

Responsible business conduct and economic diplomacy tools



June 2017 • mneguidelines.oecd.org

This concept note was prepared for the session on promoting responsible business conduct (RBC) through economic diplomacy tools at the Roundtable for Policy Makers that took place on 28 June 2017 within the framework of the OECD Global Forum on Responsible Business Conduct. It sets a basis for reflection and discussion on how RBC standards can be embedded in economic diplomacy.

Economic diplomacy refers to government services and support provided to business in foreign markets. This can take the form of financial support such as export credits, investment guarantees and direct lending, but can also include other public services such as trade missions, capacity building activities and access to information and networks through embassies. These tools are not only instrumental to promote foreign trade and investment, but they can also be powerful levers for governments to guide corporate behaviour and support best practice on responsible business conduct (RBC).

Although far from mainstream, some governments have recognised this potential and are using economic diplomacy to create incentives for business to behave responsibly. There are several reasons for this. First, governments as economic actors should not contribute to adverse impacts of business operations. Second, although trade and investment promotion is a competitive field among countries, it is in governments' interests to create a level playing field and ensure that companies are subject to fair competition and do not profit from public services with irresponsible practices. Third, insufficient attention to corporate conduct by national companies in foreign markets can negatively affect the country's image abroad. And lastly, support to companies with irresponsible practices can undermine the political support for economic diplomacy instruments and affect a government's reputation. Therefore in order to provide real incentive structures companies need a consistent and clear message from governments on what is expected from them in terms of RBC, and policy coherence is key in this regard.

Since 2003, OECD countries have gradually agreed on provisions to consider environmental, social and human rights impacts of export credits.¹ However, other economic diplomacy tools are less well known. This is hardly surprising considering the "soft nature" of government support provided to companies operating abroad and the different approaches taken by countries in this regard. National Action Plans on Business and Human Rights and on Responsible Business Conduct provide an insight into certain tools that countries are applying. Economic diplomacy measures are provided by different government ministries and agencies including, typically, Ministries of Economy, Finance, and Foreign Affairs.

International policy linkages

Whereas the OECD Guidelines for Multinational Enterprises (2011) are recommendations by governments addressed to business on responsible business conduct, the OECD has also developed recommendations for Governments to guide the design and implementation of a strong policy framework to enable RBC. These are set out in the OECD Policy Framework for Investment (2015)² and emphasise the alignment of all policies relevant to RBC and ensuring that RBC principles and standards are observed in the context of the government's role within the economy. In this regard, the

PFI explicitly recognises the role of including RBC expectations international economic instruments such as trade and investment agreements, export credit agreements and official development assistance.

Likewise, the United Nations Guiding Principles on Business and Human Rights (2011) specifically address export credits. Guiding Principle 4 recommends that "States should take additional steps to protect against human rights abuses by business enterprises that [...] receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence."³

The importance of economic diplomacy tools has also recently been echoed in statements made at the European level. The European Council of Foreign Affairs in June 2016 encouraged "EU Institutions and Member States to address their responsibilities [...] when supporting or partnering with businesses (e.g. through export credit, trade promotion, or subsidies⁴ for the private sector)."⁵ The Council of Europe recommendation on human rights and business also addressed other economic diplomacy tools, stating that "Member States should, when business enterprises [...] are represented in a trade mission to member States and third countries, address and discuss possible adverse effects future operations might have on the human rights situation in those countries and require participating companies to respect the UN Guiding Principles or the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD)."⁶ This recommendation furthermore encourages Member States to advise, provide assistance and training to companies on human rights risks through diplomatic networks and calls on capacity building for diplomatic and consular staff.⁷

Export credits, investment guarantees and direct lending

Officially supported export credits constitute a significant source of finance and insurance in particular with regard to financing of large scale projects in developing countries, which may come with risks of social and environmental impacts. They are provided through Export Credit Agencies (ECAs) and can take the form either of "official financing support", such as direct credits to foreign buyers, refinancing or interest-rate support, or of "pure cover support", such as export credits insurance or guarantee cover for credits provided by private financial institutions. ECAs can be government institutions or private companies operating on behalf of governments.

