

Responsible Business Conduct: The OECD Guidelines for Multinational Enterprises

What business needs to know

Established in 1962, *Business at OECD* stands for policies that enable businesses of all sizes to contribute to growth, economic development and societal prosperity. Through *Business at OECD*, national businesses and employers' federations representing over 7 million companies provide and receive expertise via our participation with the OECD and governments, promoting competitive economies and better business. The OECD is the world's foremost purveyor of statistics and analysis and has established more than 250 legal instruments including conventions, decisions, recommendations and declarations covering a wide range of policy areas relevant to business. The OECD Guidelines for Multinational Enterprises are one of the very prominent OECD instruments, which get global recognition and help foster responsible business conduct around the world.

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List of abbreviations

MNE	Multinational Enterprise
SME	Small and Medium-Sized Enterprise
OECD	Organization for Economic Cooperation and Development
RBC	Responsible Business Conduct
NCP	National Contact Point

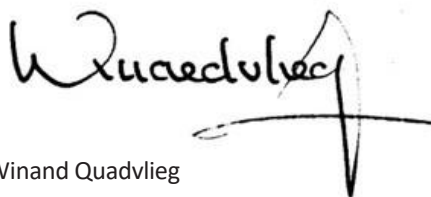
A Word from the Chair

Business, as represented at the OECD by *Business at OECD*, has long recognized the importance of responsible business conduct in a globalized world. Today, many companies have integrated responsible business conduct into their overall business strategy to manage their activities in a responsible way.

The OECD Guidelines for Multinational Enterprises (MNE Guidelines) are the most comprehensive international instrument for responsible business conduct, which covers all major areas of business ethics. Adhering countries have committed to promote the Guidelines in a global context. They are an integral part of the OECD Declaration on International Investment and Multinational Enterprises, which aims to balance the public policy to promote an open international investment climate with a business commitment to responsible conduct. The MNE Guidelines are already widely in use as a reference document.

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, we are committed to work in partnership with the OECD, national governments and multinational enterprises to support effective implementation of the updated Guidelines and promote them in adhering countries and beyond. In October 2015, we published jointly with TUAC and OECD Watch a statement underlining our support for efforts to further strengthen the performance of national contact points (NCPs). *Business at OECD* is involved in close discussions with the OECD to ensure a shared understanding regarding the implementation of the MNE Guidelines. This is especially so for the “specific instances,” which can be brought up by stakeholders at the National Contact Points. We also underline the need for the MNE Guidelines to remain a practical and manageable tool for MNEs operating in a global environment.

The MNE Guidelines were last updated in 2011 and have since then attracted increased attention from countries and stakeholders around the world. They are fully consistent with the UN Guiding Principles on Business and Human Rights developed by John Ruggie. The number of activities promoting the MNE Guidelines is on the rise, as is the number of specific instances. It is therefore indispensable that companies are aware of the MNE Guidelines and their concrete implications. This brochure has been written in response to the demand of our membership to provide business with the key facts they need to know about the MNE Guidelines and the NCP procedure. We are very interested to hear from companies about their experiences with the MNE Guidelines and NCP procedures.



Winand Quadvlieg

Chair, *Business at OECD* Investment & Responsible Business Conduct Committee

I. The OECD MNE Guidelines – an overview

The MNE Guidelines in brief

- The MNE Guidelines are an international reference document providing recommendations from governments to their MNEs on responsible business conduct at home and abroad. Adhering governments have committed to promote the MNE Guidelines globally.
- The OECD MNE Guidelines are the most comprehensive, government-backed instrument for promoting responsible business conduct. They provide voluntary principles and standards, covering all major areas of business ethics: human rights, information disclosure, employment and labor, environment, anti-corruption, consumer interests, science and technology, competition and taxation.
- The MNE Guidelines are supported by a unique implementation mechanism of **National Contact Points (NCPs)** established by adhering governments. The NCP promotes the MNE Guidelines and provides a non-judicial grievance mechanism that can contribute to the resolution of issues that arise in relation to the implementation of the Guidelines. The NCP can offer its good offices to help the parties involved to resolve the issue by facilitating access to mediation and conciliation. It can also issue a statement and make recommendations.
- The MNE Guidelines are part of the **1976 OECD Declaration on International Investment and Multinational Enterprises**. The Declaration is an important policy commitment by adhering governments, which balances the promotion by governments of an open international investment climate with a commitment from business to responsible conduct. The Declaration comprises four elements: the MNE Guidelines, the “national treatment” principle, the commitment to minimize conflicting requirements, and the commitment to cooperate in the field of international investment incentives and disincentives.

