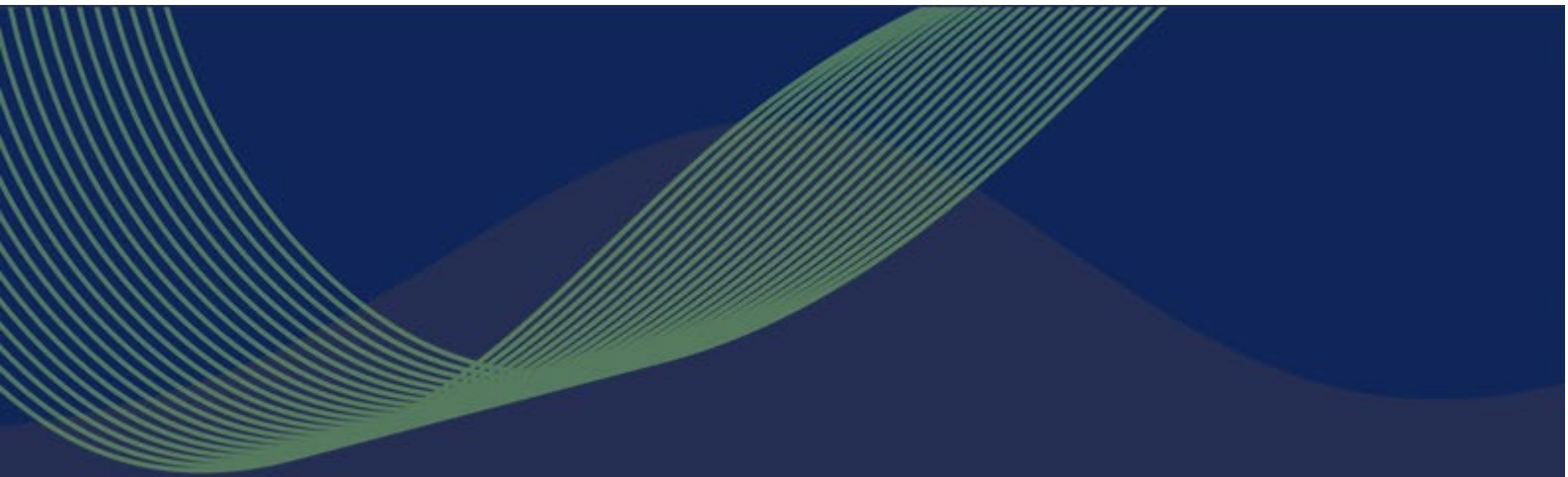




BUSINESSatOECD

Promoting and Enabling Responsible Business Conduct in the Global Economy

*Business at OECD (BIAC) Contribution to the
OECD Ministerial Meeting on
Responsible Business Conduct
14-15 February 2023*



Established in 1962, *Business at OECD* (BIAC) stands for policies that enable businesses of all sizes to contribute to growth, economic development, and societal prosperity. Through *Business at OECD*, national business and employers' federations representing about 8 million companies provide and receive expertise via our participation with the OECD and governments promoting competitive economies and better business.

Introduction

Representing the OECD private sector, *Business at OECD* (BIAC) appreciates the opportunity to participate in the 2023 OECD Ministerial Meeting on Responsible Business Conduct under the theme “Promoting and enabling responsible business conduct in the global economy”. In an increasingly dynamic geopolitical context and increasing expectations on responsible business conduct, we look forward to continuing our close collaboration with the OECD to advance economic, environmental, and social progress. We look forward to making a constructive contribution to the discussions.

The OECD private sector is committed to responsible business conduct and has actively supported the promotion and implementation of the existing OECD MNE Guidelines, recognizing that responsible business conduct must go hand in hand with an open trade and investment climate. Buy-in of the private sector is imperative to ensure strong impact of this OECD instrument, which is voluntary for business. However, the current revision process raises some serious concerns which will eventually jeopardize broad business buy-in. We call on Ministers to take urgent action to ensure that the Guidelines remain realistic and workable for companies operating on the ground.

