

Draft Recommendation on the Role of Government in Promoting Responsible Business Conduct

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises and the OECD Guidelines for Multinational Enterprises (hereafter “OECD Guidelines”) [[OECD/LEGAL/0144](#)], the Decision of the Council on the OECD Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)], and the Recommendation of the Council on the Policy Framework for Investment [[OECD/LEGAL/0412](#)];

HAVING REGARD to OECD Due Diligence Guidance as referred to in 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](#)], the Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [[OECD/LEGAL/0427](#)], the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [[OECD/LEGAL/0428](#)], the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)], and the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)];

HAVING REGARD to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0293](#)], the Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service [[OECD/LEGAL/0316](#)], the Recommendation of the Council on Further Combating Bribery of Foreign Public Officials in International Business transactions, including its Good Practice Guidance on Internal Controls, Ethics and Compliance Annex II [[OECD/LEGAL/0378](#)], the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [[OECD/LEGAL/0379](#)], the Recommendation of the Council on Policy Coherence for Sustainable Development [[OECD/LEGAL/0381](#)], the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence [[OECD/LEGAL/0393](#)]; the Recommendation of the Council on Public Procurement [[OECD/LEGAL/0411](#)]; the Recommendation of the Council on Principles of Corporate Governance [[OECD/LEGAL/0413](#)], the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises [[OECD/LEGAL/0414](#)], the Recommendation of the Council on Public Integrity [[OECD/LEGAL/0435](#)], the Recommendation of the Council of Open Government [[OECD/LEGAL/0438](#)], the Recommendation of the Council on Sustainable Lending Practices and Officially Supported Export Credits [[OECD/LEGAL/0442](#)], the Recommendation of the Council on Bribery and Officially Supported Export Credits [[OECD/LEGAL/0447](#)], the Recommendation of the Council on Artificial Intelligence [[OECD/LEGAL/0449](#)], the Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises [[OECD/LEGAL/0451](#)]; the Recommendation of the Council on the Governance of

Infrastructure [[OECD/LEGAL/0460](#)], and the 2017 OECD DAC Blended Finance Principles for Unlocking Commercial Finance for the Sustainable Development Goals (SDGs);

HAVING REGARD TO the foundation provided on various aspects of Responsible Business Conduct (RBC) within the framework of other international organisations, notably the UN and the ILO, in particular the UN Guiding Principles on Business and Human Rights, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy;

RECOGNISING that the common aim of Members and non-Members having adhered to the OECD Guidelines (hereafter “OECD Guidelines Adherents”) is to encourage the positive contributions enterprises can make to economic, environmental, and social progress and to minimise the adverse impacts that may result from their operations;

RECOGNISING that since the adoption of the OECD Guidelines in 1976, and their subsequent updates, including the 2011 update, there has been increased demand on business to follow principles and standards on RBC;

RECOGNISING the importance of the OECD Guidelines and OECD Due Diligence Guidance (hereafter “OECD RBC standards”) in creating a level playing field across global markets;

RECALLING that the 2030 Agenda for Sustainable Development calls for fostering a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements and that enterprises can enhance their contribution to the 17 SDGs and targets through implementation of RBC standards;

RECALLING that the 2015 Paris Agreement on climate change recognises that the private sector is an integral part of the global solution to address and respond to climate change;

RECOGNISING that RBC involves numerous considerations and policy areas relating notably to corporate governance, human rights – including indigenous peoples’ rights, gender equality, and non-discrimination –, employment and industrial relations, environment, corruption, consumer interests, science and technology, competition, and taxation;

RECOGNISING that the OECD Guidelines recommend that enterprises undertake risk-based due diligence (“due diligence for RBC”) to identify, prevent, mitigate and account for how they address actual and potential adverse impacts on matters covered by the OECD Guidelines in their own operations, their supply chain, and other business relationships;

RECOGNISING that social dialogue, consultation, and cooperation between employers’ and workers’ representatives allows for meaningful involvement of stakeholders in RBC and due diligence;