Why do the MNE Guidelines matter to business?

- The MNE Guidelines provide a comprehensive framework for responsible business conduct. They are based on a consensus view from adhering governments, which also incorporates the input of business, labor and civil society.
- The MNE Guidelines are deliberately not legally enforceable as they are intended to stimulate responsible behavior, not to trigger legal disputes. However, MNEs are expected to fulfil the recommendations set out in the Guidelines and to have a policy in place that is consistent with these recommendations.
- As they provide for a complaint mechanism for stakeholders, any interested party can call upon the National Contact Points which aim to help parties resolve issues concerning the implementation of the MNE Guidelines by a specific company in a specific case. The MNE Guidelines are the only international corporate responsibility instrument with such a grievance mechanism.
- At the same time, the MNE Guidelines are not only a demand on business. They also contribute to providing a more level playing field, nationally and internationally, by setting out the standards of responsible behavior that are expected from all MNEs. They also protect business from unrealistic expectations from stakeholders. Expectations that go clearly beyond the Guidelines will not easily be considered justified.

What is a “multinational enterprise”?

- There is no precise definition of a “multinational enterprise” in the Guidelines. MNEs are usually enterprises that are established in several countries and coordinate their operations in various ways. This means that not every enterprise involved in some international activity is considered an MNE. The Guidelines recognize that international business has changed significantly over the past decades leading to a broader range of business arrangements and organizational forms, including complex supply chains. The Guidelines are addressed to all entities within an MNE, the parent company as well as local entities.
- The Guidelines are not exclusively addressed to large enterprises. They also apply to small and medium-sized enterprises (SMEs) that are active on a multinational level. But they recognize that SMEs do not have the same capacities as large companies to implement them. While the MNE Guidelines were not developed with the average SMEs in mind, they can nevertheless be a source of inspiration to companies other than MNEs, small or large. Business in general should therefore be familiar with the MNE Guidelines.

Key chapters of the Guidelines – a brief overview

I.	II.	III.
CONCEPTS AND PRINCIPLES This part sets out the concepts and principles that put into context the recommendations in the subsequent chapters. It underlines among others that obeying domestic law is the first obligation of enterprises.	GENERAL POLICIES This second part provides a framework of common principles for the subsequent chapters. It includes provisions related to due diligence, addressing adverse impacts, and stakeholder engagement.	DISCLOSURE This chapter calls on enterprises to be transparent in their operations and responsive to increasing demands for information.
IV.	V.	VI.
HUMAN RIGHTS This chapter is aligned with the UN “Protect, Respect and Remedy” Framework and the UN’s Guiding Principles on Business and Human Rights.	EMPLOYMENT AND INDUSTRIAL RELATIONS The Guidelines promote MNEs’ respect of core labor rights and encourage them to support the establishment of responsible labor and industrial relations policies (e.g. elimination of forced and child labor)	ENVIRONMENT This part provides recommendations for MNEs to continuously improve their environmental performance and maximize their contribution to environmental protection through appropriate environmental risk management.

VII.	VIII.	IX.
COMBATING BRIBERY, BRIBE SOLICITATIONS AND EXTORTION This chapter contains concrete recommendations on how to combat bribery, based on international agreements such as the OECD Anti-Bribery Convention.	CONSUMER INTERESTS The Guidelines call on enterprises to apply fair business, marketing and advertising practices and to ensure the quality and reliability of the products they provide.	SCIENCE AND TECHNOLOGY This chapter promotes technology transfer to host countries and their contribution to innovative capacities.
X.	XI.	
COMPETITION This chapter focuses on the importance of MNEs carrying out their activities in a manner consistent with all applicable competition laws and regulations.	TAXATION The Guidelines are the first international responsible business conduct instrument to cover taxation. They expect MNEs to comply with the letter and the spirit of tax laws, drawing on the important work by the OECD in this area.	

Adhering countries: OECD members and other countries

Not only all OECD member countries, but also an increasing number of non-member countries adhere to the MNE Guidelines. They are applicable to MNEs operating in and from these countries. Observance of the Guidelines by these enterprises is thus recommended wherever they operate, not only in adhering countries. In order to create a global level playing field, *Business at OECD* strongly encourages close cooperation with additional non-member countries.