The following document further presents key business messages to support the Ministerial discussions. In this context, we also encourage Ministers to consider the following overarching questions for governments from a private sector perspective:

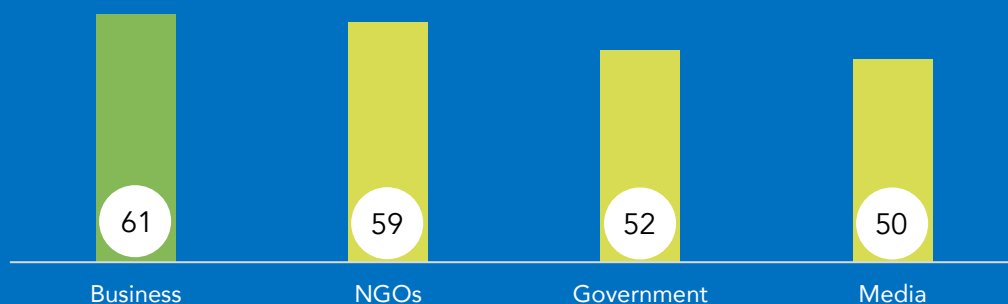
- In the current challenging socio-economic environment, how can we create a conducive environment for businesses, with provisions on RBC that are practical and implementable, lead to real positive impact on the ground, while avoiding negative unintended consequences and significant administrative burden?
- How to facilitate coordinated outreach to non-OECD countries to support responsible business conduct at the global level, thus facilitating an international level playing field?
- How do we deal with investment from non-likeminded countries when we compete in common foreign markets?
- How can we work towards political commitment and adequate implementation of major OECD standards in all adhering countries?

Starting on Common Ground:

3 Facts on Responsible Business Conduct

1 Business is a trusted force for economic, environmental and social progress.

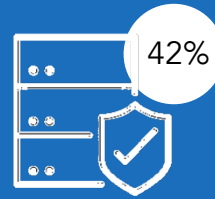
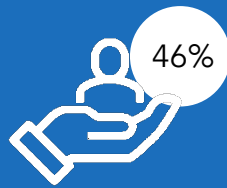
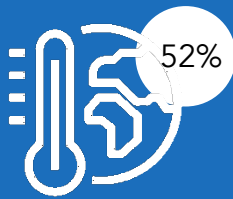
Our companies strive to provide the goods and services that our societies need and play an important role in providing solutions to address major global challenges. Working towards this end, the activities of multinational enterprises – whether large or small – create jobs, raise living standards, and increase choice and opportunity for people at home and abroad. This is a key reason why business is now the most trusted partner globally.



According to the 2022 Edelman Trust Barometer, at 61%, business is the most trusted institution globally, ahead of NGOs at 59%, government at 52% and media at only 50%. Seventy-seven percent of respondents trust "My Employer", making the relationship between employer and employee incredibly important.

2 Expectations on business to lead have never been higher.

In today's interconnected world, increasing trust in both business and government is becoming increasingly important, and our societies place an even greater expectation on business to lead. To that end, more and more companies innovate and develop their products and services, set up their own sustainability objectives, build more resilience into manufacturing and supply networks, and work continuously to find solutions to complex global challenges. An increasing number of business initiatives as well as partnerships with key stakeholders help to promote and implement due diligence expectations. While much has already been achieved, we can still do more, and business is devoting increasing amounts of resources and financial means to address RBC considerations.



As business outcores government by 53 points on competency and 26 points on ethics, many respondents want more business engagement to address societal problems, such as climate change (52%), workforce reskilling (46%) and trustworthy information (42%) (2022 Edelman Trust Barometer).

3 Responsible business conduct is in the best interest of companies.

For the vast majority of companies, it is clear that the support of citizens as customers will always depend on business commitment to responsible business conduct practices, which is equally important for employees, investors, governments, and others. Responsible conduct is not just a “nice to have”, it is indispensable to long-term success and should be engrained in companies’ DNA.

58%

Buy or advocate for brands based on their beliefs and values

60%

Choose their place to work based on their beliefs and values

64%

Invest based on their beliefs and values

88%

Of **institutional investors** subject ESG to the same scrutiny as operational and financial considerations

58% will buy or advocate for brands based on their beliefs and values; 60% will choose a place to work based on their beliefs and value; 80% will invest based on their beliefs and values; 88% of institutional investors subject ESG to the same scrutiny as operational and financial considerations (2022 Edelman Trust Barometer).

