the agriculture sector was also strong, and included the organisation of two technical seminars.

These examples show a clear demand by businesses for capacity building to meet international expectations on RBC. A similar trend has been observed in the Philippines. Driven by strong demand from both business and government stakeholders, the OECD held a number of roundtables, workshops,

technical seminars and a high level event as part of the 2019 Sustainable Agriculture Forum on the OECD RBC tools and instruments. In light of significant buy-in from both business and governments, the OECD is holding a dedicated Master Class training for businesses in the Philippines, in which government agencies have also expressed interest to participate. Interest and proposals for collaboration with government agencies have extended beyond initial interlocutors and include engagement with the Department of Tourism, the Department of Environment and Natural Resources, and the Securities Exchange Commission – in addition to on-going collaboration with the Department of Trade and Investment and the Department of Agriculture.

Activities under this programme have opened up new opportunities for engagement. Notably, the Thai Government Pension Fund (GPF), one of the two biggest institutional investors and asset holders in Thailand, has requested OECD technical support to help align its policies and practices with OECD RBC standards. GPF's ambition is to be a global leader on RBC. The OECD RBC Centre also hosted high-level visits by the China Chamber of International Commerce (CCOIC) as well as the Ministry of Ecology and Environment and discussed collaboration on green investment, environment and biodiversity, including in the context of APEC 2020 and Biodiversity COP planned in China in October 2020.

### *India*

In December 2019, the OECD organised a session on RBC in India as part of the larger launch event of the OECD Economic Survey of India. The session highlighted the strong cooperation between the Secretariat and the private sector in India to advance responsible business conduct in the domestic textile and gold supply chains.

In addition, with the support of the India Gold Policy Centre, the OECD organised an all-day workshop on responsible sourcing of gold in India. The purpose of the workshop was to secure commitments from key stakeholders to undergo OECD-aligned gold refiner audits and to develop a locally contextualised version of the OECD Minerals Guidance. There was agreement from the different key stakeholders as to when Indian gold refiners will need to undergo an OECD-aligned audit and which industry body is specifically responsible for different aspects of the preparation (e.g. drafting the Indian Guidelines, conducting trainings and outreach, conducting supporting research, etc.).

### ***Latin America and the Caribbean***

A new work stream on RBC in Latin America and the Caribbean started on 1 January 2019. The project "Responsible business conduct in Latin America and the Caribbean (RBCLAC)" is implemented by the OECD in collaboration with the International Labour Organization (ILO), and the United Nations Office of the High Commissioner for Human Rights (OHCHR).<sup>158</sup> It is financed by, and designed in collaboration with, the European Union (EU). It is the first time these three organisations join forces with the support of the EU to promote RBC within the framework of a joint regional project, which is being implemented over a period of four years (2019-2022). The project is undertaken in partnership with Chile and Mexico, both OECD Members, as well Argentina, Brazil, Colombia, Costa Rica and Peru, which have all adhered to the OECD Guidelines for Multinational Enterprises and have set up a NCP, and two non-Adherents, Ecuador and Panama. The project was officially launched at the Regional Consultation on Business and Human Rights in Santiago, Chile on 3-4 September 2019.<sup>159</sup> The activities carried out by the OECD under the project have been structured around three pillars: (1) Government policies for responsible business conduct, (2) Helping business to conduct due diligence in priority sectors and (3) Strengthening access to remedy: reinforcing NCPs.

**Figure 6.1. Responsible Business Conduct Country Fact Sheet: Peru**



Source: OECD.

Under the first pillar, the OECD engages with governments on RBC policies through the drafting of RBC policy reviews. The main objective of a RBC policy review is to provide a reference for further consolidating and implementing a strong RBC policy framework based on the country's policies and regulations in the areas covered by the OECD Guidelines, as well as government action to promote and incentivise RBC through trade, investment, public procurement and other policies. The RBC policy review of Peru process started in July 2019 and is expected to be completed in 2020. The review will also feed into the ongoing development of the National Action Plan (NAP) on Business and Human Rights in Peru. As a precursor for the RBC policy reviews, the RBC Fact Sheets for Peru<sup>160</sup> and Colombia<sup>161</sup> were released in 2019. They provide a general overview of investment and trade data, a snap shot of RBC related instruments, and also introduce the sectors of major economic and development importance in the country.

Under the second pillar, the OECD supports businesses to strengthen due diligence, with a focus on the priority sectors (agriculture, minerals/extractives, financial, and garment/footwear sectors). During the first phase of the project (18 months), the OECD is carrying out "regional diagnostics" to identify key issues per country as well as regional trends in the priority sectors. The regional sectoral diagnostics will provide the basis for the design of the regional sectoral capacity building with businesses on due diligence to be carried out over 2020-2022. Besides the development of the methodology of the sectoral diagnostics, the OECD also collaborated with the Spanish NCP and NCPs from Latin America to translate its Due Diligence Guidance for Responsible Business Conduct into Spanish. The Spanish version of the Guidance was launched during the Regional Forum on NAPs and public policies in business and human rights in Buenos Aires, Argentina on 3-4 June 2019. The Portuguese version will be launched in Brasilia and Sao Paulo in April 2020.

Under the third Pillar, the objective is to strengthen the functioning of the seven NCPs in the region in order to provide access to remedy related to business impacts and promote RBC at the national level. Activities focus on tailor-made capacity building based on roadmaps developed in collaboration with the seven NCPs in the region, as well as strengthening regional cooperation and peer learning. The Network of LAC NCPs was established in 2019 and three meetings have taken place so far (5 March, 21 June and 8 November).

## ***Africa***

In 2019, the OECD led several outreach missions in West (Senegal, Burkina Faso and Niger) and Central Africa (Democratic Republic of the Congo and Rwanda). In the DRC, the objective was twofold: to advance

the work on cobalt supply chains, through on-the-ground fact-finding (leading to the drafting of a baseline report on risks in cobalt supply chains in November); and to gather all relevant stakeholders of the sector for a series of consultations and workshop (also in November, in Kolwezi) that were well attended and impactful.

In West Africa, the objective was to advance the work plan with the Liptako-Gourma Authority, with a view to raising awareness on the OECD Guidance mainly with governmental officials and the private sector. Two missions were more specifically dedicated to awareness raising with law enforcement agencies (customs and financial intelligence units).

In 2019, the OECD also launched a series of training and capacity building workshops on the recommendations of the OECD Minerals Guidance, covering four countries (Burkina Faso, the Democratic Republic of Congo, Mali, and Niger). Trusted external partners perform the trainings.

### 6.3. Global Forum on RBC

The Global Forum on Responsible Business Conduct (GFRBC) is the OECD's flagship event on RBC and has been held annually since 2013 at OECD headquarters in Paris. The 7th edition took place on 12-13 June 2019 in Bangkok, Thailand, within the framework of the Bangkok Business and Human Rights Week (BHR Week, 10-14 June 2019). It was co-organised together with the Royal Government of Thailand (Chair of ASEAN in 2019), ASEAN Intergovernmental Commission on Human Rights (AICHR), International Labour Organisation (ILO), United Nations Development Programme (UNDP), and the United Nations Economic and Social Commission for the Asia Pacific (UN ESCAP). To take account of the human rights focus of the partner organisations, the Forum was held under the heading Responsible Business and Human Rights Forum.<sup>162</sup>

The Forum included 16 sessions covering a wide variety of priority topics, including supply chain due diligence, food and agriculture, electronics, project finance and infrastructure, migrant workers, climate change, gender issues in global supply chains, decent work, and trade and investment agreements. In addition, 14 side-events were organised with key partner organisations, including on topics related to the environment, decent work in value chains, special economic zones, child-labour, mining, and anti-corruption. This includes side-events sponsored by the Australian NCP as well as Japan and the EU. Moreover, numerous stakeholder events happened on the margins of the forum and included trainings of human rights experts in the region; a workshop on RBC in electronics supply chains; and a conference organised by OECD Watch for NGOs. To enable broad participation, the Forum was webcast.<sup>163</sup>

With over 700 registered participants from 42 countries, the RBHR Forum was one of the largest events in Asia on responsible business conduct / business and human rights in 2019. Participation included 50% governments, 25% business, and 25% civil society; 54% of participants were women. Eight NCPs and all 10 ASEAN Members participated. Participants from 21 Adherent countries were present, including high-level business stakeholders. For example, BIAC, United States Council for International Business and International Organization of Employers organised a side-event on business contribution to the SDGs. Additionally, several UN agencies were actively involved, including the UN Office of the High Commissioner for Human Rights, UN Environment, UNFCCC, UNICEF and IOM. Joint sessions included an OECD, ILO, UNICEF, and IOM consultation on the Alliance 8.7 report on Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains.

