Building environmental resilience and responding to global crises through supply chain due diligence

OECD Global Forum on Responsible Business Conduct: Partner Side Session

9:00–10:30am (CET), Thursday 25 June 2020

BACKGROUND NOTE

Responsible business conduct tools and instruments addressing environment-related challenges

1. The OECD Guidelines for Multinational Enterprises (OECD Guidelines)[1] are the only international standard on responsible business conduct (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, including and extending beyond the Environment Chapter, relate to business responsibilities with respect to environmental matters – including climate change, biodiversity, and the circular economy.

2. The Environment Chapter of the OECD Guidelines (Chapter VI) provides a set of recommendations for enterprises to raise their environmental performance and help maximise their contribution to environmental protection through improved internal management and better planning. Following the 2000 update of the OECD Guidelines, guides were produced to support the implementation of this Chapter by business.[2]

3. Other chapters also contain specific references relevant to environmental matters, including those on Disclosure (Chapter III), Employment and Industry Relations (Chapter V) and Consumer Interests (Chapter VIII). The Chapter on Human Rights (Chapter IV) is relevant to environmental impacts, which are often linked to human rights impacts. The recommendations of the General Policies Chapter (Chapter II), including those related to the expectation that companies should carry out risk-based due diligence, are also applicable to environmental impacts – and are reflected in the environment-related examples featured in the OECD Due Diligence Guidance for Responsible Business Conduct (Due Diligence Guidance for RBC).[3]

4. Following the last update of the OECD Guidelines in 2011, the sectoral due diligence guidance instruments[4], as well as the Due Diligence Guidance for RBC adopted in 2018 all include guidance and reference to how companies can identify and address adverse environmental impacts or risks.

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[1] OECD (2011), OECD Guidelines for Multinational Enterprises https://doi.org/10.1787/9789264115415-en

[2] OECD (2005), Environment and the OECD Guidelines for Multinational Enterprises: Corporate tools and approaches, https://www.oecd.org/env/environmentandtheoecdguidelinesformultinationalenterprisescorporatetoolsandapproaches2005.htm, and OECD (2010), Transition to a Low-carbon economy: public goals and corporate practices https://www.oecd.org/daf/inv/mne/transitiontoalow-carboneconomy.htm

[3] OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct

[4] OECD (2017), Due Diligence for Responsible Supply Chains in the Garment and Footwear Sector; OECD (2017), OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector; OECD (2017), Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises; OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition; OECD/FAO (2016), OECD-FAO Guidance for Responsible Agricultural Supply Chains.

Trends in environmental and human rights due diligence

5. Over the past 5 years, policy makers in different geographies have introduced various policy initiatives and regulations promoting supply chain due diligence in line with OECD and UN due diligence recommendations, including binding sectoral regulations in the United States, Europe and Central Africa anchored in OECD due diligence guidance on minerals and finance.

6. In addition, policy and business responses surrounding the COVID-19 crisis have also further highlighted the importance of environmental, including climate change aspects of RBC. These are outlined in further detail at Box 1. Policy and business responses surrounding the COVID-19 crisis have also further highlighted the importance of environmental, including climate change aspects of RBC.

Box 1. The environment, RBC and COVID-19 Responses and Recovery

For a company, observing RBC standards and implementing due diligence in its response to the COVD-19 crisis will help ensure that its business decisions avoid and address potential adverse impacts on people and the planet. For governments, ensuring that their response to the COVID-19 crisis is guided by RBC standards is essential to ensure that measures do not exacerbate the adverse socio-economic impacts of the crisis, but rather incentivise companies to mitigate any potential harms and maximize the positive impacts of their response – including with respect to environmental matters.

The spread of COVID-19 has increased awareness around the consequences of the lack of supply chain resilience and preparedness to deal with a pandemic. It has been highlighted that environmental matters like climate change, water pollution and factors contributing to biodiversity loss – including deforestation and illegal wildlife trade, may increase the risk of similar pandemics in the future.

In addition, the environmental risks and adverse impacts of business, particularly in regard to air pollution, water and waste management, can increase vulnerabilities of workers and communities to the current impacts of COVID-19. For example, outdoor air pollution increases vulnerabilities to respiratory diseases, and the lack of access to clean water and sanitation in some countries, including for hand-washing, can accentuate health impacts of the pandemic.

7. There has been an increasing trend in the incorporation of environment – in addition to human rights – due diligence into various voluntary and mandatory regulations. Due to the cross cutting nature of environment-related provisions within the OECD Guidelines (including and extending beyond those outlined in the Environment Chapter), RBC and due diligence in global supply chains is inherently connected to addressing and progressing environmental priorities. In this regard, such efforts can further drive a "just transition" and support broader green economy policy objectives such as the European Green Deal and building resilience in responding to environmental emergencies.