Promoting And Enabling Responsible Business Conduct in the Global Economy

Open markets enable business to foster sustainable development globally.

Through their global activities, our companies make significant contributions to sustainable development, including in emerging and development economies. Over recent decades, the emergence of global value chains has contributed to lifting hundreds of millions of people out of poverty; it has delivered unprecedented access to goods and services especially for low-income households; it provides jobs for millions of people around the world; it improves overall working conditions on a global scale; and it is indispensable to address global challenges that no country can solve on its own – such as pandemics, climate change and others. While individual cases may deviate, the overall evidence is clear: Global business engagement is a force for economic, environmental, and social progress. In this context, it is important that governments foster open trade and investment and accompany it with the right flanking domestic policies.

Global value chains help export responsible business practices.

In the current context, the OECD private sector is highly concerned about calls for policies to re-shore global value chains, localize production and decouple our economies. More regional diversification – and not less – increases the scope for business to build resilience, improve productivity, drive innovation, and promote sustainability standards. It must be clear that without open markets, we cannot harness the benefits from global value chains, and we also cannot promote responsible business practices abroad. Therefore, the largest contribution that governments can make to promote responsible business conduct is establishing a predictable regulatory, trade and investment policy environment, accompanied with an enabling policy environment for responsible business conduct at the global level. Open international trade and investment and RBC go hand in hand – and they should continue to do so.

There must be a clear understanding of the roles of governments and business.

The OECD private sector stands ready to constructively work with governments to further promote and enable responsible business practices globally. However, we underline that there must be a clear understanding of the respective roles of governments and business, which cannot be blurred when it comes to foreign economic relations. While the private sector has a major role

to play in spreading responsible practices, companies cannot be expected to replace effective government action and diplomatic dialogue. Many serious RBC issues also have a governance dimension which must be achieved through state-to-state engagement. This is especially important in the current context of rising geopolitical tensions.

Governments should collaborate to address weak institutions.

Against this backdrop, we stress the important role of governments, including the importance of addressing weak institutions and root causes of weak governance on the ground. Companies' commitments to RBC should be complementary but cannot be considered a substitute for the role of the state, and the enforcement of fundamental standards cannot be delegated to companies. The OECD can play an important role in fostering collaboration among governments to address the root causes of human rights infringements and work towards ensuring that a legal and regulatory framework is in place and enforced domestically. In its 2018 report to the UN General Assembly, the UN Working Group on Business and Human Rights pointed out that "Many Governments are not fulfilling their duty to protect human rights by failing to pass legislation that meets international human rights and labor standards, passing legislation that is inconsistent with those standards or failing to enforce legislation that would protect workers and affected communities."¹

Private sector buy-in is critical to make RBC expectations a reality.

The private sector is at the heart of implementing responsible business conduct standards. To this end, public expectations on business must be kept realistic and workable for companies operating on the ground, while avoiding unnecessarily bureaucratic and unrealistic provisions. The aim should be to realise impact on the ground and avoid negative unintended consequences. Therefore, close consultation and meaningful dialogue between business, governments and other stakeholders is critical to establish common expectations, and understand what is possible on the ground, and what is not. In this context, there must also be a clear understanding that companies create prosperity and opportunities for development and advancement at home and abroad, with recognition that certain values and principles are non-negotiable.

Global supply chains can be very complex:

¹ [OHCHR \(2018\), Summary of the report of the Working Group on Business and Human Rights to the General Assembly](#)

Some companies have over

+100,000

direct suppliers and the preceding supplier levels
can cover millions of companies.

A close dialogue with business is therefore particularly important to make sure that business realities in global supply chains are given due attention.

Create a level the playing field for responsible business conduct.

Across societies and governments, diverging expectations exist on what responsible business conduct constitutes, and how different elements should be prioritized. However, unnecessary divergence in responsible business conduct expectations and approaches across countries can be very costly, negatively affects business efforts, and disproportionately impact SMEs. Therefore, fostering the establishment of common, clear, and coherent expectations for responsible business conduct that are practical and implementable across countries should be a critical objective for global governance.

Unintended consequences of due diligence legislation must be avoided.

