

Business at OECD (BIAC) comments on the 2nd stocktaking report of the OECD MNE Guidelines

Business, as represented by *Business at OECD* (BIAC), has long recognized the importance of responsible business conduct in a globalized world. *Business at OECD* considers responsible business conduct, as promoted by the MNE Guidelines, to be an essential part of an open investment climate and in the best interest of business. To that end, *Business at OECD* is working closely with its member organizations and multinational enterprises in order to raise the visibility of the MNE Guidelines.

Business at OECD has further been contributing to the ongoing stocktaking of the Guidelines from the very outset of the process. To that end, we have provided [initial comments](#) at the March 2021 OECD Working Party on RBC (WPRBC) meeting, have made a [formal submission to the public consultation](#), which took place over the summer, and have participated in an ad-hoc meeting of the WPRBC discussing the outcomes of the public consultation in October 2021.

Comments on the results of the public consultation

The findings of the public consultation reconfirm our views, most notably that **the Guidelines are fit for purpose** and that they have played a decisive role in promoting RBC. 38 NCPs, who have participated in the survey provided an average rating of 8.1. (where 1 is the lowest and 10 is the highest suitability) for overall suitability of the Guidelines to meet future RBC challenges.

Over a third of respondents to the public online consultation further noted that ‘*a major achievement of the Guidelines, alongside other international instruments, is the establishment of RBC as a strong international norm, based on a government backed standard*’. **The Guidelines have produced substantial changes** in the business culture around RBC, which is not always sufficiently recognized in the debate.

We also agree that the **NCPs system**, with its focus on mediation and constructive, forward-looking dialogue, **has been a key achievement of the Guidelines**, while uneven NCP performance remains an important challenge in the context of effective implementation of the instrument.

Comments on 2nd draft stocktaking report

Overarching remarks

While we appreciate the comprehensive nature of the report, providing an overview of the findings of the different surveys/consultations, we regret that the **views of the institutional**

stakeholders, *Business at OECD* (BIAC) and TUAC and as well as OECD Watch, are not explicitly highlighted in the report, recognizing their status as “advisory bodies” of the WPRBC. We therefore urge the OECD Secretariat to give specific emphasis to the comments and assessments provided by the institutional stakeholders, *Business at OECD* (BIAC) and TUAC, and as well as OECD Watch, who have actively contributed to the stocktaking process from the very beginning and which represent large, organized, representative stakeholder groups, which provide consensus-based inputs and feedback. This distinction between the positions and proposals of the institutional stakeholders and the general public should be fully taken into account in the conclusions to be drawn from the stocktaking exercise.

Moreover, when the stocktaking report refers to the public online consultation, we ask the OECD Secretariat to clearly mark the details on the **distribution of submissions across stakeholder groups**, which are necessary to appropriately evaluate the responses and their context.

Nevertheless, we acknowledge that selected stakeholder comments are highlighted in the boxes at the end of each chapter and appreciate the **reference to our joint statement** with TUAC and OECD Watch on NCPs as well as our workshop on NCPs.

Remarks on the contents

Given the key role of the NCPs, we welcome the inclusion of a dedicated chapter on national contact points, providing a comprehensive assessment of the NCP landscape (including details on their setup and performance), the NCPs’ achievements as well as key developments and observed challenges faced in the system. We further acknowledge the distinction between issues, implementation and institutions, which helps to disentangle and streamline the feedback provided in the stocktaking process. In our view, **implementation and institutions are key to ensure that the Guidelines remain fit for purpose**.

Concerning implementation, we stress that there remain different levels of implementation on the ground. While some states and NCPs are advanced, some are lagging behind. Further efforts are needed, including through the exchange of best practices and peer reviews. **Policy coherence** remains an important objective, especially in light of a proliferation of RBC initiatives and regulation, which creates practical challenges for businesses operating across different jurisdictions. Furthermore, we believe that it could be helpful to develop **targeted support materials** (while not generating new standards), which are in line with the MNE Guidelines, and potentially also **launch targeted information campaigns** to raise awareness beyond the traditional RBC community. Special attention could further be given to alignment of collective industry and multi-stakeholder initiatives with the Guidelines, thereby respecting the autonomy of social partners and stakeholders and taking into account the different needs, challenges and traditions on the ground. The aim of RBC efforts should never be to create more enforcement and fines, but to promote a better situation on the ground. To that end, **collective initiatives can play an important role** in the implementation of RBC.

Concerning the institutions, we appreciate the emphasis on the important role of the NCPs, and the explicit reference to the **implementation gaps in the NCP system**, resulting from ‘*under resourcing, insufficient government support and/or inadequate structure at a number of NCPs*’. The notion that the public support and resourcing of some NCPs need to be strengthened is a shared one across the three stakeholders. The report also notes that ‘*functional equivalence is currently not achieved*’, citing **differences in human and financial resources, expertise and stakeholder confidence across NCPs**. These indicate clear target areas for improving the functionality of some NCPs. OECD efforts should focus on ensuring that NCPs are sufficiently equipped and capable to facilitate constructive dialogues and deal with emerging challenges according to national circumstances, while ensuring that the process is impartial, well understood and trusted by all parties to allow for sound engagement.