48 adhering countries as of January 2020:

ARGENTINA*	FINLAND	KOREA	SLOVAK REPUBLIC
AUSTRALIA	FRANCE	LATVIA	SLOVENIA
AUSTRIA	GERMANY	LITHUANIA	SPAIN
BELGIUM	GREECE	LUXEMBOURG	SWEDEN
BRAZIL*	HUNGARY	MEXICO	SWITZLERLAND
CANADA	ICELAND	MOROCCO*	TUNISIA*
CHILE	IRELAND	NETHERLANDS	TURKEY
COLOMBIA*	ISRAEL	NEW ZEALAND	UKRAINE*
COSTA RICA*	ITALY	NORWAY	UNITED KINGDOM
CZECH REPUBLIC	JAPAN	PERU*	UNITED STATES
DENMARK	JORDAN*	POLAND	EUROPEAN UNION (observer)
EGYPT*	KAZAKHSTAN*	PORTUGAL	
ESTONIA		ROMANIA*	

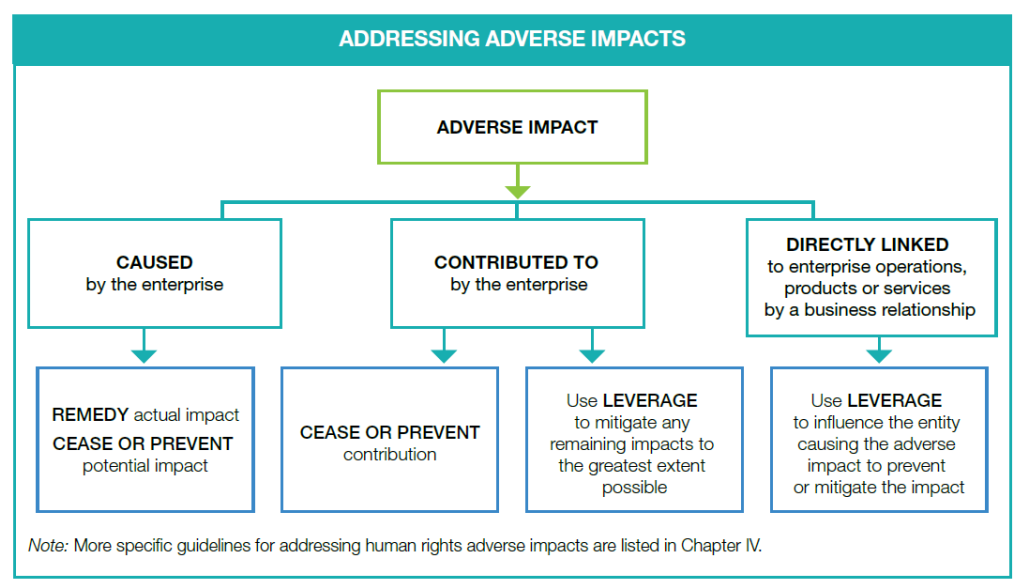
*Non-OECD member country

The essence of the MNE Guidelines: avoid adverse impact

The 2011 MNE Guidelines introduced an important new recommendation: MNEs should avoid adverse impacts of their own business activities in the areas covered by the MNE Guidelines. What does this mean?

- Enterprises should prevent their own activities from **causing an adverse impact** which may occur when a particular standard from the MNE Guidelines is not being observed. Enterprises should also avoid **substantially contributing** to any such adverse impact. 'Their own activities' can also include activities in the supply chain. However, for the adverse impact to be directly linked to their operations, products or services by a business relationship, some meaningful involvement of the MNE in the activity is required.
- MNEs should **seek to prevent or mitigate** adverse impacts by a business relationship when this impact is directly related to the MNE's operations, products or services. This is the case even when the MNE itself did not directly contribute to those impacts. The practical implications of this provision have been subject to a lot of debate. As explicitly stated in the MNE Guidelines, this recommendation **does not shift the responsibility** from the party that commits the infringement to the MNE with which it has a business relationship. Furthermore, MNEs should **encourage their business partners** to uphold the principles of the Guidelines.
- Thus, there are **4 degrees** of avoiding adverse impact:
 - » do not cause
 - » do not substantially contribute
 - » seek to prevent or mitigate adverse impacts of your business relationships
 - » encourage your business partners to apply the Guidelines' principles

The Guidelines are clearly based on the principle that MNEs are **responsible for their own behavior** and not for the adverse impacts purely caused by others. The MNE Guidelines are more demanding depending on how directly or substantially the enterprise is involved in the adverse impact:



Source: OECD MNE Guidelines brochure 'RESPONSIBLE BUSINESS CONDUCT MATTERS'

- When the MNE is **causing** the adverse impact, it should take all necessary steps to **stop or prevent** it and to remedy actual impacts.
- When the MNE is **contributing** to the problem alongside with others, it should **stop or prevent** its own contribution, and it should **use its influence** to reduce any remaining impacts by others, as far as practically possible.
- When **a business relationship which is directly linked to its operations, products or services is causing an adverse impact**, the MNE should **use its leverage** on this relationship to influence it or prevent the adverse impact.
- Last but not least, enterprises are generally **expected to encourage their business partners** to behave responsibly by applying standards of corporate conduct in line with the MNE Guidelines.