The international rules for export credits are developed, implemented and monitored at the OECD. These consist of both financial disciplines, which seek to foster a level playing field and eliminate financing subsidies, and good governance disciplines, which aim to promote coherence with Members' national and international policies and commitments. In 2014, OECD ECAs reported providing \$74.38 billion of export credits support to exporters for transactions with a repayment term of two years or more that were provided in conformity with the OECD's financial disciplines, contained in the Arrangement on Officially Supported Export Credits.⁸

With regard to good governance disciplines, OECD member countries meeting under the auspices of the OECD Working Party on Export Credits and Credit Guarantees (ECG),⁹ have agreed to rules to deter and detect bribery in international business transactions supported by export credits (the Recommendation of the Council on Bribery and Officially Supported Export Credits¹⁰), to consider the social, environmental and human rights impacts of ECA supported projects overseas (the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, known as the "Common Approaches"¹¹) and to promote sustainable lending practices (the Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official export Credits to Lower Income Countries¹²).

The Common Approaches provides that "[m]embers should... [p]romote awareness of [the Guidelines] among appropriate parties involved in applications for officially supported export credits as a tool for responsible business conduct in a global context".¹³ As a result many ECAs have incorporated reference to the Guidelines within their policies and provide information on the OECD

Guidelines on their websites. In addition, the Common Approaches specify that ECAs, when undertaking a review, “should... where appropriate: [...] consider any statements or reports made publicly available by their National Contact Points (NCPs) at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises”.¹⁴

Prior to the 2016 update of the Common Approaches, six ECAs (Austria, Canada, the Netherlands, Slovenia, Sweden/SEK and the United States)¹⁵ reported having a formal process for considering, where appropriate, any statements or reports from their NCP.¹⁶ For example, in the United States, all applications must be “cleared” by the US Department of State, which houses the NCP. In addition, 21 other ECAs reported that they have processes in place; however, these seem to be more *ad hoc* than formal, although some ECAs commented that they have established regular contacts with the NCPs in order to exchange information about on-going projects.¹⁷ Three ECAs (the Czech Republic, New Zealand and Turkey) reported that they do not have any such policies or procedures in place and two ECAs (Denmark and Spain) reported that, at that time, they were in the process of developing specific policies and procedures with regard to considering any statements or reports from their NCP.¹⁸ ECAs also periodically exchange experiences about dealing with NCP cases and, in this context, the ECAs from Belgium, Finland, Germany, Netherlands, Norway, United Kingdom and United States have previously reported that they have considered statements or reports relating to specific instances from their NCPs.¹⁹

Twelve OECD countries which also provide export credits recognise the responsibility of the government to ensure protection against human rights infringements within their National Action Plans (NAPs) on Human Rights and Business. Ten of these make explicit reference to the OECD Common Approaches, highlighting the importance of environmental and social impact assessments to safeguard a level playing field between ECAs and as covering the entire spectrum of RBC. Three of these (Germany, Switzerland and the United Kingdom) stipulate a direct link with their NCPs in this regard, although with a nuance regarding the outcome of the case versus good faith engagement by the company in the NCP process. For example, the UK Export Finance (UKEF) “will consider any reports made publicly available by the UK National Contact Point (NCP) in respect of the human rights record of a company when considering a project for export credit.”²⁰ The screening process of applications for export credits under the German NAP “includes in particular the participation by companies in the dispute settlement mechanism of the German National Contact Point for the OECD Guidelines.”²¹

Other economic diplomacy tools

In addition to export credits, governments also systematically provide non-financial services to business to support their trade and investment efforts abroad. Compared to export credits, much less is known about the tools that governments are applying and to what extent they are used as incentives to promote RBC. NAPs provide certain information on measures taken by governments, although on a more general and political level. In addition, due to the practical and evolving nature of these tools, little information is publicly available, therefore only some anecdotal examples are reflected here.

Trade missions and trade advocacy support

A trade mission is a visit abroad by government officials and companies organised by the government with a view to exploring international business opportunities. Governments engage in trade missions to open doors, provide on-the-ground support, and explore international business opportunities. Trade missions present an opportunity to raise awareness about RBC and governments can use them as incentive structures to promote corporate accountability for social, environmental and human rights impacts. For example, one of the formal requirements for Dutch companies to participate in government sponsored trade missions concerns active awareness of and commitment to the OECD Guidelines, with particular emphasis on human rights risk analysis.²² After a business expresses interest in joining a trade mission, the Dutch Government assesses the company using the Transparency Benchmark,²³ which measures how transparent businesses are on publishing their CSR

activities. On the basis of several exchanges, the Dutch government verifies to what extent the business is aware of the OECD Guidelines and, shortly before departing on a trade mission, the business is provided with training on RBC standards, which are also addressed throughout the mission.