RECOGNISING the increased uptake and disclosure of environmental, social, and governance (ESG) criteria in the market and across enterprise activity and the importance of ensuring coherence between relevant international and national standards in these fields and RBC standards;

RECOGNISING that while RBC standards address business behaviour, governments have an important role to play in supporting their effective implementation, including by creating an enabling policy environment to drive, support, and promote responsible business practices, including in their role as economic actors (e.g. through their role as employers, procurers and through state-owned enterprises);

RECOGNISING that governments are increasingly adopting legislation aimed at promoting responsible business practices, including by using OECD RBC standards to support

comprehensive and common approaches for due diligence that extend to companies' operations, supply chains and other business relationships;

RECOGNISING the role of National Contact Points (NCPs) in furthering the effectiveness of the OECD Guidelines and the role NCPs can play in promoting policy coherence for RBC;

RECOGNISING that increasingly a number of OECD standards in different policy areas touch on the role of governments in leveraging RBC and that governments have increasingly been called on to promote RBC across relevant policy areas to support coherence across them;

RECOGNISING the importance of coherence across international RBC standards and that governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted;

RECOGNISING that the design of specific policies and other measures on RBC will be shaped by individual Members and non-Members having adhered to this Recommendation's (hereafter, "Adherents") political, administrative, and legal contexts, including the respective authorities and competences of different levels of government;

On the proposal of the Investment Committee:

I. AGREES that the purpose of this Recommendation is to provide guidance on fostering government policies to support and enable RBC without amending or modifying the scope of existing RBC standards, creating new such standards, or addressing the categories of actors to which those standards apply.

II. RECOMMENDS that Adherents **develop and review legal and other regulatory frameworks to enable RBC and support the continued implementation and effective enforcement of these frameworks** by:

1. Putting in place an appropriate legal and regulatory framework that is continuously implemented and effectively enforced in the areas covered by the OECD Guidelines and other RBC standards as applicable, including with respect to corporate governance, human rights, employment and industrial relations, environment, anti-corruption, consumer interests, science and technology, competition, and taxation. Adherents should periodically assess the relevant legal and regulatory frameworks in place and address any gaps and other challenges, including in enforcement and access to remedy.
2. Identifying and addressing unnecessary barriers that impede the implementation of RBC standards by businesses with a view to promoting coherence, including making best efforts to resolve any actual or perceived inconsistencies in laws and policies, or otherwise providing additional guidance where a legitimate conflict exists.
3. For OECD Guidelines Adherents, periodically assessing the adequacy of their NCPs' institutional arrangements and the human and financial resources made available to them, with a view to enabling them to play an important role in furthering the effectiveness of RBC standards and in promoting policy coherence for RBC.
4. Drawing from RBC standards and in particular OECD Due Diligence Guidance when developing new policies, laws, or regulations, including secondary rules, legislative guidance, or sectoral policies. This will be particularly important for policies, laws, or regulations seeking to promote responsible global supply chains and corporate disclosure of non-financial risk information.

III. RECOMMENDS that Adherents **encourage RBC across relevant policy areas**, including by:

1. Supporting effective implementation of RBC standards, including OECD Due Diligence Guidance where relevant, through the provision of reliable information, tools, and incentives, including, where feasible, aligning economic benefits and incentives for business with the implementation of RBC standards.
2. Promoting RBC through trade and investment policies, as well as bilateral and multilateral agreements. This should include the expectation that businesses under the scope of these policies and agreements implement RBC standards.
3. Promoting RBC in development cooperation efforts, and in particular development finance instruments at the national and international levels, in order to leverage and promote private sector contributions to sustainable development. Specifically, sustainable and blended finance instruments should be based on RBC standards, including OECD Due Diligence Guidance.
4. Clearly communicating expectations regarding RBC and providing guidance to help businesses, in particular SMEs, in meeting them. To this end, Adherents should, through relevant government agencies – including NCPs for OECD Guidelines Adherents – actively promote the use of OECD Due Diligence Guidance.

