



# Annual Report on the OECD Guidelines for Multinational Enterprises 2018





# **Annual Report on the OECD Guidelines for Multinational Enterprises 2018**



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## *Foreword*

The 2018 Annual Report on the OECD Guidelines for Multinational Enterprises<sup>1</sup> (hereafter the “Guidelines”) set out in the Appendix describes activities undertaken to implement the Guidelines during the period January 2018 to December 2018. In addition, this note provides some developments up to March 2019. The Report was discussed by the Working Party on Responsible Business Conduct (WPRBC) on 5-6 March 2019 and approved by the Investment Committee by written procedure on 29 March 2019]. On the same dates, the WPRBC also discussed the Draft [Progress Report on National Contact Points \(NCPs\)](#) for the 2019 Ministerial Council Meeting, subsequently submitted to the Investment Committee for transmission to the Council.

The 2018 Annual Report describes work on the implementation of the Guidelines and more broadly on responsible business conduct (RBC), with a focus on the key work streams of the WPRBC: support to the NCPs, design and implementation of due diligence tools in global supply chains and policies to enable RBC, as well as outreach through the new programme on [Promoting Responsible Supply Chains in Asia](#) and through the [Global Forum on RBC](#). The report also provides an overview of work on specific RBC issues, such as child and forced labour, and incorporating a gender perspective into due diligence. It also provides an insight into projects that consider the effectiveness of due diligence efforts, such as assessing the alignment of industry initiatives and certification programmes with OECD due diligence approaches, and measurement of due diligence impacts. Finally, it looks at how direct and in-depth engagement with stakeholders, in particular business, trade unions and civil society permeates the design and implementation of the work around RBC, the Guidelines and due diligence, building on the OECD’s unique convening power and experience in these areas. The report also looks at how Adherents are addressing the growing demand for more policy coherence around RBC, and how the revised mandate of the WPRBC will support those efforts.

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<sup>1</sup> The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. The text of the Declaration, including the Guidelines, is available on the [Compendium of OECD Legal Instruments](#) with the reference [OECD/LEGAL/0144](#).



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## *Introduction and Executive summary*

### **Key highlights on Responsible Business Conduct**

In 2018, the implementation of the OECD Guidelines for Multinational Enterprises<sup>1</sup> (the Guidelines) saw a number of highlights. These concern the National Contact Points, which received a record high of submissions of specific instances; the adoption of the [OECD Due Diligence Guidance for Responsible Business Conduct](#) (RBC) during the OECD Council Meeting at Ministerial level ;<sup>2</sup> the launch of the EU-ILO-OECD programme on Promoting Responsible Supply Chains in Asia, and an unprecedented participation of stakeholders in OECD activities and events related to RBC.

In 2018, the mandate of the Working Party on Responsible Business Conduct (WPRBC) was renewed, for the first time since the creation of this subsidiary body of the Investment Committee in 2012. The renewal process provided an opportunity to reflect on the mandate and ensure the continued pertinence of the WPRBC for the next five years. Adjustments made in the revised mandate included in particular: (i) a broader overarching objective of the WPRBC, (ii) the inclusion of policy analysis and promoting policy coherence with respect to RBC, (iii) more explicit inclusion of the OECD's work on due diligence and engagement with the private sector, and (iv) the recognition of increased collaboration with other OECD bodies and international organisations to promote international policy coherence. The Chair since 2013, Mr Roel Nieuwenkamp, stepped down, and Ms Christine Kaufmann was designated as the new Chair following an extensive, transparent and fair process.

### **National Contact Points for Responsible Business Conduct**

All countries adhering to the Guidelines (currently 48) have a National Contact Point (NCP) in place. Of these, all but one submitted a report to the OECD Secretariat, providing information on activities related to implementation of the Guidelines in 2018.

Since 2016, the OECD's work in support of the NCPs was based on the implementation of the Action Plan to Strengthen NCPs 2016-18. Under this Action Plan, all G7 countries have either completed or have a peer review ongoing as at January 2019. An additional four countries which received at least five specific instances have undergone a peer review during the 2016-18 period. During the same period, four countries benefited from a tailored

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<sup>2</sup> The Due Diligence Guidance for Responsible Business Conduct was approved by the Investment Committee on 3 April 2018. It was subsequently made the subject of the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)], adopted in the Ministerial Council Meeting on 30 May 2018.

capacity building mission to address areas for improvement. Two NCPs underwent significant reviews as part of the process of accession to the OECD. An additional seven NCPs have a peer review scheduled between 2019 and 2022. This leaves a total of 25 NCPs having not yet committed to a peer review of which 15 are OECD Members.

Similarly, actions taken in the second track of activity to address coherence between NCPs involved training on a wide range of topics including: confidentiality and campaigning, mediation, RBC for institutional investors, due diligence in practice, etc. A set of papers was also developed to address challenging topics and draw together NCP practice, these addressed: NCP structures and activities; confidentiality and campaigning; NCP case coordination; recommendations and determinations.

