



Trade Union
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Launch of the OECD Due Diligence Guidance on Responsible Business Conduct - TUAC Contribution

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Under the international instruments governing business conduct, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, companies should conduct due diligence to avoid and address adverse impacts in their operations, supply chains and business relationships.

In addition, OECD countries are increasingly adopting hard law on due diligence. France has introduced legislation imposing a “duty of vigilance” on companies, making human rights and environmental due diligence mandatory. Just last week, Switzerland’s National Council approved a legislative proposal requiring mandatory due diligence by Swiss-based companies, now to be passed to the Upper House. And Germany is to consider introducing legislative measures if 50% of its large enterprises are not conducting human rights due diligence by 2020.

This growing expectation that companies conduct due diligence has been accompanied by an increasing need for authoritative explanations of *how* to conduct due diligence. That is why for TUAC, today’s launch of the OECD’s general Due Diligence Guidance on Responsible Business Conduct could not come soon enough.

Developed with the support of a multi-stakeholder Advisory Group comprising government, trade union, business and NGO representatives, and approved by governments, the Guidance has the legitimacy to allow it to become *the* authoritative international reference on due diligence. From here-on, companies, trade unions, NGOs and governments, have a common reference point on due diligence.

What’s in it for Workers and Trade Unions?

The OECD Guidance sets out a due diligence framework to be used by enterprises of all sizes and in any sector to avoid and address adverse impacts in their operations, supply chains and business relationships. It makes clear that the main purpose of due diligence is to *prevent* adverse impacts and that when adverse impacts occur, companies should provide *remedy*, where they have caused or contributed to those impacts. There are two aspects of the Guidance that are particularly noteworthy from a trade union perspective.

The first concerns the *role of trade unions*. While emphasising that the responsibility for conducting due diligence lies wholly with the individual company, the Guidance underlines the importance of engaging with *stakeholders* and *right-holders* throughout the due diligence process. Stakeholders are any persons or group affected by an enterprise’s activities and include *workers and their trade unions within the company*, as well as *workers and trade unions in the company’s supply chain*. The Guidance explains that some forms of stakeholder engagement,

including the right to form or join a trade union and to bargain collectively, are human rights in themselves, and that on matters related to these rights, companies should engage with trade union representatives, instead of individual workers. The Guidance recognises industrial relations as a form of stakeholder engagement and identifies company-trade union agreements (collective bargaining agreements, Global Framework Agreements, protocols and Memoranda of Understanding), as a means for companies to conduct due diligence.

The second aspect concerns the expectation that companies conduct due diligence to respect all rights *including the rights of workers to form and join trade unions and to bargain collectively*. The Guidance makes clear that companies cannot ‘pick and choose’ which rights to respect, but have a responsibility to avoid and address *all* adverse impacts covered by the OECD Guidelines: information disclosure, human rights, employment and industrial relations, environment, bribery and consumer affairs. And while the Guidance explains that companies may have to prioritise what impacts and risks to address, on the basis of severity and likelihood, it also recognises that anti-union behaviour by companies can result in severe adverse impacts.

What Next for Governments?

It is government action that will ultimately determine the extent to which companies conduct effective due diligence, in line with the OECD Due Diligence Guidance. The OECD Council’s adoption of a Recommendation, committing adhering governments to promoting, monitoring and disseminating the Due Diligence Guidance is therefore a significant milestone.

In line with these commitments, TUAC is calling all governments to implement the following 5-Point Plan:

- 1.** Introduce mandatory due diligence that covers all topics of the OECD Guidelines, establishes corporate liability and includes binding obligations on stakeholder engagement;
- 2.** Strengthen policy coherence by introducing binding due diligence clauses in trade and investment agreements, export credits, development finance and public procurement;
- 3.** Monitor company compliance with the OECD due diligence framework;
- 4.** Strengthen stakeholder engagement by supporting capacity-building on due diligence for trade unions and other stakeholders;
- 5.** Disseminate the Guidance, including by ensuring that National Contact Points have the necessary resources to do so, working with the social partners/stakeholders.

What Next for the OECD?

In addition to governments, the OECD has an essential role to play in implementing the Due Diligence Guidance. A key lesson from the implementation of the OECD’s sectoral guidance on minerals, and garments and footwear is the value of OECD follow-up: multi-stakeholder events to facilitate learning on due diligence and pilot projects involving specific companies/countries. This will require the allocation of adequate resources. The OECD should involve TUAC, BIAC and OECD Watch in the implementation plan.