8. Most recently, the EU Commission voiced a commitment to introducing stronger incentives, including regulation requiring companies to carry out environmental and human rights due diligence.[5]

9. Other recent initiatives include:

a) *French "Duty of Vigilance Law"*: France's 2017 law on the duty of vigilance makes the establishment of a due diligence plan by large companies mandatory. The plan must outline measures related to both human rights and environmental risks and adverse impacts.[6] France has also introduced the PACTE Law (Action Plan for Business Growth and Transformation) in April 2019 which includes the modification of civil and commercial codes requiring companies to take into account social and environmental issues in companies' strategies and activities.[7]

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[5] Speech by Commissioner Reydners; https://responsiblebusinessconduct.eu/wp/2020/04/30/speech-by-commissioner-reynders-in-rbc-webinar-on-due-diligence

[6] France, Duty of Vigilance Law https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte

[7] https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation

b) *German Ministry of Environment*: Under the new Federal Government's 2020 Raw Materials Strategy, the Environment Ministry has committed to develop an international, practical guide on environmental due diligence in mineral supply chains – in alignment with OECD due diligence guidance. The guide is intended to help companies along the entire value chain to systematically, continuously and transparently address the environmental risks that occur during the extraction and processing of raw materials along the supply chain.[8] Further background to this initiative is provided at Box 2.

Box 2. The German Environment Agency and environmental due diligence in the minerals sector

The German Environment Agency (UBA) has developed tools for environmental risk assessment in mineral supply chains, drawing from its research projects such as ÖkoRess II.[9]

These tools allow for the identification of priority materials and environmental hot-spots at mining sites. The target users of these tools are the downstream manufacturing sector rather than the upstream minerals sector. The full report of ÖkoRess II featuring an overview of the assessment results as well as detailed material profiles was published in June 2020.[10]

Leading downstream manufacturing companies in the electronics and automotive sector use elements of the UBA's tools or similar approaches for material sustainability risk screenings.

Source: German Environment Agency

[8] https://www.bundesregierung.de/breg-en/news/rohstoffstrategie-1712676 (en) and https://www.bmwi.de/Redaktion/DE/Downloads/P-R/rohstoffstrategie-der-bundesregierung.html (de)

[9] https://www.ifeu.de/en/project/oekoress-ii/

[10] https://www.umweltbundesamt.de/publikationen/environmental-criticality-of-raw-materials

c) *Japan Ministry of the Environment*: The Ministry is developing an "Introductory Guide for Implementation of Environmental Due Diligence in Value Chain Management" in line with the OECD Due Diligence Guidance for RBC, and will produce a final version of the guide later this year. This work builds on the Ministry of the Environment's commitment to promoting environmental-conscious business activities on reporting, environmental management systems, and environmental accounting. The OECD is supporting the Ministry of the Environment in finalising this guide as part of the engagement under the EU-ILO-OECD Responsible Supply Chains in Asia programme.[11] Further background to the Ministry's initiative on environmental due diligence is outlined in Box 3.

Box 3. Japan Ministry of the Environment and environmental supply chain due diligence in Japan

In supporting environmentally responsible behaviour by Japanese businesses, the MOEJ has developed practical guides as well as a web portal[12] to increase awareness and provide practical resources. This work has included the development of international environmental management standards, and environmental reporting guidelines that were finalised in 2018.[13]

The environmental reporting guidelines highlight the importance of a whole of supply chain approach to environmental management. Moreover, in 2019 the MOEJ set up a Committee to develop an "Introductory Guide for Implementation of Environmental Due Diligence". The Guide is currently being developed to further support Japanese business' understanding and implementation of global trends and expectations regarding supply chain due diligence.

The MOEJ also promotes the implementation of policies on environmental disclosure to improve ESG investment and established the ESG Working Group in October 2015 to support this effort. To encourage ESG dialogues between companies and investors, the MOEJ is also developing an Environmental Reporting Platform and Development Pilot Project to support companies and investors on ESG engagement.[14]

Source: Ministry of the Environment Japan

[11] http://mneguidelines.oecd.org/Responsible-Supply-Chains-in-Asia-Fact-Sheet.phttp://mneguidelines.oecd.org/Responsible-Supply-Chains-in-Asia-Fact-Sheet.pdf
[12] http://www.env.go.jp/policy/keiei_portal/index-en.html
[13] https://www.env.go.jp/policy/j-hiroba/kigyo/2018Guidelines_E20190412.pdf
[14] https://www.env-report.env.go.jp/en/portal.html

d) *EU Regulation for Sustainability-related Disclosures*: In April 2019, the European Parliament approved an EU Regulation for Sustainability-related Disclosures in the Financial Services Sector.[15] 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 both society and the environment.[16] Specifically, the regulation introduces transparency rules for financial institutions on the integration of sustainability risks and impacts in their processes and financial products. This includes 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."