The third track of activity covered the development of tools to support NCPs in their work. At the outset, an exercise was undertaken to make the OECD public specific instance database as complete as possible. In addition, key tools were developed in partnership with NCPs including a support tool for developing rules of procedure, the development of the ONE Community space for NCPs to share updates and questions and the development of key communication tools to support NCPs in their promotional activities.

In December 2018 the WPRBC discussed a second Action Plan to Strengthen NCPs for the years 2019-2021. Building upon the lessons learnt from the implementation of the first action plan, the proposed plan suggests new areas of focus to support the NCPs to better meet their mandate and cooperate more effectively. As the diversity and complexity of cases handled by NCPs continues to rise, the support of Adherent governments to ensure the effective implementation of this action plan becomes all the more pressing.

The key, and most visible function of NCPs is that of handling complaints related to issues related to the implementation of the Guidelines (“specific instances”). In 2018 NCPs closed 34 specific instances, which is in line with average numbers in previous years.<sup>3</sup> Of the eleven specific instances that went to mediation facilitated by the NCP, three resulted in agreement and one resulted in agreement in a parallel process (36%). This represents a substantial decrease from 2017, in which agreement was achieved in 83% of all cases which went to mediation.

Although few agreements were reached, strong final statements were published for concluded cases. In 2018 90% of available final statements included recommendations and 45% included determinations on whether the enterprises in question observed the recommendations of the Guidelines. Some final statements also included interpretations of the Guidelines. For example, in a case handled by the Dutch NCP regarding the relocation of a 15<sup>th</sup> century tomb, in its final statement the NCP noted that the right to culture “should be considered a human right under the OECD Guidelines.”

Furthermore, 77% of final statements included provision for monitoring and follow up, doubling the rate reported in 2017. In 2018 follow up statements were published for eleven

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<sup>3</sup> Closed specific instances include both specific instances that have been concluded during the year and those that were not accepted during the year. Specific instances concluded during the year are those that the NCP found to merit further examination after the initial assessment and that have subsequently been closed. For such specific instances the NCP will have offered its “good offices” (e.g. mediation/conciliation) to both parties. Specific instances not accepted during the year are those that the NCP found not to merit further examination and that have therefore been closed. Specific instances that are in progress are those that are not yet closed. These include submissions received by the NCP and under consideration, as well as those accepted by the NCP.

specific instances. Some of them noted that recommendations issued by the NCP in cases where there was originally no agreement, had been implemented in full. For example, in a follow up statement issued by the Dutch NCP regarding a case involving due diligence in the garment sector and the Rana Plaza collapse, the NCP found that the company in question complied with all recommendations made by the NCP.

The high use of recommendations, determinations, and follow up provisions in final statements suggests that, despite low rates of agreement through mediation NCPs made an effort to establish a basis from which positive outcomes or agreements may be achieved after the closing of a specific instance.

There was a record number of new submissions brought to NCPs in 2018. In total, 52 new submissions were filed, compared to an annual average of 25 over the years 2000-2017. New submissions covered a range of substantive issues and sectors. Two high profile submissions concerning financial misconduct were submitted to the NCPs of the Netherlands and jointly to the NCPs of Belgium and Luxembourg, concerning allegations of tax evasion and money laundering respectively. There were also a few submissions relating to organisations involved in social auditing and certification.

In 2018, 25 NCPs (52% of all NCPs) received specific instance submissions. This represents an increase in historical rates and the rate reported in 2017 (38%). A high level of submissions along with more distribution of case filings across NCPs suggests the visibility of NCPs is increasing across different jurisdictions. To date 13 NCPs (Costa Rica, Egypt, Estonia, Greece, Iceland, Jordan, Kazakhstan, Lithuania, Romania, Slovak Republic, Slovenia, Tunisia and Ukraine) have not yet received a specific instance.

A total of 38 NCPs created a promotional plan for the Guidelines (compared to 33 in 2017), and 41 NCPs either held or attended promotional events, (the same number as in 2017). Most governments have made their NCP visible, e.g., via a dedicated website. Forty NCPs published information on their website on procedures and explaining the specific instance process (compared to 35 in 2017). There are currently two Adherent governments that do not have a website in place on the Guidelines or the NCP, compared to four in 2017. Furthermore, three NCPs did not attend the NCP meetings in either June or December (the same number as in 2017) and one NCP did not report on its 2018 activities (compared to three in 2017).

In 2018, the programme of NCP peer reviews continued with the finalisation of peer reviews of the NCPs of Germany, Chile, the United States, Austria and Canada. The on-site visit for the United Kingdom took place in November 2018.

## Due diligence to implement the Guidelines

To foster convergence and set out a common standard for due diligence that is relevant for all types of companies operating in all countries and sectors of the economy the OECD developed the *Due Diligence Guidance for Responsible Business Conduct*. This Guidance is the first government backed reference on due diligence which is relevant for all types of companies and helps companies respond to the expectations set out in the Guidelines that they carry out due diligence to identify, prevent and mitigate real and potential adverse impacts across their operations and business relationships and to account for how those impacts are addressed. The Guidance was made the subject of an OECD Recommendation on the Guidance was adopted by Ministers on 30 May 2018 with the aim of providing

support to enterprises by setting out practical, clear explanations of how to implement due diligence as recommended in the OECD Guidelines for Multinational Enterprises.<sup>4</sup>

Convergence around OECD standards was also strengthened through the release in April 2018 of a methodology to assess the alignment of industry-led programmes in the minerals sector with the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. This methodology was embedded into a Delegated Act of the European Commission, which foresees a consultative role for the OECD Secretariat in the EU's recognition of industry schemes deemed compliant with EU Regulation 2017/821. The same alignment assessment approach was launched in 2018 in relation with the Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. The draft assessment tool and methodology were launched in January 2018 and a pilot assessment was carried out with the Sustainable Apparel Coalition.