How to avoid adverse impact: the concept of due diligence

- Enterprises should carry out risk-based **due diligence** to avoid adverse impacts. This means that they should introduce a process to identify, prevent, reduce, and account for how they address actual and potential adverse impacts in their operations, supply chains and other business relationships, which are directly linked to their operations, products and services.
- The MNE Guidelines provide **no general procedural requirements for due diligence**, but grant businesses **flexibility** in the implementation of due-diligence measures and processes, according to their individual circumstances. Three chapters of the MNE Guidelines are exempt from the due diligence requirement: Science and Technology, Competition, and Taxation. However, the MNE Guidelines provide **more elaborate requirements specifically for human rights due diligence** in line with the UN Guiding Principles for Business and Human Rights.

Flexibility is an important concept in the MNE Guidelines. The nature and extent of due diligence depends on the precise circumstances:

- The Guidelines recognize that the encouragement of business partners to comply with the recommendations is subject to practical limitations depending on the specific circumstances.
- Depending on the circumstances, in case a business partner causes an adverse impact, it can be appropriate for the MNE to either continue the relationship while addressing the problem, suspend the relationship temporarily, or, as a means of last resort, disengage, while taking into account social and economic consequences.
- When enterprises have many business partners, in some cases tens of thousands, they are encouraged to identify global areas of activity in which the risk of adverse effects is greatest, and to determine priorities for due diligence towards suppliers on the basis of this risk assessment.
- It is explicitly recognized that the expectations are different for large MNEs and for small MNEs, due to their different capacities for implementation.

Practical implementation: OECD Due Diligence Guidance documents for Responsible Business Conduct

In 2018, the OECD issued [a general due diligence guidance](#) to help business understand and implement due diligence as foreseen in the OECD Guidelines. It provides more detailed information on the respective steps of the due diligence process and is supplemented with an Annex presenting, in a questions-and-answers format, practical examples and targeted advice to support business in the establishment of their own due diligence mechanisms. It is clearly recognised that “practical actions” are not meant to represent an exhaustive “tick box” list for due diligence and that not every practical action will be appropriate for every situation.

Taking into account that due diligence should be commensurate with risk and appropriate to a specific enterprise’s circumstances and context, the guidance introduces the following steps:

- to embed RBC into the enterprise’s policies and management systems and to undertake due diligence by
- identifying actual or potential adverse impacts on RBC issues,
- ceasing, preventing or mitigating them,
- tracking implementation and results,
- communicating how impacts are addressed, and
- enabling remediation when appropriate.

The OECD also published sectoral guidance on institutional investors, extractive, garment and footwear, agriculture and minerals. (see Chapter: The Proactive Agenda)

The general due diligence guidance further explains the concepts of **causing**, **contributing** and being **directly linked** to adverse impacts mentioned in the Guidelines:

- An enterprise **causes** an adverse impact if the impact arises directly from the firm’s conduct and operations.
- An enterprise **contributes to** an impact if its activities in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate, or incentivise another entity to cause an adverse impact. Contribution must be substantial, meaning that it does not include minor or trivial contributions. The substantial nature of the contribution and understanding when the actions of the enterprise may have caused, facilitated or incentivised another entity to cause an adverse impact may involve the consideration of multiple factors. The following factors can be taken into account:
 - » the extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring.
 - » the extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability.
 - » the degree to which any of enterprise’s activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

The mere existence of a business relationship or activities, which create the general conditions in which it is possible for adverse impacts to occur does not necessarily represent a relationship of contribution. The activity in question should substantially increase the risk of adverse impact. To give a concrete example, a retailer who is setting a very short time frame for their supplier to deliver a product while restricting the use of sub-contracting, knowing that the time frame is not realistic without resorting to excessive overtime, is contributing to an adverse impact.

Linkage is defined by the relationship between the adverse impact and the enterprise's products, services or operations through another entity (i.e. business relationship). For example, if an enterprise sources cobalt from mines using child labour which is then used in its products, then the enterprise can be directly linked to the adverse impact (i.e. child labour). In this case, the enterprise did not cause or contribute to the adverse impact itself, but nevertheless there still can be a direct link between the enterprise's products and the adverse impact through its business relationships with the entities involved in its sourcing of the cobalt (i.e. with the smelter, minerals trader, and mining enterprise using child labour).