e) *EU Taxonomy Regulation*: 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 [...]" [17]

f) *European Green Deal*: In December 2019 the European Commission presented The European Green Deal which provides a roadmap for action to boost efficient use of resources, move to a clean, circular economy, stop climate change, revert biodiversity loss and cut pollution. It outlines needed investment and available financing tools as well as how to ensure a just and inclusive transition across all sectors. The Green Deal also includes a commitment to a climate neutral continent by 2050, as well as a biodiversity strategy for 2030, the new Industrial Strategy and Circular Economy Action Plana and the Farm to Fork strategy for sustainable food.[18] Many of the objectives of the Green Deal will hinge on the private sector action. The OECD Guidelines and due diligence tools provides a supportive framework and include RBC expectations as well as examples of risks or adverse impacts in the supply chain that span many of the key objectives outlined in the Green Deal, including climate change, biodiversity and circular economy in particular.

OECD due diligence tools

10. 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 OECD Guidelines (General Policies Chapter, art 10).

11. In regard to environment-related matters, the guidance from the OECD on due diligence provides companies with clarity on ways in which they can contribute to broader environmental objectives and address challenges including circular economy, climate change and biodiversity considerations.

12. For example, reporting on climate due diligence can demonstrate the level of ambition and robustness of a company's approach to managing climate risks. It can also demonstrate the relative significance attributed to climate-related risks in relation to other risks such as labour, human rights and development impacts. [19]

13. Reporting aligned with the OECD Due Diligence Guidance for Responsible Business Conduct (Due Diligence Guidance for RBC)[20] does not prescribe specific metrics against which to report, but it does ask companies to report

[15] 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)
[16] See also: http://www.oecd.org/cgfi/forum/Disclosure-and-Due-diligence-for-Climate-related-Risks-background-session-note-CGFI-Forum-2019.pdf
[17] 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
[18] https://ec.europa.eu/commission/presscorner/detail/e%20n/ip_19_6691
[19] http://www.oecd.org/cgfi/forum/Disclosure-and-Due-diligence-for-Climate-related-Risks-background-session-note-CGFI-Forum-2019.pdf
[20] OECD Due Diligence Guidance for Responsible Business Conduct (2018)

on their policies, management systems, and significant risks – as well as how such risks are being addressed and whether such management processes are effective. This reflects the heightened disclosure expectations by investors and as reflected in the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).[21] It also allows users of the information to track the effectiveness of companies' risk identification and responses. This is data that is largely missing in current reporting and which can overcome (some if not all) of the existing challenges related to comparability.[22]

14. More broadly, environment-related examples are featured throughout the Due Diligence Guidance for RBC. For example, Table 2 of the Due Diligence Guidance for RBC outlines examples of adverse impacts on matters covered by the Guidelines. Table 3 outlines examples of environmental indicators of scale, scope and irremediable character.

15. In addition, a number of the sector specific guidances refer to environmental risks and adverse impacts relevant to that sector.[23]

Promoting responsible supply chains in Asia

This Partner Side Session is supported by the Responsible Supply Chains in Asia programme[24] which is implemented together with the International Labour Organisation and the European Union and engages with companies and governments across global supply chains in supporting action to enable better respect for human and labour rights, and the environment.

This programme is carried out in partnership with Japan (an OECD member and the only country under the programme that has adhered to the OECD Guidelines for Multinational Enterprises and has set up a National Contact Point for RBC) and five partner economies, namely China, Thailand, Viet Nam, Philippines, and Myanmar.

With funding by the European Union

BETTER POLICIES FOR BETTER LIVES

https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf (English);
https://mneguidelines.oecd.org/OECD-leitfaden-fur-die-erfullung-der-sorgfaltspflicht-fur-verantwortungsvolles-unternehmerisches-handeln.pdf (German);
https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-RBC-Japanese.pdf (Japanese)

[21] https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf

[22] http://www.oecd.org/cgfi/forum/Disclosure-and-Due-diligence-for-Climate-related-Risks-background-session-note-CGFI-Forum-2019.pdf

[23] For example: Given the potential impact for good and harm that agricultural investments can have on the environment, the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance) includes a number of critical environmental matters including: preventing or minimizing pollution and negative impacts on air, land, soil, water, forests and biodiversity, and reducing greenhouse gas emissions; The OECD guidance on responsible business conduct for financial sector practitioners recognises that climate impacts associated with investment or lending activity will be a priority issue for banks and institutional investors [https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf ;https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf]. The OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (the OECD Garment Guidance) encourages enterprises to consider the environmental impacts of a product across its full life cycle to the extent possible – thereby integrating circular economy considerations, but with a risk-based approach, as companies may prioritise the most severe risks.

[24] http://mneguidelines.oecd.org/globalpartnerships/responsible-supply-chains-asia