The past eight years of implementation of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* have resulted in increased awareness amongst stakeholders that companies have a responsibility to cut the link between the mineral trade, serious human rights abuses and conflict. However, despite anecdotal reports of various results, there appears to be a continued lack of comprehensive and empirically-based evidence. To address this, the OECD Secretariat in 2018 launched a project on developing a monitoring and evaluation framework to measure results of the implementation of the OECD Minerals Guidance. The framework will be finalised and pilot tested in 2019.

Among the tools being developed to assist companies to implement supply chain due diligence, the OECD Secretariat is in the process of launching a Portal for Supply Chain Risk Information (Risk Portal). The Risk Portal is envisioned to be a free-to-access website that companies can use to gain an initial understanding of the risks in their supply chains and to guide them towards further research resources. The primary purpose of the Risk Portal is to provide information about risks that could lead those companies to ask further questions and conduct a thorough review of what is alleged to have occurred. The pilot version of the Risk Portal will cover 40 mineral supply chains and risks mentioned in the Minerals Guidance. The pilot is expected to be ready to launch by the end of 2019. In the long term, the Risk Portal scope can be expanded to include raw materials and risks in other sectors.

The work on responsible agricultural supply chains includes collaboration with the Trade and Agricultural Directorate (TAD) of the OECD as well as the Food and Agriculture Organization of the United Nations (FAO). In February 2018, the OECD and FAO joined efforts to launch a pilot project with agribusiness companies, including investors, food manufacturers and retailers to promote the *OECD-FAO Guidance for Responsible Agricultural Supply Chains*<sup>5</sup> (OECD-FAO Guidance). The pilot aims to promote the practical understanding and application of the OECD-FAO Guidance with enterprises.

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<sup>4</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].

<sup>5</sup> OECD/FAO (2016), *OECD-FAO Guidance for Responsible Agricultural Supply Chains*. This Guidance is the subject of the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [[OECD/LEGAL/0428](#)].

In 2018 the OECD deepened its activities under its implementation program of the *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* with funding from the EU.<sup>6</sup> Under this programme of work, the OECD continued to convene stakeholders to engage on shared learnings - particularly around meaningful engagement with workers in the due diligence process, enabling traceability, and integrating a gender lens into due diligence - promote alignment with OECD recommendations and facilitate multi-stakeholder collaboration in key markets. The Guidance has been translated into French and in Chinese, as well as into Polish and Japanese, in cooperation with the respective NCPs. In 2018, the OECD partnered with the Confederation of Indian Industry (CII) to establish an industry platform on responsible business conduct bringing together Indian manufacturing businesses and global brands sourcing from India. It also signed a Memorandum of Understanding (MoU)<sup>7</sup> with the China National Textile and Apparel Council (CNTAC). Through this agreement, the People's Republic of China (China) committed to developing and implementing sector guidance that is aligned to the OECD's due diligence guidance, and the OECD committed to providing technical support. This will have a significant impact in expanding the reach of RBC instruments in the industry, as China accounts for a 40% market share in the global trade in textiles.

The project Responsible Business Conduct (RBC) in the Financial Sector aims to support practitioners in the financial sector implement the OECD Guidelines. Under this project, the OECD is currently developing guidance to identify due diligence approaches for banks to ensure they adequately avoid and address adverse environmental and social impacts associated with their clients in general corporate lending and securities underwriting transactions. Currently no broadly recognised standard on environmental and social due diligence exists for these transactions although they represent the majority of financing activity by banks. Based on feedback provided by advisory group members to the project and other experts the OECD has developed a draft paper on *Due Diligence for responsible Business Conduct in General Corporate Lending and Securities Underwriting*. The paper, to be finalised in 2019, provides guidance on when enhanced due diligence can be triggered in the context of general corporate lending and underwriting transactions, the role of banks in stakeholder engagement and remediation, and how duties with respect to client confidentiality can be respected throughout the due diligence process.

## Policy action to promote and enable Responsible Business Conduct

The trend to integrate expectations on RBC in domestic and international policy commitments and regulations continued in 2018. This included specific and targeted policy action by governments to promote and enable RBC among businesses, as well as reinforcing their own commitments on RBC be it through adoption of new RBC-specific initiatives or support for including RBC in related policy areas. The OECD Guidelines are a core framework for these efforts, notably considering the practical nature of various OECD Due Diligence guidance instruments, which are a key tool for reaching out to

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<sup>6</sup> This Guidance is the subject of the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](https://www.oecd.org/legal/0437)]

<sup>7</sup> OECD-CNTAC Memorandum of Understanding, signed 30 January 2018: <http://www.oecd.org/corporate/cntac-oecd-partner-to-strengthen-cooperation-textile-apparel-supply-chains.htm>

business, but also the role of NCPs in promoting coherence and providing a venue for resolution of issues.