What happens if national law contradicts the recommendations of the MNE Guidelines?

- The first duty of MNEs is to comply with applicable law of the countries where they operate.
- The MNE Guidelines do not take precedence over national laws and provisions.
- Where national laws and provisions conflict with the Guidelines, enterprises should look to comply with the Guidelines to the fullest extent possible without contravening the applicable law of the country.

II. Implementation of the MNE Guidelines: the Role of National Contact Points

What is the National Contact Point?

Each adhering government has to establish a National Contact Point, which has the following tasks:

- Increase awareness of the MNE Guidelines and promote their implementation.
- Respond to questions regarding the implementation of the MNE Guidelines.
- Contribute, as non-judicial grievance mechanism, to the resolution of issues that arise in relation to the implementation of the Guidelines. The NCP can offer its good offices to help the parties involved to resolve the issues by providing a platform for mediation and conciliation. It can also issue a statement or make recommendations.

While adhering governments have substantial flexibility as to how they organize their NCP, they have to respect the procedural guidance of the MNE Guidelines and follow the core criteria, including visibility, accessibility, transparency, and accountability.

The NCP specific instance procedure

- The NCP procedure is intended to resolve an issue in case of alleged non-observance of the Guidelines by an MNE. It should be stressed that normally the implementation of the Guidelines does not give rise to disagreements. However, in case a disagreement arises, these “specific instances” can be “notified”¹ by interested parties to the NCP. The notifying stakeholders are mainly NGOs and trade unions, but any group or individual with an interest at stake can bring up a ‘specific instance’ with the NCP.
- The NCP’s good offices may be called upon by individual stakeholders when they feel an enterprise is causing an adverse impact or is otherwise not acting in accordance with the MNE Guidelines. In such a case, the stakeholder(s) can request the NCP to assist in finding for the issue(s) raised a mutually agreeable, future-oriented solution. Many of the norms and standards included in the MNE Guidelines are in many countries also regulated on the basis of domestic legislation and can therefore lead to legal proceedings in case of non-compliance. But through the NCP, enterprises and their stakeholders may find a solution in a more constructive and accessible manner than via a court.
- When an NCP decides to examine an ‘issue’ or ‘specific instance’ this should by no means be construed as implying that the NCP suspects the MNE of having failed to observe the Guidelines. Any communication of the NCP on this point should be very clear, as public reports on issues under examination can cause reputational damage, even if ultimately no infringement is identified. Questions are usually dealt with by the NCP of the country where the issue has occurred. If the issue has come up in a non-adhering country, the NCP of the home country of the MNE is usually approached.

¹ The terms ‘notify’ and ‘specific instance’ were chosen to make clear also in the terminology that the NCP procedure is not a legal procedure (which would use terms such as ‘complaint’ and ‘case’).

- In some countries the administration has decided to give additional effect to NCP statements if specific business conduct has not been in line with the Guidelines. Thus certain export credit agencies take NCP statements into account when deciding on providing credit. In several other countries, the refusal by a business to participate in a “good offices” effort bars that business from getting government support in economic diplomacy. However these are national policy decisions which are not based on the OECD Guidelines.

Phase 1: Initial assessment

- During the initial assessment phase, the NCP informs the parties involved about the substance of the issue that has been brought up. Based on the initial assessment, a decision is taken on whether the questions that were raised merit a more detailed examination. The issue must be related to the MNE Guidelines and be adequately substantiated. It should be brought up by a party with a justified interest in the contentious issue.
- The NCP will apply a good faith test before accepting to examine a case: there should be a genuine problem, and there should be a genuine willingness of the notifying party to resolve the issue by entering into a mediation process. The NCP can invite the MNE to provide its views early in the process. The MNE can also express its views at its own initiative.
- If the case is rejected, the NCP informs the parties of the reasons for its decision. A statement will be made publicly available after consultation with the parties. The NCP can decide not to publish the name of the company. The indicative timeframe for the initial assessment is 3 months.