The OECD co-hosted two major events in addition to the Forum - the AICHR Inter-Regional Dialogue on Business and Human Rights (10-11 June) and the first-ever ASEAN Institutional Investors Forum (14 June), together with the Thai Stock Exchange and the Government Pension Fund, in which OECD's work on RBC in the financial sector was prominently featured. The AICHR Regional Dialogue was also

supported by Adherents, notably Norway and Switzerland, in addition to the Thai Ministry of Justice and the Australian Human Rights Commission.

#### 6.4. RBC in international processes

As part of the 2019 G7 French presidency and its theme “fighting inequality”, the Working Party provided input to the G7 Employment Task Force on NCPs, due diligence and the inclusion of RBC in specific policy areas. The Tripartite Declaration and the G7 Social Communiqué adopted on 9 June both refer to the Guidelines. The Communiqué sends a strong signal on the importance of promoting RBC in global supply chains, including specific calls to G7 countries to: (i) promote the Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct, (ii) step up efforts to strengthen mechanisms providing access to remedies, including the National Contact Points (NCPs) for RBC, and (iii) consider RBC practices in their role as economic actors through public procurement, export credits and international cooperation financing and, where applicable, as owners of enterprises.

The OECD also supported the 2019 Japanese G20 Presidency on RBC. This included supporting discussions at the G20 in two thematic areas, notably the discussions on quality infrastructure and ending child labour, forced labour and human trafficking in global supply chains. As outlined in the 2018 Annual Report on the OECD Guidelines, infrastructure projects can have significant positive but also adverse impacts on society and the environment. Various recent initiatives have focused on integrating RBC across the entire infrastructure project.<sup>164</sup> The G20 in 2019 explicitly recognised the importance of RBC in the Principles on quality infrastructure under Principle 6: Strengthening Infrastructure Governance.<sup>165</sup> Additionally, the draft report on Ending child labour, forced labour and human trafficking in global supply chains, developed by the OECD, ILO, UNICEF and IOM under the aegis of the SDG Alliance 8.7, was presented and recognised at the G20 Labour and Employment Ministers’ meeting in Japan on 2 September.

# Annex A. Overview of NCP performance

## Key elements

No .	Country	Full time staff	Website	Rules of procedure online	Engaged in promotional events	Attended June and/or Nov 2019 NCP meetings
1	Argentina	YES	YES	YES	YES	YES
2	Australia	YES	YES	YES	YES	YES
3	Austria	YES	YES	YES	YES	YES
4	Belgium	YES	YES	YES	YES	YES
5	Brazil	YES	YES	YES	YES	YES
6	Canada	YES	YES	YES	YES	YES
7	Chile	YES	YES	YES	YES	YES
8	Colombia	YES	YES	YES	YES	YES
9	Costa Rica	NO	YES	YES	YES	YES
10	Croatia	No report				YES
11	Czech Republic	NO	YES	YES	YES	YES
12	Denmark	YES	YES	YES	YES	YES
13	Egypt	NO	NO	NO	NO	YES
14	Estonia	NO	YES	YES	NO	YES
15	Finland	YES	YES	YES	YES	YES
16	France	YES	YES	YES	YES	YES
17	Germany	NO	YES	YES	YES	YES
18	Greece	NO	YES	N/A	YES	YES
19	Hungary	YES	YES	YES	YES	YES
20	Iceland	NO	YES	N/A	NO	YES
21	Ireland	NO	YES	YES	YES	YES
22	Israel	NO	YES	YES	YES	YES
23	Italy	YES	YES	YES	YES	YES
24	Japan	NO	YES	YES	YES	YES
25	Jordan	No report				NO
26	Kazakhstan	YES	NO	NO	NO	YES
27	Korea	YES	YES	YES	YES	YES
28	Latvia	NO	YES	YES	YES	YES
29	Lithuania	YES	YES	YES	YES	YES
30	Luxembourg	NO	YES	YES	YES	YES
31	Mexico	NO	YES	YES	YES	YES
32	Morocco	NO	YES	YES	YES	YES
33	Netherlands	YES	YES	YES	YES	YES
34	New Zealand	NO	YES	NO	YES	YES
35	Norway	YES	YES	YES	YES	YES
36	Peru	NO	YES	YES	YES	YES
37	Poland	NO	YES	YES	YES	YES
38	Portugal	NO	YES	NO	YES	YES
39	Romania	NO	NO	NO	YES	YES

40	Slovak Republic	NO	YES	YES	NO	YES
41	Slovenia	YES	YES	YES	YES	YES
42	Spain	YES	YES	YES	YES	YES
43	Sweden	NO	YES	YES	YES	YES
44	Switzerland	YES	YES	YES	YES	YES
45	Tunisia	YES	YES	NO	YES	YES
46	Turkey	YES	YES	YES	YES	YES
47	Ukraine	NO	YES	YES	YES	YES
48	United Kingdom	YES	YES	YES	YES	YES
49	United States	YES	YES	YES	YES	YES

## Comprehensive overview

No.	Country	Full time staff	Part time staff	Staff joined NCP	Staff left NCP	NGOs	Business	Trade unions	Advisory body	Advisory body with some	Other ministries	Dedicated budget	Report to Government	Report to Parliament	Website	Rules of procedure	Online	Revised in 2018	Promotional plan	Organised / co-organised	Number of events	Participated in events	Number participated in	June 2019 attended NCP	Nov 2018 attended NCP
1	Argentina	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	12	YES	14	YES	YES
2	Australia	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	2	YES	10	YES	YES
3	Austria	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	7	YES	3	YES	YES
4	Belgium	YES	YES	NO	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES	YES	NO	YES	YES	3	YES	2	YES	YES
5	Brazil	YES	YES	YES	YES	NO	NO	NO	NO	NO	YES	NO	YES	NO	YES	YES	YES	NO	NO	YES	9	YES	3	YES	YES
6	Canada	YES	YES	YES	YES	NO	NO	NO	NO	NO	YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	1	YES	37	YES	YES
7	Chile	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	7	YES	12	YES	YES
8	Colombia	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	NO	NO	NO	0	YES	6	YES	YES
9	Costa Rica	NO	YES	NO	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	9	YES	7	YES	YES
10	Croatia	NO REPORT																							
11	Czech Republic	NO	YES	YES	YES	YES	YES	YES	NO	NO	YES	NO	NO	NO	YES	YES	YES	NO	YES	YES	4	NO	0	YES	YES
12	Denmark	YES	NO	YES	YES	YES	YES	YES	NO	NO	NO	YES	NO	NO	YES	YES	YES	NO	YES	YES	3	YES	3	YES	YES
13	Egypt	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	0	NO	0	YES	YES
14	Estonia	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO	0	NO	0	YES	YES
15	Finland	YES	YES	NO	NO	YES	YES	YES	NO	NO	YES	NO	YES	NO	YES	YES	YES	YES	YES	YES	2	YES	4	YES	YES
16	France	YES	YES	YES	YES	NO	YES	YES	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	40	YES	27	YES	YES
17	Germany	NO	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	8	YES	11	YES	YES
18	Greece	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO	YES	NO	N/A	N/A	YES	NO	0	YES	5	YES	YES
19	Hungary	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	YES	YES	YES	NO	NO	NO	0	YES	1	YES	YES
20	Iceland	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	N/A	N/A	NO	NO	0	NO	0	YES	NO
21	Ireland	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO	0	YES	1	YES	NO
22	Israel	NO	YES	YES	YES	NO	NO	NO	YES	NO	YES	NO	YES	NO	YES	YES	YES	YES	NO	YES	4	YES	3	YES	YES
23	Italy	YES	YES	NO	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	1	YES	9	YES	YES
24	Japan	NO	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	1	YES	4	YES	YES