Elaborating a National Action Plan on Business and Human Rights (NAP) showed to be an effective way to unify national efforts on RBC. As of January 2019, 22 countries have adopted NAPs and four countries are in the process of developing one – all of which are Adherents to the Guidelines.

Another way to build coherence around RBC is by mainstreaming RBC into other policy areas. For example, RBC has been integrated as a core element of OECD Investment Policy Reviews, including in the ongoing reviews of Thailand, Myanmar and Egypt.

OECD work on the integration of RBC in other policies and practices continued, with a focus on areas where government operates as an economic actor, e.g., through public procurement and development finance. A new work programme on Responsible Business Conduct and Public Procurement was approved by the OECD Working Party on Leading Practitioners of Public Procurement (LPP), and the Working Party on RBC end 2018; with work planned for 2019-2020, pending funding.

A first regional programme to promote RBC was launched. The programme *Promoting Responsible Supply Chains in Asia*, implemented by the OECD in partnership with the ILO and funded and developed in co-operation with the EU, is expected to deepen engagement with partners in Asia on RBC. The OECD is working with Japan as well as five non-Member economies (China, Thailand, Viet Nam, Philippines, and Myanmar) to provide insight and analysis on RBC, boost capacity to implement RBC instruments, support RBC policies, and raise awareness about the importance of RBC. The programme activities started in January 2018 and will continue until 2020.

In 2018 the OECD also concluded negotiations on a new EU-funded project on Responsible Business Conduct in Latin America and the Caribbean. The project, to be implemented over a period of 4 years starting in 2019, together with the ILO and the United Nations Office of the High Commissioner for Human Rights (OHCHR), foresees activities in the seven Adherent countries in the region (two OECD Members: Chile and Mexico, and five non-Members: Argentina Brazil, Colombia, Costa Rica, and Peru), as well as in two non-Adherent countries (Ecuador and Panama).

The regional programmes in Asia and Latin America are important avenues to promote RBC globally and increase the outreach of the Guidelines and due diligence guidance instruments. They provide a vehicle to strengthen alignment across government policies relevant for RBC in the countries targeted by the projects. At the same time, the projects provide an opportunity to strengthen coherence across the three pillars of the OECD's work on the Guidelines and on RBC more broadly: providing guidance to companies on how to do due diligence across supply chains; supporting governments in ensuring an enabling environment for RBC, and – in the case of Adherent countries - strengthening the functioning of NCPs.

## Stakeholder engagement

Stakeholder engagement is a defining characteristic of RBC as set out in the Guidelines. Stakeholders, including business, trade unions and civil society organisation, have played a critical role in drawing attention to key issues to be considered e.g. in the development and implementation of due diligence guidance, bringing specific instances to the NCP system, and in promoting the Guidelines.



Through engagement with each of these stakeholder groups, the OECD brings relevant and cutting-edge perspectives, rooted in real-world experience, to advising governments on RBC issues and in developing standards and tools to promote RBC globally. One key avenue for engagement with stakeholders is through consultation with BIAC, TUAC and OECD Watch during meetings of the WPRBC and the NCP Network. In addition, all sector related guidance, as well as the 2018 OECD Due Diligence Guidance for RBC, were developed in close consultation with multi-stakeholder advisory groups, which also accompany the implementation of the guidance, once adopted. Pilot projects with a small group of companies in a sector help share experience on the implementation of due diligence in a specific sector. In 2018, a pilot project was launched to work with companies on the implementation of the OECD-FAO Guidance for agricultural supply chains.

Another important way for OECD to engage with stakeholders is through its various events, notably the Global Forum on Responsible Business Conduct, the Forum on Responsible Minerals Supply Chains, and the Forum on Due Diligence in the Garment and Footwear Sectors, which are held annually and contribute significantly to promoting the OECD Guidelines and due diligence guidance, and to supporting their uptake and implementation.

### **Due Diligence Guidance for RBC: A new milestone for implementation of the Guidelines**

In June 2018, the OECD Council adopted the Recommendation of the Council on the [OECD Due Diligence Guidance for Responsible Business Conduct](#)<sup>8</sup> (Guidance) ] and all Adherents to the Guidelines committed to promote its use.<sup>9</sup> Adherents have now also adopted a three-year plan to support the implementation of the Guidance. Under the implementation plan, the Guidance will be translated into multiple languages (versions in Spanish, German, Japanese, Thai, Arabic and others are already in place or in preparation), training materials are being developed, and tools to support the application of due diligence in specific sectors (e.g. construction), or on specific issues (e.g. gender, and the sustainable development goals) are in preparation. At its March 2019 meeting, the WPRBC held its first workshop on RBC and Gender, which helped analyse in more depth the Guidance's advice on how to integrate a gender lens in supply chains and provide input into the United Nations (UN) Working Group on Business and Human Rights' call for inputs on a new guidance on gender.