Phase 2: Good offices

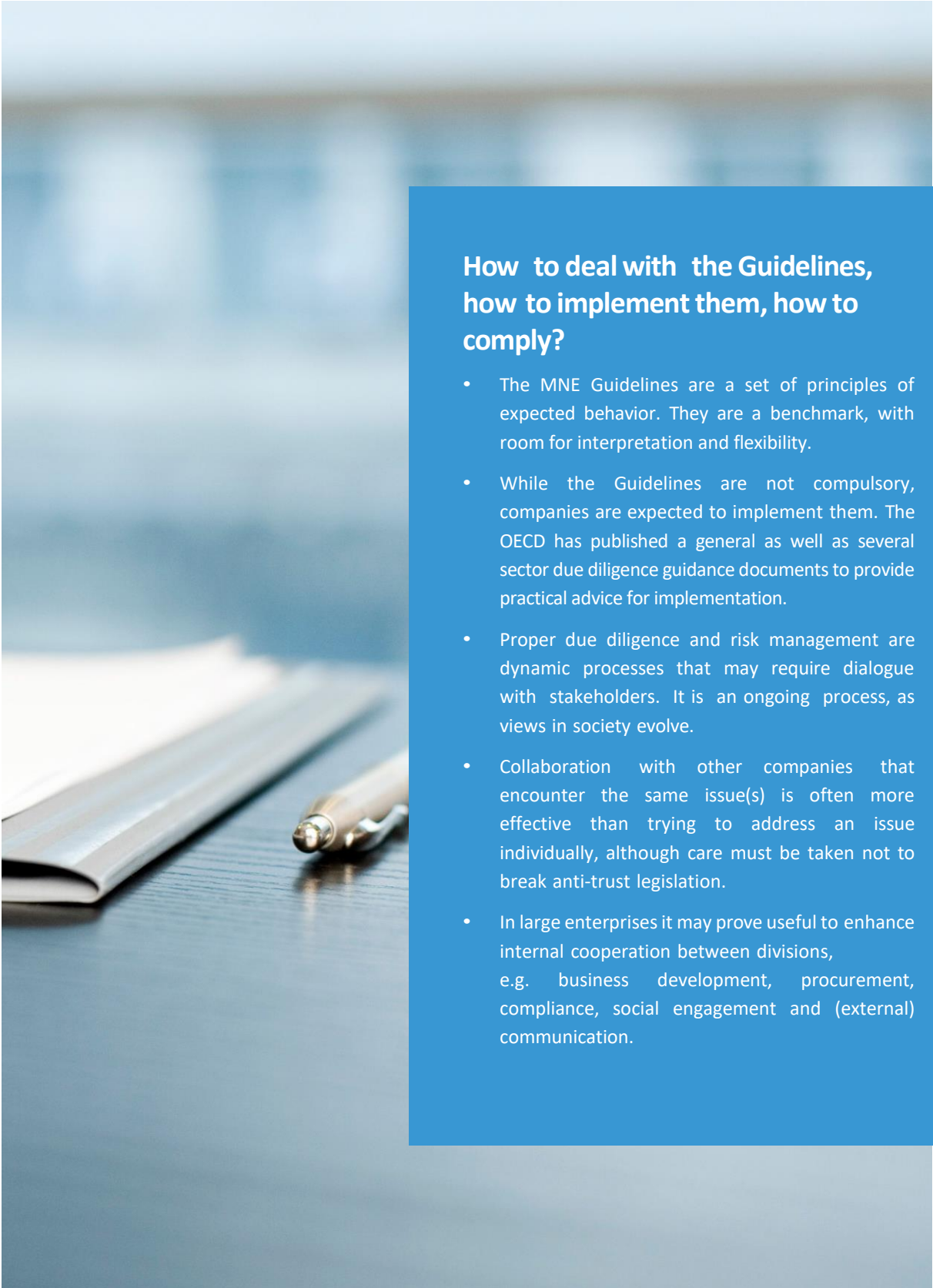
- When a case is accepted, the NCP contacts the parties involved to offer its assistance in resolving the issues and conducts consultations with the parties. It is understood that good offices can only be provided when the parties concerned agree to it. The parties’ commitment to participate in good faith is a crucial element. NCPs are expected to take appropriate steps to protect sensitive information and the interests of stakeholders involved. Confidentiality of the proceedings will be maintained during good offices. Parties can make agreements on whether, and if so how, they communicate on the procedure.
- The NCP offers the parties a neutral discussion forum and mediation platform. A comprehensive written statement is usually required from the enterprise in question. Participation in the NCP procedure provides enterprises with the possibility to make their point of view heard and, in case a relevant issue was raised, to search together with stakeholders for a solution.
- The NCP can ask the formal advice of the OECD Investment Committee in case there is a specific question related to the interpretation of the MNE Guidelines. The indicative timeframe of the second phase is 6-12 months.