No.	Country	Full time staff	Part time staff	Staff joined NCP	Staff left NCP	NGOs	Business	Trade unions	Advisory body	Advisory body with some	Other ministries	Dedicated budget	Report to Government	Report to Parliament	Website	Rules of procedure	Online	Revised in 2018	Promotional plan	Organised / co-organised	Number of events	Participated in events	Number participated in	June 2019 attended NCP	Nov 2018 attended NCP
25	Jordan	NO REPORT																							
26	Kazakhstan	YES	NO	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO	NO	NO	YES	NO	NO	YES	NO	0	NO	0	NO	YES
27	Korea	YES	YES	YES	NO	YES	NO	YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	NO	NO	YES	3	YES	3	YES	YES
28	Latvia	NO	YES	NO	NO	NO	YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	6	YES	1	YES	YES
29	Lithuania	YES	NO	NO	NO	NO	NO	NO	YES	NO	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	12	YES	5	YES	YES
30	Luxembourg	NO	YES	NO	NO	NO	NO	NO	YES	NO	YES	NO	YES	NO	YES	YES	YES	NO	NO	YES	1	YES	5	YES	YES
31	Mexico	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO	YES	YES	YES	NO	YES	YES	1	NO	0	YES	YES
32	Morocco	NO	YES	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	9	YES	7	YES	YES
33	Netherlands	YES	YES	NO	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	1	YES	12	YES	YES
34	New Zealand	NO	YES	NO	NO	YES	YES	YES	YES	NO	YES	NO	YES	NO	YES	NO	NO	NO	NO	YES	2	No	0	NO	YES
35	Norway	YES	NO	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	9	YES	16	YES	YES
36	Peru	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	NO	YES	YES	YES	NO	NO	YES	1	YES	2	YES	NO
37	Poland	NO	YES	NO	NO	YES	YES	YES	YES	NO	YES	NO	NO	NO	YES	YES	YES	YES	NO	YES	3	YES	4	YES	YES
38	Portugal	NO	YES	YES	YES	NO	NO	NO	NO	NO	YES	NO	YES	NO	YES	NO	NO	NO	NO	YES	1	NO	0	YES	YES
39	Romania	NO	YES	YES	YES	NO	YES	NO	NO	NO	YES	NO	YES	NO	NO	NO	NO	N/A	NO	YES	3	YES	2	YES	NO
40	Slovak Republic	NO	YES	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO	NO	YES	YES	YES	NO	NO	NO	0	NO	0	YES	YES
41	Slovenia	YES	NO	NO	NO	YES	YES	YES	YES	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	4	YES	1	YES	YES
42	Spain	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES	YES	NO	NO	NO	0	YES	6	YES	YES
43	Sweden	NO	YES	NO	NO	NO	YES	YES	NO	NO	YES	NO	YES	NO	YES	YES	YES	NO	NO	YES	3	YES	4	YES	YES
44	Switzerland	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	2	YES	19	YES	YES
45	Tunisia	YES	YES	YES	NO	NO	YES	YES	NO	NO	NO	NO	YES	NO	YES	YES	NO	NO	YES	NO	0	YES	2	YES	NO
46	Turkey	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	NO	YES	YES	YES	YES	NO	NO	0	YES	1	YES	YES
47	Ukraine	NO	YES	NO	NO	YES	YES	YES	YES	NO	YES	NO	NO	NO	YES	YES	YES	NO	NO	YES	1	YES	3	YES	NO
48	United Kingdom	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	21	YES	4	YES	YES
49	United States	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	5	YES	3	YES	YES

## Annex B. NCP peer review recommendations

### Peer review of the National Contact Point of the United Kingdom

The full report is available online<sup>166</sup>

**Table A B.1. Institutional arrangements**

	<b>Findings</b>	<b>Recommendations</b>
1.1	There is a lack of clarity and visibility around the structure and mandate of the UK NCP as a non-judicial grievance mechanism. The implications of its being set up as an independent team within DIT are unclear. In the absence of a legal document setting up the NCP, the fact that its mandate, structure and functioning is not recorded in formal terms of reference contribute to this general lack of clarity and visibility around the NCP structure.	The NCPs mandate, structure and functioning should be clarified, described and communicated in a public document, and an annual report on NCP activities should be published and sent to relevant authorities, including Parliament.
1.2	There is a lack of clarity about the extent of the Steering Boards advice and oversight functions, and what the corresponding powers of the Steering Board are in regard to both. The exercise of these functions is rendered difficult by the limited information made available to the Steering Board.	The terms of reference for the Steering Board should be revised to define more precisely the advice and oversight functions of the Steering Board and the information which is to be made available to it.
1.3	The chairship and secretariat arrangements of the Steering Board potentially limit its independence and reduce the confidence of stakeholders.	The UK NCP should address the concerns relating to the independence of the Steering Board.

**Table A B.2. Promotion**

	<b>Findings</b>	<b>Recommendations</b>
2.1	The UK NCP suffers from a lack of awareness and visibility among key stakeholders beyond the largest organisations. Stakeholders would like the NCP to more directly engage with them.	The UK NCP should strengthen engagement and increase awareness of the Guidelines and the NCP with key stakeholders (including SMEs)
2.2	The UK NCP does not systematically measure knowledge of the Guidelines and the NCP among business and other constituencies.	The UK NCP should systematically measure stakeholder awareness of the Guidelines and the NCP.
2.3	The UK NCP's website is informative but not user friendly and incomplete, as it does not contain recent developments or events sections, and older documents are automatically transferred to the national archives website. The website is also only available in English.	To the extent possible within the gov.uk template, the UK NCP should improve the structure and navigability of its website. To be more comprehensive, the website should include links to the national archives where relevant and an events and latest developments page. The UK NCP should also assess the need for key information on the website to be available in other languages.
2.4	The UK NCP is well known to departments which have a structural connection to the NCP but insufficiently beyond that circle, which reduces the potential for policy coherence. The UK NCP is also viewed by other government departments as mainly active on promotion of the Guidelines overseas, but less so on promotion within the UK.	With due regard for the allocation of responsibilities set by the UK Government, the NCP should ensure that it continues to work and develop relationships with other government departments and Parliament so as to increase its visibility in the promotion of the Guidelines domestically and overseas as part of the UK government's wider RBC policy. Government members of the Steering Board should also continue to act as representatives of the NCP across government.

Table A B.3. Specific instances

	Findings	Recommendations
3.1	The UK NCP' interpretation of the Guidelines' criteria for initial assessment was highlighted by some stakeholders as a challenge.	In the future, the UK NCP should interpret the Guidelines criteria for initial assessment (in particular the 'material and substantiated' criterion) in a broad manner wherever possible
3.2	The expertise on the wide variety of topics covered in the OECD Guidelines directly available to the NCP for the purposes of examining cases is limited by the fact that cases are only handled by staff in the NCP, whereas the complexity of cases is increasing.	The UK NCP should make more extensive and systematic use of the possibility to seek advice from experts in order to assist during the initial assessment stage or the examination stage.
3.3	There is a lack of predictability as to the exact material scope of the 'Review procedure for dealing with complaints' The procedure describes the review as covering 'procedural errors' in the NCP decision-making, but in practice what qualifies as a 'procedural error' is open to interpretation. Additionally, the role of the NCP staff in recommending whether a review should be conducted reduces the perception that the process is fully impartial.	The rules governing the review procedure should more precisely describe the material scope of the review function of the Steering Board, notably by clarifying the notion of 'procedural error'. The questions raised by the role of the NCP staff in the process should also be addressed.
3.4	The UK NCP does not disclose parties' names until a case has been accepted for further examination, although information about cases is made public in most cases, showing that a periodic review of whether rules of procedure still align with the latest developments is necessary.	The UK NCP should continue to regularly review its rules of procedure to ensure that they still align with the latest developments, for example regarding whether to disclose case parties' names as soon as the case is filed.

## Peer review of the National Contact Point of Argentina

The full report is available online <sup>167</sup>

Table A B.4. Institutional arrangements

	Findings	Recommendations
1.1	The NCP suffers from a reduced institutional profile and a lack of visibility. The fact that the NCP and its Advisory Council are set up by means of Ministerial Resolutions reduces their prominence and stability within the Government, as this legal instrument is internal to the Ministry of Foreign Affairs and Worship.	The NCP and the Advisory Council should be established by way of Presidential Decrees rather than Ministerial Resolutions.
1.2	The current configuration of the NCP as part of a larger government department reduces its visibility and stability, and prevents it from having a dedicated budget.	The NCP should be set up as a distinct unit within the National Directorate for Multilateral Economic Relations.
1.3	The legal instrument setting up the Advisory Council is drafted in general terms and stakeholders have varied expectations and concerns in relation to the details of its functioning.	The NCP should adopt, after discussion with the Advisory Council members, Terms of Reference for the Advisory Council covering in particular its composition and the mode of designation of its members, its material competence and its working procedures.