The adoption of the Guidance was the culmination of a two year-long process of research and consultations with key stakeholders, including governments, business, trade unions, civil society, experts from other international organisations, academia, etc., which led to a practical and easy-to-understand tool for companies of all sizes, operating in any sector and geography. Importantly, the Guidance constitutes an international standard for supply chain due diligence for companies, which serves to implement the due diligence expectations of international instruments such as the UN Guiding Principles on Business and Human Rights and the International Labour Organization (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, as well as domestic legislation such as the French law on Duty of Vigilance. The strong call by the UN Working Group

<sup>8</sup> The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](#) with the reference [OECD/LEGAL/0443](#).

<sup>9</sup> In addition to the OECD countries that participated in the Council adoption, all non-OECD Adherents to the Guidelines adhered to the Recommendation at the time of its adoption .

on Business and Human Rights for companies to use the OECD Guidance as a means to implement the UN Guiding Principles attests to its wide relevance and responds to businesses' demand to address the proliferation of standards around responsible business conduct.

The development of the Guidance built on the extensive expertise acquired in the design and implementation of sector-specific programmes led by the OECD, in the minerals, extractives, agriculture, garment and footwear, as well as the financial sectors. The pertinence and usefulness of these guidances is reflected, *inter alia*, in their increasing uptake by business and industry groups. One crucial factor for the success of these programmes is the continuous engagement with, and support provided to companies by the OECD, to help them understand how to operationalise due diligence expectations, address common challenges, and exchange experiences on lessons learnt regarding implementation and opportunities to work together to address problems.

### **Direct engagement with stakeholders: A key feature of OECD's work on RBC**

Strong, direct engagement with companies is a distinguishing feature of the OECD's work on RBC. All sector guidance instruments have been developed with the active participation of multi-stakeholder advisory groups, which promotes buy-in and provides a solid basis for the acceptance of the guidance tools by a comprehensive set of stakeholders, in particular business. Engagement with business in the implementation of guidance tools is particularly important, as it provides direct feedback on the relevance of the guidances and tools.

The engagement with business developed in the context of work on RBC is also helpful in other areas of work of the OECD, and there are growing linkages between, for example, work on RBC and the environment (e.g. climate change and chemicals in the context of garment supply chains, biodiversity, etc.). RBC also contributes to the advancement of the OECD Framework for Policy Action on Inclusive Growth, as the OECD tools on RBC can help both governments and business work together to drive more inclusive and sustainable trade and investment across countries and supply chains.

This engagement with business keeps growing, as reflected in the increasing number of companies attending OECD events on RBC. For example, in 2018 the Forum on Responsible Mineral Supply Chains, attracted over 900 participants, of which over 60% were company representatives; the 2018 Forum on Due Diligence in the Garment and Footwear Sector had over 40% company participation (numbers which increased in the February 2019 edition with 50% of participants from the private sector), and the Global Forum on RBC, which had ca 50% company participation, among over 750 participants.

### **Strengthening outreach to new partners: RBC in Asia and Latin America**

This approach of engaging directly with business and providing advice and training is a strong value-add of the European Union (EU)-funded project on *Promoting Responsible Supply Chains in Asia*, implemented together with the ILO. Under this three-year project, which started in 2018, a range of training and capacity building events targeting companies have been held in all six countries in the project<sup>10</sup>, including, for example, workshops with companies in the electronics sector in China and Japan, in seafood supply chains in Viet Nam, agri-businesses in the Philippines, and with state-owned enterprises and institutional

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<sup>10</sup> People's Republic of China (China), Japan, Myanmar, Philippines, Thailand, Viet Nam



investors in Thailand. A pilot project on responsible agricultural supply chains in Southeast Asia will soon be launched involving companies in Myanmar, Thailand, Viet Nam and the Philippines. A pilot on responsible garment and footwear will also be undertaken with companies in China and Viet Nam.

Engagement in Asia is not only with business, but also with policy makers, and several activities support enhancing the policy environment to enable RBC. In Thailand, for example, this is done in the framework of the OECD-Thailand Country Programme and in the context of the ongoing Investment Policy Review of Thailand.<sup>11</sup> The 7<sup>th</sup> Global Forum on Responsible Business Conduct, which will be held in Bangkok on 12-13 June 2019 as part of the Bangkok Business and Human Rights Week, will provide an opportunity to highlight the strength of OECD instruments on RBC and initiatives undertaken by Adherent governments to promote their implementation. Considering Thailand's chairmanship of ASEAN this year, the work on RBC could usefully contribute to the ASEAN agenda and its current focus on sustainability.

Capacity building on RBC and due diligence, as well as supporting the development of an enabling environment for RBC, is also a key component of the project on RBC in Latin America and the Caribbean (LAC), which was launched in January 2019 and will benefit nine countries, seven of them Adherents to the Guidelines, and the related Recommendations on due diligence.<sup>12</sup> Another important element of the LAC project is strengthening the NCPs in Adherent countries. Work has already started to identify specific needs and areas for improvement of the seven NCPs.