Phase 3: Conclusion

- If the parties reach an agreement on the issue that was raised, the procedure can be closed and the NCP will prepare a final report in coordination with the parties involved. The final report of the procedure is made public, unless confidentiality is deemed in the interest of effective implementation of the MNE Guidelines or needed to protect sensitive business information.
- If the parties do not agree on a resolution at the conclusion, the NCP will also issue a statement and can make recommendations. The parties are in principle free to communicate about the issues after the procedure. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.
- The NCP will also issue a statement and can make recommendations in case a party is unwilling to participate. The practice of some NCPs to conclude the procedure with a judgment on the merits of the notification is not explicitly mentioned in the MNE Guidelines.
- The statements and the recommendations of the NCP can suggest changes in the behavior of the enterprise, but they can also conclude that there was no infringement of the Guidelines. By taking a cooperative stance in the procedure the enterprise may create the best conditions for a favorable outcome, or for finding a solution to the issue together with stakeholders. The indicative timeframe of the third phase calls on the NCP to issue its statement or report within three months after the conclusion of the procedure.

Assisting parties to resolve an issue is the essence of the NCP procedure. It is not a semi-legal procedure, nor is the NCP an enforcement agency.

The task of the NCP is to assist parties in coming to an agreement on resolving an issue and to promote business behavior that is compatible with the Guidelines. NCPs should stress this in their external communication and choose their words carefully.



How to deal with the Guidelines, how to implement them, how to comply?

- The MNE Guidelines are a set of principles of expected behavior. They are a benchmark, with room for interpretation and flexibility.
- While the Guidelines are not compulsory, companies are expected to implement them. The OECD has published a general as well as several sector due diligence guidance documents to provide practical advice for implementation.
- Proper due diligence and risk management are dynamic processes that may require dialogue with stakeholders. It is an ongoing process, as views in society evolve.
- Collaboration with other companies that encounter the same issue(s) is often more effective than trying to address an issue individually, although care must be taken not to break anti-trust legislation.
- In large enterprises it may prove useful to enhance internal cooperation between divisions, e.g. business development, procurement, compliance, social engagement and (external) communication.

III. The Proactive Agenda

What is the proactive agenda?

The proactive agenda was introduced in the 2011 update. It is intended to contribute to the avoidance of problems in a proactive way and in a broader context than the specific instance procedures.

The proactive agenda aims to promote the effective observance of the Guidelines by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries before adverse impacts actually occur.

It is based on a multi-stakeholder process, which gives business and key stakeholders the opportunity to participate in discussions to develop strategies to avoid risks of adverse impacts. *Business at OECD* experts actively participate in these discussions, alongside NCPs, trade unions and civil society representatives.

Sector-specific projects and due diligence guidance documents

Responsible business conduct in the financial sector <ul style="list-style-type: none">– Responsible Corporate Lending and Securities Underwriting– Responsible Business Conduct for Institutional Investors– Responsible Project - and Asset Based Finance (in progress)	Stakeholder Engagement and Due Diligence in the Extractive Sector	Responsible Investment in Agricultural Supply Chains	Responsible Supply Chains in the Garment and Footwear Sector
Due Diligence in Mineral Supply Chains			

Key business considerations for the proactive agenda

- The proactive agenda is not intended to create any additional responsibilities beyond the 2011 MNE Guidelines agreement.
- The guidance documents must be fully in line with the MNE Guidelines, which remain the only reference document for the handling of specific instances.

- The objective of any proactive agenda dialogue is to take stock of existing information and develop practical tools that assist companies in performing due diligence to avoid adverse impacts.
- The choice of specific projects must be demand-driven, should avoid duplication and should carry the support of all relevant parties. Furthermore, the development of such projects must rely on a multi-stakeholder process via an ad-hoc advisory group of interested stakeholders, in which the institutionalized stakeholders, such as *Business at OECD*, should always be involved.