Table A B.5. Promotion

	Findings	Recommendations
2.1	Stakeholders beyond the Advisory Council have little knowledge of the NCP and of its role, which reduces the NCP's visibility and accessibility.	The NCP should therefore increase its efforts and develop information and promotional materials with a view to promoting itself and informing the public about its role and functions, as well as the benefits of engaging with the NCP.

2.2	Promotional activities of the NCP have been limited in recent years, although the NCP has increased promotion since the beginning of 2019. A particular challenge regarding promotion is to cover the entirety of Argentina's very large territory. Currently, most events were organised in the capital and involve stakeholders based there.	The NCP should develop a promotional plan to raise awareness on RBC, taking into account the key sectors, key issues and key actors identified by stakeholders. The plan should also include actions to promote the OECD due diligence guidance instruments. To address the challenge related to the size of the country, the NCP should take advantage of local government and stakeholder offices throughout the country to organise promotional events and reach out to enterprises and stakeholders located outside of the capital, including indigenous communities.
2.3	The NCP is not very visible within government, but has made recent efforts to establish contacts with other government departments, in particular as it was establishing its Advisory Council. Government representatives showed interest in furthering cooperation with the NCP.	The NCP should continue to build relations with other government departments with a view to fostering policy coherence for RBC. In particular, the NCP should seek to facilitate the implementation of any action contained in the NAP in the areas relating to its mandate.

Table A B.6. Specific instances

	Findings	Recommendations
3.1	The rules of procedure are not closely aligned with the language of the Procedural Guidance. In practice the NCP's handling of cases has been characterised by a high degree of informality (e.g. regarding confidentiality), which has impacted predictability.	The NCP should revise its rules of procedure with a view to aligning them with the Procedural Guidance and designing a clearer and more predictable procedure.
3.2	During good offices, the NCP has not consistently played an active role in helping the parties find a mutually agreeable solution to the issues and lacks expertise to conduct mediation, which may diminish the confidence of the parties and impede the effective handling of cases.	Where possible, the NCP should offer mediation during good offices, and should explore ways in which the services offered by the National Directorate for Mediation could be used in future NCP cases.
3.3	The NCP's final statements are generally short and do not include details on the issues. The NCP also does not make recommendations or plans for follow up.	The NCP's final statements should, in the future, contain the following elements: a description of the issues, an account of the process before the NCP, an analysis of the issues and, when appropriate, recommendations and provisions for follow up.

## Annex C. Submission by *Business at OECD* (BIAC)

*Business at OECD* (BIAC) represents the major national business and employers' organizations from OECD member countries, and through them over 7 million companies. We also have observer organizations in a number of non-member countries as well as over 40 international sectoral organizations.

Today, many companies have integrated responsible business conduct (RBC) considerations into their overall business strategy to manage their activities in a responsible way. We consider RBC as promoted by the OECD Guidelines for Multinational Enterprises (MNE Guidelines) to be an essential part of an open investment climate and in the best interest of business. To that end, we are working in partnership with the OECD, national governments and our members to support an effective implementation of the MNE Guidelines, ensure a shared understanding of the NCP process and promote the MNE Guidelines as well as practical due diligence guidance in adhering countries and beyond to support a global level playing field.

We are in close contact with our member and observer organizations and multinational enterprises, both large and small, to raise the visibility of the MNE Guidelines by participating in events and raising awareness in regular online communications. Our [business brochure on the MNE Guidelines](#), which has just been updated, has been widely distributed to provide our members with a user-friendly communication tool that helps multinational enterprises understand what they need to know about the Guidelines and why this unique government-backed responsible business conduct instrument is of major importance for business.

A key focus of our work on RBC in 2019 was our contribution to the implementation of the OECD general due diligence guidance for responsible business conduct. In this context, we contributed to several outreach events, including in cooperation with member organizations.

We have further remained an active partner in the proactive agenda projects to ensure that the concrete experience of the different sectors is duly reflected. We actively contributed to the development of the due diligence guidance for corporate lending and securities underwriting. A number of our member companies also participated in the pilot program to support the practical application of the OECD-FAO Guidance for responsible agricultural supply chains. Like in previous years, we promoted and our member actively participated in the Forum on responsible minerals supply chains and the Forum on responsible supply chains in the garment and footwear sectors.

We are further strengthening our work with non-member countries, which are adherents to the OECD Declaration on International Investment and Multinational Enterprises, by reaching out to and engaging in a dialogue with the major business organizations in these countries.

## Annex D. Submission by OECD Watch

### NCP case handling and NCP structures

The OECD's annual report notes that 30 complaints were closed in 2019; this includes at least 13 filed by communities or civil society. While there were some high points among these cases, OECD Watch remains concerned over many NCPs' complaint-handling practices. In particular, OECD Watch is deeply concerned that 15, or 50%, of complaints closed in 2019 were rejected at the initial assessment phase (p. 15). The primary ground for rejection was that the complaints would not "further the purpose or effectiveness of the Guidelines." OECD Watch has pointed out repeatedly that this admissibility criteria is unhelpfully broad. The 2019 Annual Report now shows how the criteria's extensive misuse helps deny access to remedy for complainants. The second reason for untimely rejection was that complaints were deemed insufficiently substantiated. OECD Watch has long observed an overly high standard of proof required by many NCPs at the initial assessment stage that shuts the door to valuable dialogue.

OECD Watch is also concerned that three NCPs are still located in investment promotion agencies, where serious conflicts of interest or perception thereof jeopardize their ability to offer impartial dispute resolution between parties (pg. 30). OECD Watch is also concerned that 33 NCPs are located in economic or trade ministries, where many civil society groups rightly also perceive a conflict of interest. These issues impinge on NCPs' credibility and trust with civil society stakeholders.

OECD Watch welcomes engagement with the OECD and NCPs on these procedural and structural challenges. We believe the Guidelines and Procedural Guidance should be revised to close gaps in standards for MNEs and guidance for NCPs to meet the core criteria and complaint handling principles.

Positive highlights related to case-handling and NCP structures in 2019 included achievement of agreement in a few cases involving important sectors (financial sector responsibility and responsibility of digital platforms over hosted content, pg. 16-17); recommendation of consequences against a company (pg. 21); and the restructuring of the Australian NCP towards an independent expert structure (pg. 30), following sustained advocacy from Australian civil society and OECD Watch.

### Focus on gender

OECD Watch appreciated increased focus on gender and RBC in 2019, including through the WPRBC's workshop at which OECD Watch presented, which focused on gender impacts of MNEs and on minimising gender-specific barriers to remedy via NCPs. OECD Watch urges individual NCPs and the OECD to maintain focus on this topic by issuing a gender due diligence guidance, holding more training events for stakeholders on addressing gendered impacts in supply chains, and establishing guidance for NCPs on improving access to remedy for women via the specific instance process.

### Reprisals against human rights defenders

OECD Watch published a factsheet in 2019 finding a 25% rate of reprisals against human rights defenders occurring in relation to NCP specific instances between 2000 and 2018. In 2019 and earlier, OECD Watch has engaged with individual NCPs and the OECD secretariat on a number of reprisal-related concerns

linked to complaints. Given the prominence of this issue in the global human rights community, OECD Watch is disappointed the Annual Report does not address it. NCPs have unique ability to promote guidance for companies on reprisals and also address risks through complaint-handling. OECD Watch urges the OECD and NCPs to work with sister international organisations and grievance mechanisms to develop coordinated statements, policies, and internal guidance on this issue.

## Annex E. Submission by TUAC

The Annual Report for 2019 confirms challenges for promoting and protecting the OECD Guidelines. [doc of reference DAF/INV/RBC(2020)5] Seventy-eight percent (78%) of cases concluded in 2019 did not resolve the issues raised by the filing party. None of the trade union cases concluded in 2019 resolved issues raised by the workers. Unresolved cases has eroded trade union confidence in the NCP mechanism overall.

As of 31 December 2019, ten (10) trade union NCP proceedings remained in progress without resolution. Trade union proceedings at NCPs have been on a downward trend since peaking at 18 new proceedings filed in 2004. There were five new specific instances filed by trade unions in 2019.

Two proceedings concluded with Final Assessments at the end of 2019: **IUF & FLOC v. British American Tobacco** at the UK NCP; and **BWI, IndustriALL & CUT Brazil v. BHP Vale** at the Brazil NCP. NCPs accepted both cases for further examination but multinational respondents refused to participate, triggering final assessments.