### A new Action Plan to strengthen National Contact Points

Strengthening NCPs and providing support to the NCPs has been an ongoing effort by both Adherent governments and the Secretariat, especially since the review of the Guidelines in 2011. A major step was the adoption of the Action Plan to Strengthen National Contact Points (2016-18). This Action Plan has delivered concrete and positive outcomes and addressed a wide range of topics of central importance to NCPs, including: confidentiality and campaigning, mediation, RBC for institutional investors, due diligence in practice, etc.<sup>13</sup> See also the [Progress Report on National Contact Points for Responsible Business Conduct](#) for the 2019 MCM.

One notable indicator of success is that at the end of 2018, for the first time, all Adherent governments had an NCP in place and 47 of 48 submitted their annual report to the OECD. Moreover, 2018 also saw the highest number of cases submitted to NCPs in one year, a total of 52 cases. Less encouraging is that fact that only three out of eleven cases that went to mediation reached agreement between the parties. On the other hand, although few

<sup>11</sup> The same is likely to be the case in Viet Nam, following Council's agreement in February 2019 to invite Viet Nam, alongside Egypt, to engage in a country programme and the conclusion by the ERC in February 2019 to start discussing a country programme with Viet Nam.

<sup>12</sup> This four-year project, funded by the EU, is being carried out by the OECD, together with the ILO and the UN Office of the High Commissioner for Human Rights (OHCHR).

<sup>13</sup> A set of papers was also developed to draw together NCP practice, these focused on: NCP structures and activities; confidentiality and campaigning; NCP case coordination; recommendations and determinations.

agreements were reached, strong final statements were published for concluded cases.<sup>14</sup> In 2018, 90% of available final statements included recommendations and 45% included determinations on whether the enterprises in question observed the recommendations of the Guidelines.

The increasing complexity of cases submitted to NCPs continues to be a challenge, and some governments changed the structure of their NCPs in 2018, to, among other things, increase their capacity to better promote the Guidelines and handle cases. Among the NCPs with reinforced structures is that of Australia, which was also the first Adherent to receive a substantiated submission regarding the handling of a case, and was also the first Adherent government which carried out an independent review of its NCP.

The second Action Plan to Strengthen NCPs (2019-2021) has three tracks of activity which mirror the first Action Plan (peer reviews and capacity building; building functional equivalence; and building and improving tools). A new fourth track of activity was added to the Action Plan to cover promoting policy coherence by NCPs.

Since the last revision of the Guidelines there have been significant changes in a number of adhering governments, leading to better functioning NCPs, in particular those based in countries with high outward and inward investment. This is to be welcomed. Nevertheless, many NCPs today still face challenges since they are not adequately resourced or staffed to be able to carry out their mandate. Cases coming before NCPs are only set to increase in complexity and having access to the appropriate expertise is critical for the overall functioning of these agencies. In order for the entire community of NCPs to meet the expectations set out by their mandate, appropriate government support, resources and institutional arrangements are required so that their work can be carried out in a way that demonstrates the full potential of these unique agencies for responsible business conduct.

### **Promoting implementation of the Guidelines through regulation and policy coherence**

While the Guidelines and related due diligence instruments are non-binding tools, governments have, over the years, adopted legislation embedding many of the recommendations of the Guidelines and making them mandatory. One example is disclosure of non-financial information, which in some countries is now mandatory. A number of countries have also adopted legislation which makes reporting on due diligence mandatory. Following the adoption of the UK's Modern Slavery Act in 2016, Australia's Modern Slavery Act entered into force in 2019. France's 2017 Law on the duty of vigilance<sup>15</sup> makes the establishment of a due diligence plan by large companies mandatory, and similar initiatives are underway, e.g., in Switzerland. On 7 March 2019 the EU came

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<sup>14</sup> Closed specific instances include both specific instances that have been concluded during the year and those that were not accepted during the year. Specific instances concluded during the year are those that the NCP found to merit further examination after the initial assessment and that have subsequently been closed. For such specific instances the NCP will have offered its "good offices" (e.g. mediation/conciliation) to both parties. Specific instances not accepted during the year are those that the NCP found not to merit further examination and that have therefore been closed. Specific instances that are in progress are those that are not yet closed. These include submissions received by the NCP and under consideration, as well as those accepted by the NCP.

<sup>15</sup> *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.*

to a provisional political agreement on a Regulation for Sustainable Disclosure by EU Investors which will call on financial market participants and financial advisors to integrate consideration of environmental, social or governance (ESG) risks and opportunities in their processes and to report on their due diligence policies. It encourages financial market participants to take into account due diligence guidance for responsible business conduct developed by the OECD.

In addition to regulatory incentives, governments are also expected to lead by example, by including RBC criteria across policies in a coherent manner, and ensuring that expenditure of public funds and engagement with the private sector also takes RBC criteria into account. For example, a growing number of governments are now incorporating RBC into public procurement policies and practices. The joint project between the WPRBC and the Working Party on Leading Practitioners of Public Procurement (LPP) agreed to in 2018 will provide support to governments in this endeavour.