Trade advocacy support is characterised in Canada as activities where mission staff can be seen to be supporting a company in interactions with foreign public officials, and in certain circumstances, in the public sphere generally. This could include making representations on behalf of the company to foreign public officials, accompanying clients to meetings with foreign public officials, or supporting, and/or participating in, events tailored to a particular company. The Canadian government requires companies seeking such support from its Trade Commissioner Service to sign an Integrity Declaration.²⁴ By signing this Declaration the company acknowledges the expectation that Canadian companies operate in a manner consistent with the OECD Guidelines and will cooperate with Canada's NCP if requested to do so. Responses to the declaration will determine the level of support provided, if any.

Diplomatic networks and capacity building

Governments have direct access to companies operating abroad through their diplomatic network. Embassies and consulates fulfil a counselling role to these enterprises, especially in risk and conflict areas where the respect of human rights, labour and environmental conditions may be threatened. Practically all NAPs feature the use of diplomatic networks by governments to provide counsel on RBC and provide guidance to enterprises operating abroad. For some countries, the NAPs have provided an impetus to step up specific training and capacity building of diplomatic personnel on RBC.

The United Kingdom, for instance, has developed a Government's Business and Human Rights toolkit, which aims to give guidance to political, economic, commercial and development officers in overseas missions on how to promote good conduct by UK companies operating overseas.²⁵ Germany committed in its NAP to provide appropriate training to relevant employees in the highest federal authorities - including German foreign representatives on business and human rights.²⁶ At Swedish embassies, "knowledge about CSR and the UN Guiding Principles on Business and Human Rights will be enhanced through training initiatives. Embassies should use their local networks for Swedish and other companies, government agencies, trade unions and NGOs for support, cooperation and dialogue on how best to respect human rights. Embassies should be prepared to capture information about potential problems related to human rights and Swedish companies, especially in conflict-affected countries".²⁷ In the United States, a plan will be established this year to further integrate instruction on RBC into relevant training for embassy employees who are working abroad.²⁸ Global Affairs Canada provides a RBC course to all trade employees prior to each posting abroad. This includes trade commissioners at all levels as well as heads of mission. This course is complemented with on-going virtual training on specific RBC topics offered to both Canadian and locally engaged staff at missions overseas throughout the year.

In certain cases, promotion of RBC among companies' operation abroad is done through special ambassador, such as in Sweden on Corporate Social Responsibility (CSR), or is part of the mandate of a country's promotion team. For example, Team Finland which promotes Finnish enterprises abroad comprises representatives from ministries of Economy, Employment, Foreign Affairs and Education and publicly funded organisations which are providing a platform for the promotion of corporate responsibility. Pursuant to the recommendations by the Working Group that developed the Finnish NAP, Team Finland provides interactive trainings for business on CSR, ensures CSR and business and human rights considerations are taken into consideration in export promotion and that "questions related to CSR and human rights shall be included in the service selection by the Team Finland provided by Finnish foreign services."²⁹ Other countries are also providing or are in the process of developing RBC specific trainings for national business abroad. For example, "as part of the

promotional activities among Danish companies the government has committed to providing courses and guidance on responsible business conduct”.³⁰

Bilateral agreements

Government cooperation between home and host countries of trade and investment also provides an enabling framework for governments to foster RBC standards by companies operating abroad. Many recent economic instruments include corporate responsibility criteria and references to the Guidelines. An OECD study of 2014 found that three quarters of international investment agreements concluded between 2008 and 2013 contain language on sustainable development or RBC and virtually all of the investment treaties concluded in 2012 and 2013 include such language.³¹ For instance, the Cooperation and Facilitation Investment Agreement Model (CFIA) of Brazil includes an article on CSR.³² Other recent examples include the EU-Canada Economic and Trade Agreement, the EU-Viet Nam Free Trade Agreement and the Free Trade Agreement between the European Free Trade Association (EFTA) States and Georgia. In the context of the sustainable development, labour and environmental chapters of its latest trade agreements, the EU has promoted implementation through awareness raising activities for stakeholders, notably lately in the context of the EU-Republic of Korea and the EU-Costa Rica Free Trade Agreements.