A lack of good faith participation by MNEs in recent NCP processes compounded concerns by TUAC affiliates about MNEs commitment to the Guidelines. TUAC will be closely monitoring future MNE participation levels and developing recommendations designed to help NCPs keep both parties engaged in future proceedings.<sup>168</sup>



## Annex F. List of 2019 publications

- OECD (2019) Artificial Intelligence & Responsible Business Conduct, <https://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf>
- OECD (2019) Platform Companies & Responsible Business Conduct, <https://mneguidelines.oecd.org/RBC-and-platform-companies.pdf>
- OECD (2019) Is there a role for blockchain in responsible supply chains? <http://mneguidelines.oecd.org/Is-there-a-role-for-blockchain-in-responsible-supply-chains.pdf>
- OECD (2019) Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>
- OECD (2019) OECD-FAO Guidance Pilot Final Report, <http://mneguidelines.oecd.org/Pilot-project-on-the-implementation-of-the-OECD-FAO-Guidance-for-Responsible-Agricultural-Supply-Chains-FINAL-REPORT.pdf>
- OECD-FAO, Summary Note: OECD-FAO 2019 Roundtable on Responsible Agricultural Supply Chains, <https://mneguidelines.oecd.org/Summary-note-OECD-FAO-Roundtable-on-Responsible-Agricultural-Supply-Chains-29-October-2019.pdf>
- OECD (2019) Summary Note on the SEA Agricultural supply chains pilot, <https://mneguidelines.oecd.org/Summary-Note-Pilot-on-Responsible-Agricultural-Supply-Chains-in-Southeast-Asia-November-2019.pdf>
- OECD (2019) Stakeholder statement on Implementing Gender-Responsive Due Diligence and Ensuring the Human Rights of Women in Mineral Supply Chains, <https://mneguidelines.oecd.org/Stakeholder-Statement-Implementing-Gender-Responsive-Due-Diligence-and-ensuring-human-rights-of-women-in-Mineral-Supply-Chains.pdf>
- OECD (2019) An introduction to the OECD Due Diligence Guidance for Responsible Mineral Supply Chains for Upstream Actors, <https://mneguidelines.oecd.org/An-introduction-to-the-OECD-Due-Diligence-Guidance-for-upstream-actors.pdf>
- OECD (2019) Interconnected supply chains: a comprehensive look at due diligence challenges and opportunities sourcing cobalt and copper from the Democratic Republic of the Congo <https://mneguidelines.oecd.org/Interconnected-supply-chains-a-comprehensive-look-at-due-diligence-challenges-and-opportunities-sourcing-cobalt-and-copper-from-the-DRC.pdf>
- Alignment assessment of industry initiatives for due diligence in the garment and footwear sector: Assessment of the Sustainable Apparel Coalition, <http://www.oecd.org/daf/inv/mne/OECD-alignment-assessment-garment-footwear-SAC.pdf>
- OECD (2019), *OECD Investment Policy Reviews: Croatia 2019*, OECD Investment Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/2bf079ba-en>.
- OECD (2019), *Responsible Business Conduct country Fact Sheet – Peru*, OECD Publishing, Paris, <https://mneguidelines.oecd.org/RBC-LAC-country-fact-sheet-Peru.pdf>
- OECD (2019), *Responsible Business Conduct country Fact Sheet – Colombia*, OECD Publishing, Paris, <https://mneguidelines.oecd.org/RBC-LAC-country-fact-sheet-Colombia.pdf>

- ILO/OECD/OHCHR (2019), *Empresas responsables – mensajes claves de los instrumentos internacionales*, <https://mneguidelines.oecd.org/Joint-brochure-instruments-Responsible-supply-chains-in-Asia-Project.pdf>
- OECD (2019), Progress Report on National Contact Points for Responsible Business Conduct, <http://mneguidelines.oecd.org/Progress-Report-on-NCPs-for-Responsible-Business-Conduct-2019.htm>
- OECD (2019), Guide for National Contacts Points on the Initial Assessment of Specific Instances, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>
- OECD (2019), Guide for OECD National Contact Points on issuing Recommendations and Determinations, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Recommendations-and-Determinations.pdf>
- OECD (2019), Guide for National Contact Points on Structures and Activities, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>
- OECD (2019), OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Argentina, <https://mneguidelines.oecd.org/Argentina-NCP-Peer-Review-2019.pdf>
- OECD (2019), OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: United Kingdom, <https://mneguidelines.oecd.org/UK-NCP-Peer-Review-2019.pdf>
- OECD (2019), National Contact Points for Responsible Business Conduct: Flyer, <https://mneguidelines.oecd.org/Flyer-OECD-National-Contact-Points.pdf>
- Responsible Supply Chains in Asia, country specific brochures on:
- China: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-CHINA.pdf>
- Japan: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-JAPAN.pdf>
- Myanmar: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-MYANMAR.pdf>
- Philippines: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-PHILIPPINES.pdf>
- Thailand: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-THAILAND.pdf>
- Vietnam: <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-VIETNAM.pdf>
- Responsible Business: Key messages from international instruments*, <https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf>
- Summary Report of the 2019 Responsible Business and Human Rights Forum, <http://mneguidelines.oecd.org/RBHRF-GFRBC-2019-Summary.pdf>

# Notes

<sup>1</sup> Minerals Alignment Assessment tool: <https://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm> and garment and footwear tool: <https://mneguidelines.oecd.org/alignment-assessment-due-diligence-garment-footwear.htm>

<sup>2</sup> Minerals assessment methodology: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Alignment-Assessment-Methodology.pdf> (English) and <https://mneguidelines.oecd.org/Methodologie-evaluation-coherence-programmes-par-industrie-avec-le-guide-OCDE-le-devoir-de-diligence-minerais.pdf> (French)

<sup>3</sup> OECD (2018) Alignment Assessment of Industry Programmes with the OECD Minerals Guidance <https://mneguidelines.oecd.org/Alignment-assessment-of-industry-programmes-with-the-OECD-minerals-guidance.pdf>

<sup>4</sup> OECD Pilot assessment report garment and footwear: <https://mneguidelines.oecd.org/alignment-assessment-garment-footwear.htm>

<sup>5</sup> OECD (2019), Summary Note on the SEA Agricultural supply chains pilot <https://mneguidelines.oecd.org/Summary-Note-Pilot-on-Responsible-Agricultural-Supply-Chains-in-Southeast-Asia-November-2019.pdf>

<sup>6</sup> <https://mneguidelines.oecd.org/RBC-Digitalisation-Workshop-Agenda-30-October-2019.pdf>

<sup>7</sup> <http://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf>

<sup>8</sup> <http://mneguidelines.oecd.org/RBC-and-platform-companies.pdf>

<sup>9</sup> <https://mneguidelines.oecd.org/Is-there-a-role-for-blockchain-in-responsible-supply-chains.pdf>

<sup>10</sup> As of the end 2019, approximately 20% of specific instances submitted to NCPs relate to environmental issues.

<sup>11</sup> <https://www.g20germany.de/Content/EN/StatischeSeiten/G20/Texte/g20-gipfeldokumente-en.html>

<sup>12</sup> See for example OECD (2019) ESG Investing DAF/CMF(2019)23

<sup>13</sup> Guidelines, I. Concepts and Principles, para. 11.

<sup>14</sup> The UN Working Group on Business and Human Rights launched a project in July 2020 to assess whether the UN Guiding Principles on Business and Human Rights are fit for purpose for the next decade.

<sup>15</sup> [2017 Ministerial Council Statement](#), para. 17.3: “We commit to having fully functioning and adequately resourced National Contact Points, and to undertake a peer learning, capacity building exercise or a peer review by 2021, with the aim of having all countries peer reviewed by 2023.” [www.oecd.org/mcm/documents/2017-ministerial-council-statement.htm](http://www.oecd.org/mcm/documents/2017-ministerial-council-statement.htm)

<sup>16</sup> OECD Members: Czech Republic, Finland, Iceland, Israel, Poland, Turkey. Non-OECD Members: Brazil, Egypt, Jordan, Morocco, Peru, Ukraine. Croatia, which adhered to the Guidelines in 2019, has not yet been included in peer review planning.

<sup>17</sup> The Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)]; 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 Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)]; 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 Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [[OECD/LEGAL/0386](#)].

<sup>18</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0821>.

<sup>19</sup> OECD (2019), Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>

<sup>20</sup> OECD (2020), COVID-19 and Responsible Business Conduct <http://mneguidelines.oecd.org/covid-19-and-responsible-business-conduct.htm>.

<sup>21</sup> OECD (2017), Government at a Glance 2017.