One area of significant public spending and public-private engagement is that of infrastructure. The growing demand for infrastructure investment, in particular in transport, energy and connectivity, has also increased calls for ensuring that infrastructure design and use meets RBC standards. An indicator for the important role of RBC in infrastructure development is the high number of NCP cases related to this issue. This role has also become evident in the OECD's Horizontal Project on Quality Infrastructure, and there is growing demand for guidance on how best to integrate the recommendations of the Guidelines and due diligence guidance, e.g. in relation to stakeholder engagement, human rights, labour rights and environmental protection into infrastructure development and implementation. The focus of the Japanese G20 Presidency on quality infrastructure is a good opportunity to raise the profile of the Guidelines and OECD RBC standards among G20 partners.

Other areas where policy coherence for RBC is important are development finance, export credits, trade and investment, corporate governance and taxation policies. Adherents are increasingly using these different policy areas, as well as National Action Plans on Business and Human Rights, to promote and incentivise responsible corporate behaviour. The [Recommendation of the Council on the Policy Framework for Investment \[OECD/LEGAL/0412\]](#) is a useful reference for governments for designing and implementing a strong RBC policy framework.<sup>16</sup> With the approval of the new mandate of the WPRBC on 27 November 2018 by the Investment Committee, the objective of promoting national and international policy coherence on RBC has for the first time been explicitly recognised in the WPRBC mandate. Through the WPRBC, the OECD can play an important role in responding to the need for alignment and coordination across government action on RBC. The OECD's value added is unique in this regard, as it covers a wide range of policy areas where technical experts from governments work together to share experiences and set international standards relating to economic policies that have a bearing on RBC.

## Proposed Action

In light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

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<sup>16</sup> See (OECD) 2015, Policy Framework for Investment, Chapter on Policies for enabling Responsible Business Conduct.

## THE COUNCIL

- a) noted document, in particular the report set out in the Appendix and agreed to its declassification;
- b) noted the continuous progress made by many Adherents in implementing the Declaration on International Investment and Multinational Enterprises and the Decision of the Council on the OECD Guidelines for Multinational Enterprises and in promoting responsible business conduct (RBC);
- c) encouraged Members to support the implementation of the new [Action Plan to strengthen National Contact Points \(NCPs\)](#) for 2019-21 and called on those Adherents whose NCPs do not yet meet the core criteria of visibility, accessibility, transparency and accountability, as set out in the Decision of the Council on the Guidelines for Multinational Enterprises, to engage with the Secretariat and the Network of NCPs to ensure they have a fully functioning NCP in place, with sufficient human and financial resources to effectively fulfil its responsibilities;
- d) encouraged Members to support the implementation plan for the OECD Due Diligence Guidance on RBC in order to promote the widest possible use of this tool by companies in their operations and in their supply chains;
- e) encouraged Members to continue strengthening policy coherence on RBC and invited the Working Party on Responsible Business Conduct, in cooperation with other OECD committees and subsidiary bodies, to support these efforts through, *inter alia*, analysing gaps, gathering examples of good practices and developing tools for governments;
- f) agreed to discuss the implementation of the OECD Guidelines for Multinational Enterprises and the related Decision of the Council on the occasion of the 2019 Annual Report on the OECD Guidelines for Multinational Enterprises.

## Chapter 1.

### National Contact Points for Responsible Business Conduct

#### 1.1. Introduction

Governments adhering to the OECD Guidelines for Multinational Enterprises (the Guidelines) are required to set up a National Contact Point (NCP) to further the implementation of the Guidelines.<sup>1</sup> NCPs have two main functions: 1) to promote the Guidelines and handle enquiries, which means that NCPs ensure that the Guidelines and the role of the NCP are known among relevant stakeholders and across government agencies; and 2) provide a grievance mechanism to resolve cases ("specific instances") relating to non-observance of the recommendations of the Guidelines.<sup>2</sup> The Council Recommendations relating to the due diligence guidance tools provide that NCPs, should contribute to their dissemination and active use by enterprises.<sup>3</sup>

This unique implementation mechanism distinguishes the Guidelines from other international RBC instruments and continues to play a critical role in ensuring that commitments under the Guidelines are met. There are currently 48 Adherent countries, and, for the first time in 2018, NCPs are in place in all Adherent countries.

#### 1.2. Overview of specific instances handled in 2018

Handling specific instances is a core pillar of the mandate of NCPs and a key feature of what makes the Guidelines unique. The Procedural Guidance provides that "NCP[s] will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with [...] issues raised [...]."<sup>4</sup> This mechanism has been part of the mandate of NCPs since the 2000 review of the Guidelines. Since 2000, the NCPs have handled over 425 specific instances.

In 2018, NCPs closed 34 specific instances; and 52 new specific instances were submitted. Closed specific instances include those submitted during and prior to 2018. The sections

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<sup>1</sup> Decision of the Council on the OECD Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)] (Decision on the Guidelines).

<sup>2</sup> Procedural Guidance, Decision on the Guidelines.

<sup>3</sup> For example, the 2018 Recommendation of the Council on the Due Diligence Guidance for Responsible Business Conduct recommends "that Adherents and where relevant their NCPs, with the support of the OECD Secretariat, ensure the widest possible dissemination of the Guidance and its active use by enterprises, as well as promote the use of the Guidance as a resource for stakeholders such as industry associations, trade unions, civil society organisations, multi-stakeholder initiatives, and sector-initiatives, and regularly report to the Investment Committee on any monitoring, dissemination and implementation activities."

