



Business at OECD (BIAC) priorities for the future work of the OECD on Responsible Business Conduct

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Introduction

First adopted in 1976 and last revised in 2023, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the Guidelines) have become an international reference document in this area. As such, the Guidelines and their Guidance have had an important impact on responsible business conduct (RBC) policy and corporate RBC culture around the world. In recent years, however, companies have faced an increasingly complex global landscape of RBC expectations due to an increasing number of voluntary and legally binding standards and approaches. The focus has often been on creating new requirements for companies rather than pursuing a more holistic set of policies to foster an environment conducive to RBC. As most such policies are relatively recent phenomena, data on their economic and RBC impact is limited, too.

In this context, this paper calls on the OECD to focus on facilitating RBC measures and the application of environmental, social and governance (ESG) criteria, and analyzing the economic and RBC impact of RBC policies on the ground. For this, it provides concrete recommendations on how the OECD can:

- Address the fragmentation of RBC standards
- Work towards coherence of RBC policies, accompanying measures and guidance
- Analyze the impact of RBC policies
- Emphasize the importance of recognizing individual company circumstances
- Involve *Business at OECD* in all RBC-related OECD workstreams

Business recommendations

Address the fragmentation of RBC standards

Numerous reporting and compliance obligations in the areas of environment, social and governance (ESG) and RBC have been introduced around the world in recent years and their number is growing exponentially. Many OECD members have been at the forefront of such initiatives. There are currently over 600 types of sustainability reporting provisions or regulations worldwide, with many having differing interpretations around key concepts¹.

Hence, standard fragmentation and proliferation are a real challenge for companies operating in multiple markets and geographies, creating unnecessary costs through duplications, inefficiencies, and uncertainties. With its convening power and cross-cutting expertise, the OECD is well placed to address this issue by enhancing dialogue on related policies amongst its members and beyond. It could thus:

¹ EY (2021), *The future of sustainability reporting standards – The policy evolution and the actions companies can take today*, https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/sustainability/ey-the-future-of-sustainability-reporting-standards-june-2021.pdf (last accessed on 27 February 2024).

- **Foster interoperability and alignment of RBC standards** across member countries, with the aim to, ultimately, enable countries to adopt mutual recognition agreements for their respective schemes. This work should aim at reducing the need for duplicative reporting by companies.
- **Create an overview of the various forms of RBC-related legislation and standards** at national, regional, and international level. This should include information on differences in their scope, definitions, and degree of bindingness. The results should be shared with policymakers across OECD countries and beyond to enable them to avoid duplication going forward.
- **Help businesses understand how the MNE Guidelines relate to various forms of RBC legislation** at national, regional or international level. As part of these efforts, the OECD could draft a brief, practical, and clear document on how the OECD due diligence approach can be practically applied by companies to support their RBC efforts.
- **Create a safe space for business to exchange views and issues they face in relation to the fragmentation of RBC and ESG standards.** This may include politically sensitive issues, such as contradictory requirements companies face in different markets.

Work towards coherence of RBC policies, accompanying measures and guidance

Higher expectations and demands on companies alone are not enough for improving social and environmental sustainability standards along global supply chains. On the contrary, binding RBC legislation can have unintended consequences if it is not part of a broader set of policies that support relevant actors and help create an enabling environment to improve standards in the countries where companies do business. For example, reputational, financial, and penal risks resulting from RBC legislation may compel companies to withdraw from developing countries with weak governance frameworks instead of staying and helping improve the situation on the ground. The gap they leave is likely to be filled by companies from non-likeminded countries with lower standards on RBC.

To avoid such unintended outcomes and maximize the positive impacts of RBC policies, it is crucial for governments to work towards policy coherence across relevant areas, complementing regulation with adequate accompanying measures. As a forum for cross-cutting work, the OECD is uniquely placed to bring together relevant policymaking communities to exchange views and strengthen linkages and synergies between relevant policy fields. This could include work on the following areas:

- **Enhance information sharing on RBC due diligence policies amongst OECD countries** through an inclusive platform for dialogue, information sharing, capacity building and cooperation as highlighted in the Ministerial Declaration on RBC from February 2023.
- **Facilitate cooperation in the implementation of supply chain due diligence provisions** by facilitating collaboration between OECD member governments, industry and civil society. Working together to close these gaps will help to ensure that future RBC policy and regulation is coherent.
- **Relevant OECD directorates should coordinate their related work internally, consulting the institutional stakeholders.** Due to the cross-cutting nature of RBC, the OECD's work on this issue spills over into a growing number of areas, including SMEs, development, digital, social affairs, and environment and climate.
- **The OECD could conduct research on the role of governments in sourcing countries in the Global South in promoting adherence to the MNE Guidelines and identify the different constraints they face by region and level of development.** Even if MNEs are aligned with RBC standards, positive outcomes for people, communities, and the

environment may still fall short if governments do not adequately protect their citizens, communities, and ecosystems.