Concerning the issues, we acknowledge that the broader RBC environment has evolved over the last decade. We are also aware of new regional standards and initiatives, while recognizing that many of these developments are ongoing and that the RBC landscape will continue to develop. Therefore, we are against **a revision of the Guidelines** because we think it is **not needed and may lead to practical challenges and unintended consequences**. Discussions on the inclusion of references to other multilateral instruments, for instance, could potentially become **very complex in practice**. To provide a concrete example, while many large companies have aligned their corporate policies and strategies with the Paris agreement, the Paris agreement remains a commitment by governments. Hence, it is unclear how such reference would fit into the context of the Guidelines. Lack of generalized ratification, diverging coverage and differences in the nature and legal standing of instruments and guidance documents, more broadly, can further cause additional challenges.

Furthermore, it must be taken into account that in the last years the OECD has already developed a sufficient amount of cross-sectoral and sectoral Guidance documents. Overall, we thus remain convinced that there is no need for new RBC standards and rules, but that **more should be done to implement the MNE Guidelines and improve the performance of NCPs** on the ground. Nevertheless, we see an **important role for the OECD to monitor developments** in the RBC policy sphere and to collect best practice examples with a view to inform discussions and flexible approaches going forward.

Proposed way forward

While **the Guidelines remain highly** relevant and fit for purpose, there are **opportunities to support their implementation on the ground**. Specifically, we are convinced that there is a need to strengthen resourcing, ensure sound functioning and foster trust in the NCP system, which is confirmed by the stocktaking assessment.

We welcome the call to ‘leverage (NCPs) in terms of the support they receive from governments’ as well as the recommendation to ‘further developing relations with stakeholders and other relevant bodies to increase confidence and expertise’ with a view to **foster confidence and promote shared understanding of the NCP mediation process**. The institutional stakeholders, BIAC and TUAC, as well as OECD Watch can and must play a key role in this regard. In addition, we call on the OECD to **encourage governments to undergo peer reviews**, working towards the ultimate objective of having all NCPs peer reviewed, while making sure that there is a clear understanding that there is **no one size fits all for how individual NCPs are set up**. Moreover, the OECD may wish to consider exploring **additional measures that can foster monitoring and regular feedback**. We further recommend to support NCPs with **practical tips and best practices** within the framework of the Procedural Guidance. While the OECD Secretariat has been working on targeted guidance on specific issues related to case handling, it will be important to recognize the role, responsibilities and **independence of NCPs** and work with them through **dedicated training sessions and exchanges**. The report further points to diverging interpretations and practices among NCPs, which could lead to diverging expectations across stakeholder groups. However, **we continue to emphasize the need for flexibility** in the set-up of National Contact points as it is explicitly foreseen in the MNE Guidelines. The challenge is to combine functional equivalence with freedom of choice concerning the appropriate organisational model of the NCP.

In addition to this, we continue to consider as a key priority issue for the next decade of the Guidelines **the need for better visibility of the Guidelines** - both nationally and on a global scale though **more outreach activities in non-OECD countries**. To that end, we would like to see the OECD, together with the institutional stakeholders, explore new approaches to **support awareness raising among new audiences** that lack familiarity with the OECD’s MNE Guidelines, both among large and small multinational companies. With a view to multinational SMEs, we note that their effective embracement of the Guidelines hinges on the **flexible nature of the Guidelines**, which needs to be maintained, while outreach to multinational SMEs should be accompanied by awareness raising activities. Finally, a key driver behind global promotional efforts in the context of the Guidelines are the **OECD’s regional programs, which should not only be continued, but also further strengthened**, also with a view to further **expanding the circle of adherents** to the Guidelines in non-OECD countries, provided that candidate countries demonstrate willingness to implement, enforce and live up to the expectations under the Guidelines.

Conclusion

→ Business is concerned about the ongoing **proliferation of widely diverging mandatory regional and national RBC legislation**, threatening global competition and open and smooth international trade and investment

- Business considers the stocktaking report to contain **valuable material for further discussions**, but urges the Secretariat to make sure that the views of the institutional stakeholders are fully reflected in the final version of the report.
- We consider the Guidelines as being **fit for purpose for current and future challenges**. To that end, we are against a **revision of the Guidelines** because we believe it **is not needed** and could even lead to practical challenges and unintended consequences.
- Business sees a **substantial unused potential of the Guidelines**. We therefore believe that there should be more ownership and focus on **implementation** on the ground, especially with a view to the functioning of the NCPs and the visibility of the Guidelines, and more **outreach** to smaller businesses as well as non-OECD countries. This is also important to guarantee for the future that the Guidelines maintain their widely recognised status of an important international reference document, which they have gained in the past decade.