<sup>22</sup> Working Party on Responsible Business Conduct, Summary Record 5-6 November 2019 [DAF/INV/RBC/M(2019)2/REV1].

<sup>23</sup> <http://mneguidelines.oecd.org/OECD-Responsible-Business-Conduct-Policy-Review-Peru.pdf>

<sup>24</sup> The following countries are targeted by the *Responsible Business Conduct in Latin America and the Caribbean project*: Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru. See: <http://mneguidelines.oecd.org/rbclac.htm>.

<sup>25</sup> The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. The text of the Declaration, including the Guidelines, is available on the [Compendium of OECD Legal Instruments](#) with the reference [OECD/LEGAL/0144](#).

<sup>26</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

<sup>27</sup> <https://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf>;

<sup>28</sup> <https://mneguidelines.oecd.org/RBC-and-platform-companies.pdf>

<sup>29</sup> <http://mneguidelines.oecd.org/Is-there-a-role-for-blockchain-in-responsible-supply-chains.pdf>

<sup>30</sup> OECD (2017) OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, (modules 8- 10).

<sup>31</sup> OECD/FAO (2016), OECD-FAO Guidance for Responsible Agricultural Supply Chains.

<sup>32</sup> <https://www.oecdguidelines.nl/documents/publication/2019/04/19/ncp-final-statement-4-ngos-vs-ing>

<sup>33</sup> <https://mneguidelines.oecd.org/Concept-note-COP25-The-business-and-human-rights-dimension-of-climate-change.pdf>

<sup>34</sup> <https://mneguidelines.oecd.org/Session-note-COP25-Global-Climate-Action-and-RBC.pdf>

<sup>35</sup> <https://www.oecd.org/env/resources/biodiversity/biodiversity-finance-and-the-economic-and-business-case-for-action.htm>

<sup>36</sup> The UN Working Group on Business and Human Rights cautioned in 2018 that overemphasising “business opportunities” tied to the SDGs overshadows the understanding that the most significant contribution the majority of businesses can make to realizing the SDGs is to respect human rights and through RBC. See 2018 Report of the UN Working Group on Business and Human Rights ([UN General Assembly Report, A/73/163](#))

<sup>37</sup> <https://mneguidelines.oecd.org/Ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf>. A preliminary version of the report was presented at the G20 Labour and Employment Ministers' Meeting in Matsuyama, Japan, on 1-2 September 2019. The OECD Secretary-General discussed the report at the Paris Peace Forum which was officially launched at the UN Forum on Business and Human Rights on 25-27 November 2019.

<sup>38</sup> <https://mneguidelines.oecd.org/Technical-paper-Measuring-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf>

<sup>39</sup> <https://mneguidelines.oecd.org/RBC-and-the-sustainable-development-goals.pdf>

<sup>40</sup> <http://mneguidelines.oecd.org/Brochure-How-the-OECD-FAO-Guidance-can-help-achieve-the-Sustainable-Development-Goals.pdf>

<sup>41</sup> <https://www.ser.nl/-/media/ser/downloads/engels/2019/sdg-and-imvo.pdf>

<sup>42</sup> Decision of the Council on the OECD Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)] (Decision on the Guidelines).

<sup>43</sup> Procedural Guidance, Decision on the Guidelines.

<sup>44</sup> For example, the 2018 Recommendation of the Council on the Due Diligence Guidance for Responsible Business Conduct 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, as well as promote the use of the Guidance as a resource for stakeholders such as industry associations, trade unions, civil society organisations, multi-stakeholder initiatives, and sector-initiatives, and regularly report to the Investment Committee on any monitoring, dissemination and implementation activities.”

<sup>45</sup> The Procedural Guidance, included in the Decision on the Guidelines, provides that “NCP[s] will offer a forum for discussion and assist the business community, worker organisations, other non-governmental

organisations, and other interested parties concerned to deal with [...] issues raised [...] Procedural Guidance, I (C)

<sup>46</sup> Currently 455 of these are reported on the public OECD specific database, 53 additional specific instances filed after 2011 have not yet been reported on the database as they were in progress or recently closed and initial or final statements were unavailable at the time of writing. The number of cases in previous annual reports reflected the number of cases on the online database.

<sup>47</sup> "Some form of agreement" means that the parties either reached full or partial agreement on the issues raised in the complaint.

<sup>48</sup> The most frequent upper limit designating an SME is 250 employees. See OECD Glossary of Statistical Terms, "Small and Medium Sized Enterprises." <https://stats.oecd.org/glossary/detail.asp?ID=3123>

<sup>49</sup> Fortune Global 500 is a list compiled by Fortune magazine ranking the world's 500 largest companies as measured by their gross revenue. <https://fortune.com/global500/2019/methodology/>

<sup>50</sup> Decision on the Guidelines, Procedural Guidance, I. C (3).

<sup>51</sup> Para 32.

<sup>52</sup> Para 35.

<sup>53</sup> Recommendations were issued by the NCPs of Argentina, Australia, Brazil, Chile, France, Italy, Netherlands, Peru, Poland, Spain, Switzerland, Turkey, United Kingdom

<sup>54</sup> Determinations were made by the NCPs of Australia, France, United Kingdom

<sup>55</sup> Para. 40.

<sup>56</sup> Para. 41.

<sup>57</sup> Para 23.

<sup>58</sup> Para 24.

<sup>59</sup> Decision on the Guidelines, I (4).

<sup>60</sup> See Decision on the Guidelines, Procedural Guidance, I. A.

<sup>61</sup> Decision on the Guidelines, Procedural Guidance, I.

<sup>62</sup> Decision on the Guidelines, Procedural Guidance. Section C.

<sup>63</sup> These categories are based on OECD (2018), Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Structures-and-procedures-of-NCPs-for-the-OECD-guidelines-for-multinational-enterprises.pdf>. This report maps how Governments have set up their NCPs and how the mechanisms operate and make decisions in relation to their mandates.

<sup>64</sup> Decision on the Guidelines, Procedural Guidance, Section I.D.1.

<sup>65</sup> More detailed data is available in Annex I.

<sup>66</sup> Decision on the Guidelines, para. 3.

<sup>67</sup> Para. 11.

<sup>68</sup> More detailed data is available in Annex I

<sup>69</sup> See <http://www.oecd.org/mcm/documents/2017-ministerial-council-statement.htm>

<sup>70</sup> More detailed data is available in Annex I.

<sup>71</sup> OECD (2019) Progress report on National Contact Points for Responsible Business Conduct, [C/MIN(2019)7], p. 6.

<sup>72</sup> *Id.*, p. 14.

<sup>73</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443]. Governments have similar obligations under Council Recommendations on other OECD Due Diligence Guidance instruments.

<sup>74</sup> More detailed data is available in in Annex I.

<sup>75</sup> NCP websites are referenced on the NCP page of the OECD website. See <http://mneguidelines.oecd.org/ncps/>

<sup>76</sup> Para 19.

<sup>77</sup> <https://www.oecdwatch.org/wp-content/uploads/sites/8/2019/06/Reprisals-NCP-system.pdf>

<sup>78</sup> This figure does not include the NCP of Croatia, which started its activities in 2019 following Croatia's adherence to the OECD Declaration on International Investment.

<sup>79</sup> OECD, Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443]

<sup>80</sup> OECD, Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [OECD/LEGAL/0386]

<sup>81</sup> Minerals Alignment Assessment tool: <https://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm> and garment and footwear tool: <https://mneguidelines.oecd.org/alignment-assessment-due-diligence-garment-footwear.htm>

<sup>82</sup> Minerals assessment methodology: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Alignment-Assessment-Methodology.pdf> (English) and <https://mneguidelines.oecd.org/Methodologie-evaluation-coherence-programmes-par-industrie-avec-le-guide-OCDE-le-devoir-de-diligence-minerais.pdf> (French)

<sup>83</sup> OECD (2018) Alignment Assessment of Industry Programmes with the OECD Minerals Guidance <https://mneguidelines.oecd.org/Alignment-assessment-of-industry-programmes-with-the-OECD-minerals-guidance.pdf>

<sup>84</sup> OECD Pilot assessment report garment and footwear: <https://mneguidelines.oecd.org/alignment-assessment-garment-footwear.htm>

<sup>85</sup> OECD (2019), Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises,



<https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>

<sup>86</sup> OECD (2019) Business and Finance Outlook: Strengthening Trust in Business <https://doi.org/10.1787/26172577>

<sup>87</sup> OECD, Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [OECD/LEGAL/0428]