In a similar vein, Sweden has entered into memoranda of understanding (MoUs) with certain countries on structured cooperation on corporate social responsibility. For example, two MoUs exist between Sweden and China, including an action plan for 2010–2015, under which a special Centre for CSR has been set up at the Embassy of Sweden in Beijing. Among other activities, the CSR Centre provides training for companies.³³ Likewise, Chile and Sweden signed a MoU on corporate social responsibility in 2012, and the Netherlands and India signed a MoU in 2011 to promote collaboration for corporate governance and responsible business conduct.

Towards an integrated approach

Governments have a range of economic diplomacy tools at their disposal to promote RBC among national business operating abroad. The interplay between the different instruments and the role of the NCP therein has been evolving in some countries.

Canada for example has adopted an integrated approach to economic diplomacy as part of its Enhanced CSR Strategy launched in 2014. A key component of this approach is making the Government’s support in foreign markets conditional on a company’s good faith participation in either of Canada’s two voluntary dispute resolution mechanisms, the Office of the CSR Counsellor and Canada’s National Contact Point (NCP).³⁴ In practice this has led to the withdrawal of Canadian Government support in 2015 to China Gold, a mining company that refused to engage with the NCP when a complaint was brought against it alleging adverse impacts to local communities as a result of its mining activities. This case represents the first example of a company’s engagement with an NCP process being directly linked to access to government economic and trade-related advocacy support.³⁵

The German NAP also paves the way for reinforcing the role of the NCP in trade promotion. The section regarding export credits, investment guarantees and other instruments of foreign trade promotion includes a proposed measure that the NCP be upgraded to a central complaint mechanism for projects relating to foreign trade promotion.³⁶

The Netherlands has also worked on an integrated approach to economic diplomacy at the sector level. The multi-stakeholder dialogues convened by the Dutch Government aimed at combining forces to address RBC deficits in ten high risk sectors have been instrumental in shaping economic diplomacy tools for specific sectors. The Sustainable Garment and Textile Agreement concluded in March 2016 addresses policy coherence and the role of government and includes a range of measures providing incentives to the signatories of the Agreement. For instance, "where an enterprise submits an application for financial or other government support from existing instruments for international

trade activities, the Dutch government acknowledges that it will be easier for participating enterprises [signatories of this Agreement] to demonstrate that they satisfy the criteria on international responsible business conduct that apply to applications for financial support from the government in respect of international trade."³⁷ In addition, with regard to support provided by embassies to implement the agreement, the Agreement states that "an example of this diplomacy would be to give embassies the role of intermediary in putting Dutch enterprises in contact with local authorities and stakeholders so as to avoid or address any potential adverse impact on the general and specific themes referred to in this Agreement. If required, an embassy can actively approach the local authority and other stakeholders."³⁸ A similar agreement has been concluded in the Banking Sector in October 2016 and in the Gold Sector in June 2017 and other sector-specific agreements are currently being negotiated.

While governments can engage in economic diplomacy in numerous ways depending on the specific context, the most successful models are those that combine incentives with responsibilities. In parallel, alignment and policy coherence are critical, i.e. the messaging needs to be the same at all levels of government. The establishment of comprehensive training for companies and government agencies, including sub-national government offices, is a further challenge. Governments would benefit from the opportunity to share best practices and lessons learnt. The OECD is well-placed to provide such a platform.