IV. How business contributes to strategic discussions on the Guidelines

Key business messages regarding the MNE Guidelines

- **The specific instance procedure should be approached as a learning process:** Basic principles and quality criteria should be taken into account by all NCPs, and best practices should be exchanged. NCPs, business and stakeholders will get the best result if they adopt a constructive approach focusing on responsible business conduct and not an adversarial legal approach.
- **Ensure a shared view of all stakeholders of the NCP procedure:** The purpose of the NCP procedure is to help parties work constructively on the basis of facts and trust towards a common future-oriented solution to the advantage of all parties. While in some cases the NCP procedure has led to a meaningful dialogue and to the solution of disagreement, the fundamental nature of the NCP procedure has at times been disregarded, thus complicating the efforts to find a solution. The OECD and NCPs should ensure that the NCP procedure is presented as an offer of good offices to help parties find a solution. The initiation of a specific instance procedure does not automatically imply that a company has failed to observe the MNE Guidelines.
- **Avoid an excessively broad interpretation:** There needs to be a clear understanding of the reasonable limitations for an MNE to change third parties' conduct when seeking to avoid or mitigate adverse impacts in a specific business context. The Guidelines need to remain a practical and manageable tool for MNEs, which is also important to facilitate their acceptance in non-OECD-member countries. Seeking to prevent or mitigate an adverse impact to which an enterprise is only linked by a business relationship does not shift the responsibility from the entity causing the adverse impact to the enterprise with which it has a business relationship. This must also be reflected in the OECD guidances on due diligence.
- **Key considerations for the “proactive agenda”:** The proactive agenda is essentially an approach to develop, on the basis of the 2011 Guidelines, practical tools for addressing specific challenges, with a view to addressing potential future risks. However, it should be understood that the proactive agenda must not create new responsibilities or recommendations beyond the Guidelines and that it should not create prescriptive sector guidance that would exceed the 2011 agreement.
- **Foster global engagement:** With the shift of weight in the world economy, it is more important than ever to expand the geographical coverage of the Guidelines and promote the implementation of the standards of the Guidelines by non-adhering countries. These countries should give serious consideration to endorsing the Guidelines, which will also contribute to creating a favorable investment environment. It is important that every country fulfils its commitment to put in place an adequately functioning NCP.
- **The Guidelines as part of the OECD Declaration on International Investment and MNEs:** The discussion on facilitating adherence to the MNE Guidelines without adherence to the OECD Declaration raises a number of strategic issues, each of which much be carefully considered on a case-by-case basis. While *Business at OECD* strongly supports adherence to the MNE Guidelines by additional non-member countries, it must not be forgotten that the Guidelines are part of a package and a mutual commitment. The Declaration commits adhering countries to improve the investment climate, while companies are encouraged to apply the standards of responsible business conduct as elaborated in the Guidelines.

Issues requiring further attention

- What is the scope of MNEs' responsibilities in the supply chain and other forms of business relationships bearing in mind that expectations must remain realistic?
- How can a balance between business responsibilities and government obligations, e.g. in the field of good public governance and the rule of law, be maintained?
- What are the precise implications for SMEs and how can capacity building be fostered?
- How should the specific problem-solving character of the NCP be better communicated so that all stakeholders see real added value in the system and business can engage in the NCP mediation process with trust?
- Should there be an additional possibility specifically for companies to raise an "issue" with an NCP in case of inappropriate behavior of local stakeholders?
- How can the worldwide application of internationally recognised standards on responsible business conduct be further promoted for an international level playing field?
- How can additional adherence to the OECD Declaration on International Investment and MNEs be promoted?
- How can it be ensured that all countries, including new adherents, put in place well-functioning NCPs?

In brief

- The OECD MNE Guidelines are recommendations on responsible business conduct in society.
- The recommendations are overarching and contain a large degree of flexibility for implementation.
- The central concept is to avoid adverse impacts.
- To this end, MNEs should develop a due diligence process.
- The MNE Guidelines are voluntary, but governments have committed to promote implementation and MNEs are expected to act in accordance with the Guidelines.
- NCPs can offer their good offices in specific instance procedures to help resolve differences arising in the implementation of the Guidelines. NCPs can issue statements and make recommendations.
- Implementing the MNE Guidelines is an ongoing learning process and benefits from a dialogue with key stakeholders involved.

***Business at OECD*, the official channel to the OECD**

As the officially recognized voice of business to the OECD, *Business at OECD* participates several times per year in consultations with the OECD Investment Committee and the Working Party on Responsible Business Conduct, which oversee MNE Guidelines related issues at the OECD, as well as the annual OECD Global Forum on Responsible Business Conduct.

During these meetings and consultations, *Business at OECD*-alongside TUAC (representing the trade unions) and OECD Watch (a network of civil society organizations) - provides active input to strategic questions that are being discussed with regard to the functioning of the specific instance procedure as well as strategic questions regarding the implementation of the MNE Guidelines, the proactive agenda, and outreach activities.

Business at OECD also solicits member business associations and/or individual companies to participate in relevant advisory groups, including sector-specific proactive agenda projects.

Who to contact for information and advice

We encourage companies that are interested in contributing to the strategic discussions concerning the MNE Guidelines or *Business at OECD* activities on investment and responsible business conduct more broadly to contact their respective national *Business at OECD* member organization. Please do not hesitate to contact the secretariat in case you have any questions or need additional assistance:

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