

## OECD Working Party on RBC meeting - speaking points

### Agenda item 4. Draft Recommendation on the Role of Government in Promoting Responsible Business Conduct

8<sup>th</sup> March 2022, 13:30-14:30 CET

- Let me start by saying that BIAC as officially recognized business voice to the OECD considers responsible business conduct, in line with the MNE Guidelines, to be part of an open investment climate, helping to promote operations, employee engagement, maintain trust of customers, enhance resilience, and foster innovation. In the last years many companies have made more and more progress on adopting RBC policies in their operations. Taking into account the enormous challenges in the course of foreign trade and investment activities, we stress the need for expectations on companies to be practical, realistic and to take into account differences between companies of different sizes, sectors etc.
- Let me underline again that we have followed the development of the Recommendation from the very beginning and have engaged in close discussions with our members to ensure representative, consensus-based business feedback. To that end, we are pleased to see that our inputs as the institutional stakeholder for business are now explicitly highlighted in the annex to the paper.
- Looking at the revised draft proposal, we appreciate the additional references to the development of Action Plans (NAPs) on Business and Human Rights to implement the UN Guiding Principles.
- However, we would like to underline that our concerns remain or have even been reinforced.
  - First of all, the revised Recommendation proposed the inclusion of calls to actively develop due diligence legislation. As we have previously outlined, and while we are well aware that regulatory approaches being considered across the board, we do not think that the OECD Recommendation should be calling on governments to unilaterally develop legislation, thereby contributing to a spaghetti bowl of approaches, which creates practical challenges for businesses that operate across different jurisdictions. We had suggested that the Recommendation could call to explore alignment where legislation is already underway, but had stressed that the Recommendation should nonetheless remain entirely based on existing provisions and that the Due Diligence Guidance should be seen as providing practical support for companies. We had also stressed, that mandatory due diligence legislation should not be considered a panacea for preventing RBC challenges and unintended consequences should be taken into account.
  - We also oppose the idea to introduce new liabilities and possibilities for lawsuits against companies for “non-observance of RBC standards” as this is not foreseen in the MNE Guidelines. The MNE Guidelines carry the intention to stimulate responsible behaviour and not to trigger legal disputes.

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- That said, we believe that governments also have an important role to play in addressing the root causes of RBC challenges on the ground. This is in effect, what we would have thought a Recommendation on the role of governments would need to address as well.
  - Our second concern relates to the call to take into account the good faith engagement of companies in the context of NCP specific instances when granting public advantages. We are aware that there are different national approaches, but underline that in our view, the design of procedures in granting benefits should remain at the discretion of individual countries.
  - Thirdly, we would like to highlight that the Guidelines are explicitly applicable to MNEs, including small and medium sized MNEs. We are concerned that creating expectations for SMEs in general could create unnecessary bureaucracy and costs without considering the natural limits and constraints of SMEs. In this context, it is worth noting that in all legislations thresholds are included in order to manage the burden on SMEs.
  - Finally, we would also like to take this opportunity to briefly address the Guidelines stocktaking, which is also on the agenda for this meeting. As you know, BIAC has very actively contributed to the process and we would find it only logical to be included in discussions about follow-up options. 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. We have therefore spoken up against a revision of the Guidelines, which we fear may lead to significant practical challenges.
  - In the meantime, we would like to raise just two brief points for delegates to consider:
    - On the issues, and specifically tax, we would like to note that discussions about implementation of the BEPS project are ongoing, and there remains to date lot of uncertainty, which should not be further increased by premature adjustments to the tax chapter.
    - Furthermore, we would like to note that businesses are navigating a complex and challenging environment on the ground, facing a multitude of different regulatory approaches , which is challenging and resource consuming, not only but especially for SMEs.