Notes

- ¹ See: the 2003 *Recommendation of the Council on Common Approaches on the Environment and Officially Supported Export Credits*; the 2007 *Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits*; and the 2012 *Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence*.
- ² OECD (2015) *Policy Framework for Investment*, Chapter 7 on Enabling RBC, www.oecd.org/investment/pfi.htm.
- ³ United Nations (2011) *United Nations Guiding Principles on Business and Human Rights*, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- ⁴ This background paper does not address government subsidies, but this may be brought up in the discussion.
- ⁵ EU Foreign Affairs Council: Council Conclusion on Business & Human Rights, 20 June 2016
- ⁶ Council of Europe: Recommendation of the Committee of Ministers to member States on human rights and business, CM/Rec(2016)3, 2 March 2016, para. 25.
- ⁷ *Ibid.*, paras. 27-29.
- ⁸ See *Trends in Arrangement official export credits (2005-2014)* www.oecd.org/trade/xcred/business-activities.htm
- ⁹ The ECG has 32 Members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.
- ¹⁰ [www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=td/ecg\(2006\)24&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=td/ecg(2006)24&doclanguage=en)
- ¹¹ [https://one.oecd.org/document/TAD/ECG\(2016\)3/en/pdf](https://one.oecd.org/document/TAD/ECG(2016)3/en/pdf)
- ¹² [https://one.oecd.org/document/TAD/ECG\(2016\)14/en/pdf](https://one.oecd.org/document/TAD/ECG(2016)14/en/pdf)
- ¹³ *Op cit* (footnote 1).
- ¹⁴ *Ibid.*
- ¹⁵ In addition, Germany in June 2017 also reported that following the adoption of the German National Action Plan on Business and Human Rights (December 2016) new procedures are put in place which establish a clear link between participation in NCP mediations and the granting of export credit and investment guarantees.
- ¹⁶ OECD Working Party on Export Credits and Credit Guarantees (2016), Review of Members' Responses to the Environmental and Social Survey [https://one.oecd.org/document/TAD/ECG\(2015\)17/FINAL/en/pdf](https://one.oecd.org/document/TAD/ECG(2015)17/FINAL/en/pdf). The annual Environmental and Social Survey is currently being updated and is scheduled for release later in 2017.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*
- ¹⁹ ECG Meeting, March 2016.
- ²⁰ UK National Action Plan on Business and Human Rights, updated May 2016, para. 17, ii. www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf
- ²¹ German National Action Plan on Business and Human Rights, December 2016, p. 25 (*free translation*), www.auswaertiges-amt.de/cae/servlet/contentblob/754690/publicationFile/222786/161221-NAP-DL.pdf
- ²² Official requirements for Dutch Trade Missions, www.rvo.nl/onderwerpen/internationaal-ondernemen/wegwijzer-internationaal-zakendoen/handelsmissie/soorten-handelsmissies/uitgaande-handelsmissies/voorwaarden

- 23 www.transparantiebenchmark.nl/en
- 24 The Declaration states that neither the company nor any of its representatives have been convicted in Canada of, or will engage in, bribery or corrupt practices. It also asks companies to disclose whether they have been or are currently subject to a National Contact Point review. <http://tradecommissioner.gc.ca/how-tcs-can-help-comment-sdc-peut-aider.aspx?lang=eng>
- 25 Foreign & Commonwealth Office, Business and Human Rights Toolkit. Published: 1 June 2011, www.gov.uk/government/publications/business-and-human-rights-toolkit
- 26 German National Action Plan on Business and Human Rights, p.41, www.auswaertigesamt.de/cae/servlet/contentblob/754690/publicationFile/222786/161221-NAP-DL.pdf
- 27 Swedish National Action Plan on Business and Human Rights (2015), p.28, www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf
- 28 United States National Action Plan on Responsible Business Conduct (2016), p. 19 www.state.gov/documents/organization/265918.pdf
- 29 Finnish National Action Plan on Business and Human Rights (2014), pp.27-28, <http://tem.fi/documents/1410877/3084000/National%20action%20plan%20for%20the%20implementation%20of%20the%20UN%20guiding%20principles%20on%20business%20and%20human%20rights/1bc35feb-d35a-438f-af56-aec16adfcbae>
- 30 Danish National Action Plan on Business and Human Rights (2014), p.11, www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf
- 31 Kathryn Gordon (2014), Investment treaty law, sustainable development and responsible business conduct: a fact finding survey, OECD Publishing.
- 32 Article 14, <http://investmentpolicyhub.unctad.org/Download/TreatyFile/4786>
- 33 www.swedenabroad.com/en-GB/Embassies/Beijing/Business/Trade-and-Promotion-sys/Corporate-Social-Responsibility-in-China-sys/
- 34 Canada's Enhanced CSR Strategy (2014), www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng
- 35 OECD: 2015 Annual Report on the OECD Guidelines for Multinational Enterprises, p. 29, <http://mneguidelines.oecd.org/2015-Annual-Report-MNE-Guidelines-EN.pdf>
- 36 German National Action Plan on Business and Human Rights (2016), pp. 23-25, www.auswaertigesamt.de/cae/servlet/contentblob/754690/publicationFile/222786/161221-NAP-DL.pdf
- 37 Agreement on Sustainable Garment and Textile (March 2016), Chapter 4 (9) pp. 19 www.ser.nl/en/publications/publications/2016/agreement-sustainable-garment-textile.aspx
- 38 *Ibid.* Chapter 4 (6) pp. 18.