- **The OECD should provide guidance to member states on how they can use their development policy tools to help relevant government authorities in developing countries on national, regional and local level to create an enabling environment for improving standards on the ground** (e.g. effective legal frameworks, capacity building, technical assistance, strengthening inspections, customs enforcement, combating corruption, etc.). Governments in developing countries often lack the capacity to effectively enforce their labour, social and environmental laws. This creates RBC-related risks for MNEs which may discourage them from investing in and sourcing from there.
- **The OECD should collect best practices for logistical and financial government support that effectively helps SMEs in the Global South improve their RBC performance and establish sustainable production practices.** Companies in emerging markets, especially SMEs, often struggle to meet higher RBC requirements without external assistance. While MNEs can provide some support to SMEs in their supply chains, local government support and international development assistance will be crucial in helping SMEs in the Global South to meet RBC standards and access global trade.
- **The OECD could help SMEs in developing countries understand what RBC-related requirements and expectations they face when doing business with companies from OECD countries** and what practical, cost-effective steps they can take in this regard. Outreach to businesses needs to be tailored to their needs and show enterprises how the MNE Guidelines can serve as a tool in their RBC efforts. When reaching out to business the representative employers and industry organizations should be involved.

Analyze the impact of RBC policies

As RBC expectations may extend to entire supply chains, RBC policies and practices in one country have impacts on their trade and investment partners as well. Whilst the number of voluntary and binding RBC policies and standards has been increasing in recent years, data on their economic and RBC impact is still limited. Yet, better data is indispensable to ensure that these policies achieve their objectives, to design adequate accompanying measures, and to avoid and address unintended consequences. As knowledge hub for data and analysis, the OECD has an important role to play in making relevant data and analysis available, going forward:

- RBC considerations increasingly affect companies' sourcing and investment decisions – be it due to internal rules and objectives, consumer and customer expectations or binding legislation. **The OECD should thus shed more light on how different RBC policies affect trade and investment flows, particularly from developed to developing countries.** It would be particularly interesting to assess the impact of binding legislation. These insights could inform accompanying policies to minimize unintended side effects, such as the exclusion of certain countries from global supply chains.
- Trade and investment agreements provide reliable frameworks to companies within which they can build long-term business relations. Whilst it is key that such agreements remain focused on reducing barriers for trade and investment and providing companies with legal certainty, approaches to include sustainability and RBC-related provisions in such agreements have been increasing in recent years. **The OECD should analyze the main differences between**

the approaches various member countries and regions take to address sustainability in their trade and investment agreements.

Emphasize the importance of recognizing individual company circumstances

Business at OECD fully recognizes the importance and necessity of having a shared foundation of expectations on RBC in line with the MNE Guidelines. However, with the rise of national and international RBC standards and policies, there is a growing trend whereby companies' RBC approaches are assessed using overly formulaic approaches. The reality of RBC due diligence is often far more nuanced, complex, and challenging. The OECD MNE Guidelines and the OECD Due Diligence Guidance recognize the unique circumstances facing individual companies. They note, for example, that "the enterprise's RBC policies may be tailored to local contexts or operations"; "the type of assessment that an enterprise employs will be tailored to the nature of the risk"; and "collaborative approaches are applied and tailored to the enterprise in ways necessary to constitute sufficiently robust due diligence". Furthermore, they recognize that "not every practical action will be appropriate for every situation." In other words, there is no one-size-fits-all approach. This is a crucially important point, but all-too-often overlooked. At the same time, the OECD frameworks acknowledge that "responsibility should not be shifted from an entity causing an adverse impact to the enterprise with which it has a business relationship".

- **In any future work, the OECD should continue to recognize the inevitable nuances and tailoring of enterprises' due diligence approaches, taking into account the resource constraints of SMEs.** Tailoring may be warranted due to the size of the company, its operations, its position in the value chain, its business model, the nature of its products or services, its leverage or influence with each business relationship, and/or the local context in which it operates, for example. Such nuance is essential for appropriate and effective implementation. Yet, it should not result in companies shifting their responsibilities to others along their supply chain.
- **Whilst the Guidelines and the concepts they establish help foster coherence on RBC internationally, the OECD should be clear that the MNE Guidelines should not be considered as a blueprint for binding regulatory or legislative action** at international, regional, national, or local level. With their broad scope and aspirational language, they are drafted as a voluntary instrument. As stated in the Preface, the Guidelines "provide voluntary principles and standards for responsible business conduct" and "may go beyond what enterprises are legally required to comply with".

Involve Business at OECD in all RBC-related OECD workstreams

Business at OECD should be involved in all OECD workstreams related to RBC. We stand ready to constructively contribute to the OECD's work on handbooks, guidance and other accompanying documents related to the MNE Guidelines and initiatives on RBC more generally. We set up a dedicated Business at OECD Committee on Responsible Business Conduct which we can leverage to amplify outreach and uptake of RBC related standards. We are looking forward to continuing to contribute to the OECD's work on RBC and, in doing so, enhancing stakeholder relations and collaboration.