IV. RECOMMENDS that Adherents lead by example and take measures to promote and exemplify RBC in their role as economic actors and in their commercial activities, by:

1. Using public procurement as a strategic tool for RBC and including RBC in procurement policies (regulatory and strategic frameworks), as well as promoting due diligence for RBC in public procurement.
2. Establishing and publically disclosing clear expectations for State-Owned Enterprises (SOEs) to observe RBC standards together with effective mechanisms for their implementation.
3. Supporting the implementation of RBC standards through the integration of environmental, social and governance criteria in the provision and management of equity, debt, grants, loans, guarantees, or insurance, including by promoting awareness of RBC among appropriate parties involved in applications for officially supported export credits.

V. RECOMMENDS that Adherents promote stakeholder participation in the development and implementation of RBC policies by:

1. Engaging with businesses and other stakeholders, including workers' organisations, employers' organisations, civil society, affected communities, and academia, as well as the interested public, on existing or potential RBC regulation and policies, including on how effective monitoring and enforcement of such policies could be facilitated. In this regard, Adherents should give particular consideration to businesses that may have specific challenges in implementing RBC standards, such as small and medium sized enterprises, as well as to vulnerable groups, such as indigenous peoples, who may face difficulties in participating in the development and implementation of RBC policies.
2. Creating a conducive environment to enable stakeholders to engage in effectively implementing, monitoring and promoting RBC, including by providing transparent channels for meaningful consultation and engagement to define challenges or opportunities related to RBC and a safe space for dialogue without undue pressure. For OECD Guidelines Adherents, NCPs should play an important role in this regard taking into account national circumstances.
3. Encouraging transparency and stakeholder engagement at all stages of the political process to promote accountability and the public interest, in particular through averting

the capture of public policies by narrow interest groups through managing conflict-of-interest situations, enforcing competition laws and regulations, and instilling transparency in lobbying activities and in the financing of political parties and election campaigns.

4. Playing a convening role for stakeholders and industry and facilitating collective initiatives to promote RBC.

VI. RECOMMENDS that Adherents **promote access to remedy** by:

1. Taking appropriate measures so that those affected by non-observance of RBC standards by companies operating in or from their territories have access to effective judicial or non-judicial remedy mechanisms.
2. For OECD Guidelines Adherents, ensuring that NCPs play an important role in providing access to remedy by facilitating the resolution of issues that arise relating to the implementation of the OECD Guidelines in given cases (“specific instances”) in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the OECD Guidelines. For this purpose, Adherents should take measures so that NCPs enjoy the confidence of social partners and other stakeholders and can effectively fulfil their responsibilities.

VII. RECOMMENDS that Adherents **coordinate their policies and activities relevant to RBC**, including by:

1. Promoting coherence across domestic government agencies and bodies to facilitate alignment and synergies between policies and practices relevant to RBC through measures including:
 - a. encouraging the use of co-ordination mechanisms to facilitate coherent policies across ministries, public agencies, and levels of government, including cross-sectoral plans;
 - b. identifying, assessing, and addressing barriers to policy coherence emerging from existing practices and policies;
 - c. monitoring the integration and mainstreaming of RBC into relevant policies.
2. For OECD Guidelines Adherents, supporting NCPs in fostering policy coherence. This should include informing government agencies and bodies of NCP statements and reports related to specific instances when those specific instances are relevant to the agency’s or body’s policies and programmes.
3. Collaborating internationally, for example through relevant international and regional organisations and multi-lateral development banks, to promote policy coherence on RBC at the international level in line with the OECD Guidelines and other international RBC standards.

VIII. INVITES the Secretary-General to disseminate this Recommendation.

IX. INVITES Adherents to disseminate this Recommendation at all levels of government.

X. INVITES non-Adherents to take account of and adhere to this Recommendation.

XI. INSTRUCTS the Investment Committee, through the Working Party on Responsible Business Conduct, and in consultation with other relevant OECD Committees and subsidiary bodies, to:

1. Serve as a forum for exchanging information on government policies for RBC including practical experience with the implementation of this Recommendation; and

2. Review the implementation, dissemination, and continued relevance of this Recommendation and report to the Council thereon no later than five years following its adoption and at least every ten years thereafter.