

Business considerations on the follow-up to the stocktaking exercise of the OECD MNE Guidelines

General comments

*Business at OECD (BIAC), in its role as institutional stakeholder of the OECD and advisory body to the OECD Working Party on Responsible Business Conduct, has been following the stocktaking exercise from the outset, submitting the representative business view in the process. Business at OECD further underlines the critical importance of **engaging on these issues with the institutional stakeholders and advisory bodies** of the OECD Working Party on RBC, Business at OECD and TUAC, as well as OECD Watch. Special consideration and emphasis should be given to the inputs provided by these parties, recognizing their mandate to provide representative, consensus-based inputs reflecting the views of businesses, trade unions and non-governmental organizations respectively.*

*The OECD has launched the stocktaking with the objective to ensure that the Guidelines remain ‘fit for purpose’. Together with NCPs (who have provided an average rating of 8.1. out of 10 for suitability), we consider the Guidelines largely fit for purpose and have therefore advocated **against a review** of the instrument, underlining that the focus of any follow-up actions should be on **strengthening the implementation of the existing Guidelines and fostering awareness and buy-in on a global scale.***

As the OECD is now exploring options for a targeted update of the Guidelines, Business at OECD aims to ensure that any possible update

- 1. has a **clear added value**;*
- 2. is **proportionate** to the potential impact that it may create and does not generate unintended consequences;*
- 3. is **workable, realistic and implementable for multinational enterprises of all sizes** on the ground.*

*The Guidelines must not become overly complex or overly detailed and the main concepts (voluntary nature for enterprises and a clear distinction of responsibilities) must be preserved. The **essence** of the instrument and the NCP process, which is **centered on good faith engagement** and not on legal disputes, is of critical value.*

Specific comments

Concerning specific chapters of the Guidelines, we stress that

- Many chapters have been rated with **high continued relevance** by NCPs, confirming the suitability of the general concepts and frameworks established in the Guidelines;*
- **Key principles established in the Guidelines for the due diligence process**, including the voluntary nature, the ‘cause-contribute-linked to’ framework, the recognition of limits to leverage and the recognition that due diligence expectations must be commensurate to company characteristics and size, **must be safeguarded**;*
- In establishing new expectations for businesses, **caution** must be applied in order to **avoid unintended consequences** (incl. in the context of international trade and environmental due diligence)*
- **Updated references** to new OECD standards or other international agreements must **reflect the core principles** of these frameworks;*

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- *The primacy of standards established by other international organizations (e.g. ILO) or other OECD work streams on certain issues (e.g. tax) should be respected with a view to **prevent duplication of work**.*

On the supporting NCP mechanism, we point out that

- *The unique nature of the NCP process aiming to provide a **platform for mediation and the identification of forward-looking solutions** must be preserved. It can play a complementary role to lawsuits, which are more adversarial, but which will likely increase as new human rights due diligence legislation is arising;*
- *Additional efforts are needed to **improve resourcing as well as visibility** of NCPs lagging behind, in order to ensure **functional equivalence**. **Peer reviews** can play a critical role in this regard. Nevertheless, NCPs should continue to be granted **flexibility** in how they chose their institutional arrangements.*
- *Stakeholder **trust** is critical to ensuring proper functioning of the NCP mechanism. This includes promoting a sound understanding of the process and what it can deliver. Businesses further attaches special importance to ensuring confidentiality and good faith engagement by all parties involved. Rendering the process more deterministic, by contrast, may induce companies to turn away from engaging in the process. There should also be a clear understanding on the relationship between the NCP process and other forms of grievance mechanisms.*