<sup>88</sup> OECD/FAO (2019), OECD-FAO Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Final Report. <http://mneguidelines.oecd.org/Pilot-project-on-the-implementation-of-the-OECD-FAO-Guidance-for-Responsible-Agricultural-Supply-Chains-FINAL-REPORT.pdf>

<sup>89</sup> OECD/FAO (2019), Summary Note: OECD-FAO 2019 Roundtable on Responsible Agricultural Supply Chains <https://mneguidelines.oecd.org/Summary-note-OECD-FAO-Roundtable-on-Responsible-Agricultural-Supply-Chains-29-October-2019.pdf>

<sup>90</sup> OECD (2019), Summary Note on the SEA Agricultural supply chains pilot <https://mneguidelines.oecd.org/Summary-Note-Pilot-on-Responsible-Agricultural-Supply-Chains-in-Southeast-Asia-November-2019.pdf>

<sup>91</sup> OECD (2019), OECD Master Class Flyer on Risk-Based Due Diligence in Asia: <http://mneguidelines.oecd.org/Flyer-master-class-on-risk-based-due-diligence-Asia.pdf>

<sup>92</sup> OECD, Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [OECD/LEGAL/0437]

<sup>93</sup> <https://mneguidelines.oecd.org/2019-oecd-forum-on-due-diligence-in-the-garment-and-footwear-sector.htm>

<sup>94</sup> As of 2019, there are five OECD Recommendations of the Council relating to due diligence guidance. These are:

Chapter 1. The Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) [OECD/LEGAL/0386]

Chapter 2. The Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2016) [OECD/LEGAL/0427]

Chapter 3. The Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) [OECD/LEGAL/0428]

Chapter 4. The Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2017) [OECD/LEGAL/0437]. Chapter 5

Chapter 5. The Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct (2018) [OECD/LEGAL/0443]

<sup>95</sup> Government of the Netherlands (2019), Child Labour Due Diligence Act dated 24 October 2019, [https://www.eerstekamer.nl/behandeling/20191113/publicatie\\_wet\\_4/document3/f=/vI3jh4kl10yx.pdf](https://www.eerstekamer.nl/behandeling/20191113/publicatie_wet_4/document3/f=/vI3jh4kl10yx.pdf). See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>96</sup> Government of Australia (2019) Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>

<sup>97</sup> Government of Switzerland (2019), Press release of the Federal Council “Swiss companies called to establish respect for human rights and environmental norms” dated 14 August 2019, <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-76050.html>. See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>98</sup> Government of Norway (2020), Norwegian Ethics Information Committee, <https://nettsteder.regjeringen.no/etikkinformasjonsutvalget/norwegian-ethics-information-committee/>. See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>99</sup> OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>100</sup> Regulation of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector, <https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf>

<sup>101</sup> See [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/green-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/green-finance_en)

<sup>102</sup> See Article 13, Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0353>

<sup>103</sup> Norway Today (2020), Norwegian law against modern slavery on the docket, <https://norwaytoday.info/news/norwegian-law-against-modern-slavery-on-the-docket/>.

<sup>104</sup> Government of Canada (2020), Consultation on labour exploitation in global supply chains, <https://www.canada.ca/en/employment-social-development/programs/international-affairs/consultation-supply-chains.html>. See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>105</sup> OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>106</sup> BIICL (2020), European Commission study on human rights due diligence in supply chains, <https://www.biicl.org/projects/european-commission-study-on-human-rights-due-diligence-in-supply-chains>. See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>107</sup> OHCHR (2020), State national actions plans on Business and Human Rights, States that have produced a national action plan, <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

<sup>108</sup> Government of Morocco (2017), National Action Plan on Democracy and Human Rights, <https://didh.gov.ma/sites/default/files/2018-11/panddh%20FR%20corrig%C3%A9%20SITE.PDF>.

<sup>109</sup> OHCHR (2020), State national actions plans on Business and Human Rights, States that are in the process of developing a national action plan or have committed to developing one, <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

<sup>110</sup> Government of Switzerland (2020), CSR Position Paper and Action Plan – Implementation Status 2017-2019 and Action Plan 2020-2023 and UN Guiding Principles on Business and Human Rights – Swiss National Action Plan 2020-03, both dated 15 January 2020, [www.csr.admin.ch](http://www.csr.admin.ch) resp ; <https://www.nap-bhr.admin.ch/napbhr/en/home.html>. See also OHCHR (2020), State national actions plans on Business and Human Rights, States that have produced a national action plan, <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

<sup>111</sup> Government of Colombia (2018), Recommendations for the update of the National Action Plan on Business and Human Rights, <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2018/180810-recomendaciones-actualizacion-Plan.pdf>. See also Fundación ideas para la paz (2019), National Action Plans on Business and Human Rights – Minimum requirements for a successful elaboration and implementation in Colombia, pp. 24-25, <http://cdn.ideaspaz.org/media/website/document/5d306cdcd0a3e.pdf>.

<sup>112</sup> Government of Chile (2020), Follow-up report on the implementation of the NAP on Business and Human Rights – August 2017-August 2019, pp. 4-5, <https://es.scribd.com/document/444590676/Reporte-de-seguimiento-PAN-04-10-2019>.

<sup>113</sup> Government of Sweden (2018), Follow-up of Sweden's action plan for business and human rights, <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/follow-up-report-to-sweden-s-national-action-plan-on-business-and-human-rights-nap.pdf>.

<sup>114</sup> Government of Germany (2020), Monitoring of the National Action Plan on Business and Human Rights, <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-nap/2131054>.

<sup>115</sup> Government of Canada (2014), Doing business the Canadian way: a strategy to advance corporate social responsibility in Canada's extractive sector abroad, Conclusion, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng#csr8>.

<sup>116</sup> Government of the Netherlands (2019), Mind the governance gap, map the chain – Evaluation of the Dutch government's policy on international responsible business conduct (2012-2018), <https://english.iob-evaluatie.nl/publications/evaluations/2019/09/01/433-%E2%80%93-iob-%E2%80%93-evaluation-of-the-dutch-governments-policy-on-international-responsible-business-conduct-2012-2018-%E2%80%93-mind-the-governance-gap-map-the-chain>. See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>117</sup> German Ministry for Economic Cooperation and Development (2020). Green Button, <https://www.gruener-knopf.de/>. See also OECD (2019) Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>118</sup> United Kingdom (2019), Green Finance Strategy – Transforming Finance for a Greener Future, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/820284/190716\\_BEIS\\_Green\\_Finance\\_Strategy\\_Accessible\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820284/190716_BEIS_Green_Finance_Strategy_Accessible_Final.pdf). See also OECD (2019) Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>119</sup> OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>120</sup> See also Government of Costa Rica (2019), Draft Law on Public Procurement, <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/sala-prensa/boletines/2019/proyecto-ley-general-contratacion-publica-lgcp-asamblea-legislativa-08-08-2019.pdf>.

<sup>121</sup> OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>122</sup> Ibid.

<sup>123</sup> Government of the Netherlands (2020), Government stimulus for corporate social responsibility, <https://www.government.nl/topics/corporate-social-responsibility-csr/government-stimulus-for-corporate-social-responsibility-csr>.

<sup>124</sup> Government of Poland (2019), Development Cooperation Plan for 2019, [https://www.polskapomoc.gov.pl/download/files/Dokumenty\\_i\\_Publikacje/Plan\\_wspolpracy\\_2019/20190109\\_Plan\\_WR\\_2019\\_EN.pdf](https://www.polskapomoc.gov.pl/download/files/Dokumenty_i_Publikacje/Plan_wspolpracy_2019/20190109_Plan_WR_2019_EN.pdf). See also OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>125</sup> Government of Norway (2020), Mapping of modern slavery and recommendations for the Norwegian Government's development programme to combat modern slavery, [https://www.regjeringen.no/en/dokumenter/modern\\_slavery/id2670039/](https://www.regjeringen.no/en/dokumenter/modern_slavery/id2670039/).

<sup>126</sup> Law No. 2019-486 dated 22 May 2019 regarding Business Growth and Transformation published in the *Journal Officiel de la République Française* No. 0119 dated 23 May 2019, Article 169 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038496102&categorieLien=id>.

<sup>127</sup> See Belarus-Hungary BIT, Preamble, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5915/download>; Cabo Verde-Hungary BIT, Preamble, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5916/download>.

<sup>128</sup> Australia-Indonesia CEPA, Chapter 14 "Investment", Article 14.17 "Corporate Social Responsibility", <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/iacepa-text/Pages/iacepa-chapter-14-investment.aspx>.