Due diligence processes are important to help business promote responsible business conduct practices along the value chain. However, government-mandated due diligence legislation will be counterproductive if it leads to potential disengagement from more risky regions - so-called "cut and run" effects. Too burdensome and rigid supply chain laws risk forcing companies to reduce the number of suppliers from high-risk countries and can lead to companies withdrawing from such countries. However well-intentioned due diligence obligations may be, if they hamper international trade and investment they will have important consequences for people on the ground. It must be avoided that RBC policies dampen investment flows to countries that are crucially in need of foreign investment, and can help address critical challenges including conflict and corruption.²

² [Kiel Institute for the World Economy \(2022\), Economic Evaluation of a Due Diligence Law- study commissioned by Gesamtmetall](#)

Serious Concerns about the Revised OECD MNE Guidelines

Business at OECD has been supporting the promotion of the 2011 OECD Guidelines for Multinational Enterprises as an essential part of an open trade and investment climate. However, we take a critical position on the current revision, which in many instances exceeds the envisaged “targeted update” endorsed by the 2022 OECD Ministerial Statement.

As we have been engaging with our global business network, we are especially concerned about the following issues, resolution of which is critical to the ability of businesses to meaningfully implement the Guidelines:

- The extension of **due diligence expectations to the downstream part of the value chain**, which is in practice unworkable for business.
- **Referencing of the *Due Diligence Guidance* documents**, which may be interpreted as putting guidances on the same level as the Guidelines, and therefore introducing over 600 pages of additional detailed requirements. These documents have been developed to provide practical support to companies and therefore companies should merely be “encouraged” to take into account the documents.
- The significant and material expansion of due diligence to the **Environment and Science and Technology chapters**, as well as the legal consequences this may have. The Guidelines must not transfer liability from laggard states to lawfully operating firms. In cases of environmental emission, lawful conduct of companies must not be assessed as causing or contributing to an adverse impact.
- Several broad references as well as the introduction of **vague concepts and expectations** must be avoided in order not to create unintended consequences and significant interpretational challenges in the context of mediation.
- The **authoritative interpretation of the Guidelines** must remain the sole responsibility of the OECD Investment Committee and the OECD Working Party on Responsible Business Conduct.

The practical value of the instruments should not be jeopardized by excessive complexity or interpretational uncertainty. Moreover, unrealistic expectations on responsible business conduct must be avoided as they can lead to OECD business withdrawing from markets. If subsequently competitors from non-like minded countries fill this gap, this may have the opposite effect of what adhering governments are aiming to achieve.

Finally, we underline the need for meaningful engagement opportunities for business – to which the Guidelines are addressed – that allow for any outstanding concerns to be adequately resolved.

The Way Forward for the Revised OECD MNE Guidelines Work for Business

More dialogue is needed to get the revised MNE Guidelines right.

The private sector is committed to responsible business conduct, and has been supporting the promotion of the existing OECD Guidelines for Multinational Enterprises as an essential part of an open trade and investment climate. Given that the Guidelines are addressed to companies, buy-in of the private sector is imperative. However, in the context of the current revision process, serious concerns remain that may jeopardize broad business buy-in and, consequently, the strength of the Guidelines' impact going forward.

More outreach is needed to promote the Guidelines.

Despite great efforts to promote OECD responsible business conduct standards and guidance on a global scale, including in the context of the OECD's regional programs, we observe that the Guidelines remain not sufficiently well-known. We therefore encourage the OECD to foster increased dialogue with non-member economies to promote buy-in to responsible business conduct expectations at the global level. We welcome the fact that new countries have adhered to or are intending to adhere to the OECD Declaration on International Investment and Multinational Enterprises. At the same time, efforts must continue to ensure that these countries live up to the standards of the OECD instruments as effective and balanced implementation across all countries will be essential to achieve progress at the global level.

More can be done to ensure well-functioning NCPs.

We underline the fundamental importance of well-functioning NCPs and encourage governments to live up to their commitments under the MNE Guidelines and to ensure that NCPs are able to operate in line with the procedural guidance. In 2015, the OECD institutional stakeholders BIAC and TUAC together with OECD Watch had therefore called upon the OECD, in a [joint statement](#), to further strengthen the performance of NCPs, in particular, those that have to catch up and ensure that NCPs are adequately equipped and staffed to fulfill their objectives, as set out in the OECD Guidelines. To that end, we welcome further discussions to ensure better functional equivalence and well-functioning NCPs in all adhering countries.



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