<sup>129</sup> Australia-Hong Kong Investment Agreement, Article 16 "Corporate Social Responsibility", [https://www.tid.gov.hk/english/ita/fta/hkafta/files/investment\\_agreement.pdf](https://www.tid.gov.hk/english/ita/fta/hkafta/files/investment_agreement.pdf).

<sup>130</sup> This list includes, among others: contributing to economic, social and environmental progress in order to achieve sustainable development; respecting the internationally recognised human rights of the persons involved in the company's activities; fostering local capacity-building through close cooperation with local communities; refraining from seeking exemptions that are not established in the legal or regulatory framework in relation to human rights, environment, health, security, or other issues; encouraging business associates to apply RBC principles and standards; etc. See Brazil-United Arab Emirates CFIA, Article 15 "Corporate Social Responsibility", <https://aplicacao.itamaraty.gov.br/ApiConcordia/Documento/download/29573>.

<sup>131</sup> EU-Vietnam FTA, Chapter 13 "Trade and Sustainable Development", Article 13.10 "Trade and Investment Favouring Sustainable Development", paragraph 2(e), [https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157373.pdf](https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157373.pdf).

<sup>132</sup> EU-Vietnam Investment Protection Agreement, Preamble, [https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157391.pdf](https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157391.pdf).

<sup>133</sup> OECD (2019), Summary record of the meeting of the WPRBC held on 5-6 November 2019, DAF/INV/RBC/M(2019)2.

<sup>134</sup> Government of the United Kingdom (2019), Tackling modern slavery in government supply chains – A guide for commercial and procurement professionals, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September\\_2019\\_Modern\\_Slavery\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf).

<sup>135</sup> UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report to the UN General Assembly, A/74/198, 19 July 2019, <https://undocs.org/en/A/74/198>.

<sup>136</sup> UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report to the UN General Assembly, A/74/198, 19 July 2019, paras. 1-2, <https://undocs.org/en/A/74/198>.

<sup>137</sup> OHCHR, Time to act: Governments urged to improve record on business and human rights ahead of major global forum, 21 November 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25332&LangID=E>.

<sup>138</sup> OHCHR, Time to act: Governments urged to improve record on business and human rights ahead of major global forum, 21 November 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25332&LangID=E>.

<sup>139</sup> OECD (2015), Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises, [OECD/LEGAL/0414](#), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0414>; OECD (2019), Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, [OECD/LEGAL/0451](#), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0451>.

<sup>140</sup> OECD (2016), Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, [OECD/LEGAL/0393](#), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0393>.

<sup>141</sup> OECD (2015), Policy Framework for Investment, <https://www.oecd.org/daf/inv/investment-policy/Policy-Framework-for-Investment-2015-CMIN2015-5.pdf>.

<sup>142</sup> OECD (2019), Annual Report on the OECD Guidelines for Multinational Enterprises 2018, see section 3.2.4, <http://mneguidelines.oecd.org/2018-Annual-Report-MNE-Guidelines-EN.pdf>

<sup>143</sup> OECD (2018), OECD Investment Policy Reviews: Cambodia 2018, OECD Investment Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264309074-en>.

<sup>144</sup> OECD (2018), OECD Investment Policy Reviews: Viet Nam 2018, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264282957-en>.

<sup>145</sup> OECD (2019), OECD Investment Policy Reviews: Croatia 2019, OECD Investment Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/2bf079ba-en>.

<sup>146</sup> OECD (2020), Responsible Supply Chains in Asia, <https://mneguidelines.oecd.org/EU-ILO-OECD-Responsible-Supply-Chains-in-Asia-Overview.pdf>.

<sup>147</sup> The RBC-LAC Project is implemented by the OECD together with the International Labour Organization, the UN Office of the High Commissioner for Human Rights (UNOHCHR), and the European Union (EU) to

promote smart, sustainable and inclusive growth in the EU and Latin America and Caribbean by supporting RBC practices in line with the OECD, ILO and United Nations instruments. For more information, see OECD (2020), Promoting Responsible Business Conduct in Latin America and the Caribbean, <https://mneguidelines.oecd.org/rbclac.htm>.

<sup>148</sup> OECD (2020), Public Procurement and Responsible Business Conduct, <http://www.oecd.org/governance/public-procurement/procurement-and-rbc/>.

<sup>149</sup> The Freedom of Investment Roundtable is a forum hosted by the Investment Committee that brings together over 55 governments to exchange information and experiences on investment policies. For more information, see <http://www.oecd.org/daf/inv/investment-policy/foi.htm>.

<sup>150</sup> OECD (2020), Consultation paper on business responsibilities and investment treaties, <http://www.oecd.org/daf/inv/investment-policy/Consultation-Paper-on-business-responsibilities-and-investment-treaties.pdf>.

<sup>151</sup> The annual OECD Investment Treaty Conference brings together senior policy makers and investment treaty negotiators from over 55 countries around the world for exchanges with leading representatives of business, civil society, academia and international organisations. For more information, see <https://www.oecd.org/investment/conference-investment-treaties.htm>.

<sup>152</sup> OECD (2020), Public consultation on business responsibilities and investment treaties, <http://www.oecd.org/investment/public-consultation-on-business-responsibilities-and-investment-treaties.htm>.

<sup>153</sup> The Roundtable for Policy Makers of the GFRBC has regularly included a joint session with the UN Working Group on Business and Human Rights on the importance of governments developing NAPs on business and human rights to address policy coherence for responsible business conduct. See, for instance, OECD (2017), National actions plans on business and human rights to enable policy coherence for responsible business conduct, <https://mneguidelines.oecd.org/NAP-to-enable-policy-coherence-for-RBC.pdf>.

<sup>154</sup> ILO, OECD, UNOHCHR (2019), Responsible business – Key messages from international instruments, <https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf>.

<sup>155</sup> The adherence review is done in line with a procedure agreed between the Investment Committee and the Working Party allowing for a focussed review by the WPRBC of the candidates' commitments under the Guidelines as part of the adherence process [DAF/INV(2016)18/FINAL],

<sup>156</sup> [DAF/INV/ICD/RD(2019)1] and [DAF/INV/ICD/RD(2019)2].

<sup>157</sup> [DAF/INV/RD(2019)9].

<sup>158</sup> See OECD website of the RBC LAC project: <http://mneguidelines.oecd.org/rbclac.htm>; see Project Fact Sheet <http://mneguidelines.oecd.org/RBC-in-Latin-America-and-the-Caribbean-Fact-Sheet.pdf>; see Project Brochure; <http://mneguidelines.oecd.org/RBC-in-Latin-America-and-the-Caribbean-project-overview-brochure.pdf>

<sup>159</sup> <https://4consultaregionalempresasyddhh.sched.com/>

<sup>160</sup> <http://mneguidelines.oecd.org/RBC-LAC-country-fact-sheet-Peru.pdf>

<sup>161</sup> <http://mneguidelines.oecd.org/RBC-LAC-country-fact-sheet-Colombia.pdf>

<sup>162</sup> <http://mneguidelines.oecd.org/global-forum/2019-global-forum-responsible-business-conduct.htm>

<sup>163</sup> <https://www.youtube.com/playlist?list=PL8hsAvmkSSmj8B0VEEyXM4ZRlqKVKOSHE>

<sup>164</sup> See for example UN OHCHR's The Other Infrastructure Gap: Sustainability: Human Rights and Environmental Dimensions.  
<https://www.ohchr.org/Documents/Publications/InfrastructureGapSummary.pdf>

<sup>165</sup> [https://www.mof.go.jp/english/international\\_policy/convention/g20/annex6\\_1.pdf](https://www.mof.go.jp/english/international_policy/convention/g20/annex6_1.pdf)

<sup>166</sup> <https://mneguidelines.oecd.org/UK-NCP-Peer-Review-2019.pdf>

<sup>167</sup> <https://mneguidelines.oecd.org/Argentina-NCP-Peer-Review-2019.pdf>

<sup>168</sup> For more information about TUAC engagement with the work of the Working Party on Responsible Business Conduct in 2019 see TUAC Annual Report on Responsible Business Paris, 1 March 2020, [https://tuac.org/wp-content/uploads/2020/02/2020-0318-WGMNE3\\_RBCAnnualRpt.Eng\\_.pdf](https://tuac.org/wp-content/uploads/2020/02/2020-0318-WGMNE3_RBCAnnualRpt.Eng_.pdf)





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