<sup>4</sup> Decision on the Guidelines, Procedural Guidance, I (C)

below give an overview of outcomes of closed specific instances and trends identified for new specific instances submitted.

#### Box 1.1. Terminology for the status of specific instances

Specific instances **closed** during the year include both specific instances that have been concluded during the year and those that were not accepted during the year.

1. Specific instances **concluded** during the year are those that the NCP found to merit further examination after the initial assessment and that have subsequently been closed. For such specific instances the NCP will have offered its “good offices” (e.g. mediation/conciliation) to both parties.
2. Specific instances **not accepted** during the year are those that the NCP found not to merit further examination and that have therefore been closed.

Specific instances that are **in progress** are those that are not yet closed. These include submissions received by the NCP and under consideration, as well as those accepted by the NCP.

#### 1.2.1. Key outcomes of specific instances

A total of 34 specific instances were closed: 21 that were already in progress as of January 2018 and 13 new ones which were submitted during 2018. Table 1.2 provides an overview of closed specific instances in 2018. Closed specific instances refers both to concluded cases and those that are not accepted for further examination (see Box 1.1). Of the specific instances in progress as of January 2018, seven were submitted prior to 2017.

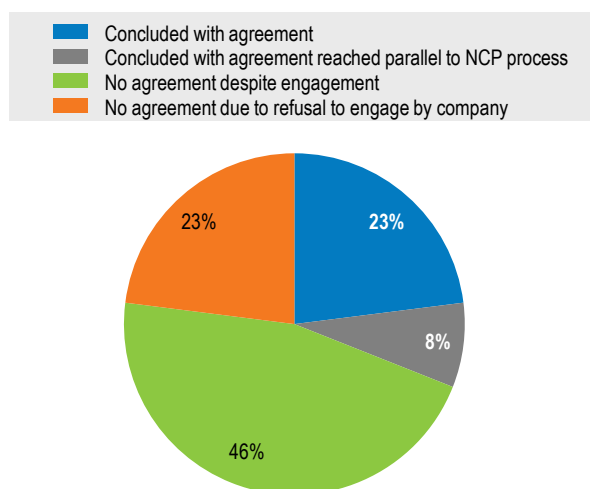
Out of the 34 specific instances closed in 2018, 13 were concluded (38%) and 20 were not accepted (59%). One additional specific instance was withdrawn by the submitter prior to the initial assessment by the NCP (3%).

Of the 13 concluded specific instances, eleven underwent mediation which in 3 cases resulted in some form of agreement between the parties through the NCP process<sup>5</sup> and 1 which resulted in some form of agreement between the parties in parallel to the NCP process. Seven specific instances that went to mediation did not result in agreement despite the engagement of both parties in the process.

For the remaining two concluded specific instances no mediation took place as companies in question declined to participate.<sup>6</sup>

<sup>5</sup> “Some form of agreement” means that the parties either reached full or partial agreement on the issues raised in the complaint or ways forward

<sup>6</sup> Molinos Río de la Plata and Maxiconsumo (Argentina, 2018); Vale and BHP Billiton and SITICOP, CNQ-CUT, BWI and IndustriALL (Brazil, 2015)

**Figure 1.1. Outcomes of specific instances concluded in 2018****1.2.2. Agreement between parties**

Agreement was reached in 4 specific instances, 3 within the NCP process and another in parallel to the specific instance procedure accounting for 31% of all concluded cases (see Figure 1.1) and 36% of all cases where mediation occurred. This is a decrease from 2017 where parties reached an agreement in eight specific instances through the NCP and in another two in parallel to the specific instance procedure, accounting for 83% of all concluded specific instances where mediation occurred (12 in total). In addition, in one specific instance which was not formally accepted the NCP nevertheless provided mediation resulting in agreement between the parties (see Box 1.2).

**Box 1.2. Agreement attained through the National Contact Point mechanism**

**Corning Inc. and the Workers Union of Corning Inc.:** On 17 August 2017, the Workers' Union of Corning Inc. submitted a specific instance with the Korean NCP alleging that Corning Inc. did not respect the Employment and Industrial Relations chapter of the Guidelines by not facilitating collective bargaining. The NCP organised a mediation with a member of the NCP and two independent experts. The mediation resulted in an agreement between the parties on all of the issues tabled for discussion including: deduction of union dues, the retroactive application of wage increases, workers' leave and space for a union office. This was the first mediation led by the NCP of Korea resulting in full agreement between the parties.

**Nuon Energy N.V. and/or Nuon Wind Development B.V. (Nuon), and Stichting Hou Friesland Mooi:** On 12 December 2017, Stichting Hou Friesland Mooi (HFM) submitted a specific instance to the Dutch National Contact Point. Alleging non-observance of the Human Rights and Environment chapters of the Guidelines related to the scaling up of an existing wind farm by Nuon, a Dutch utility company. The NCP organised a mediation which resulted in agreement on how stakeholders would be engaged in the next phase of the project by Nuon. The NCP noted it would follow up within one year to assess implementation of the agreement.



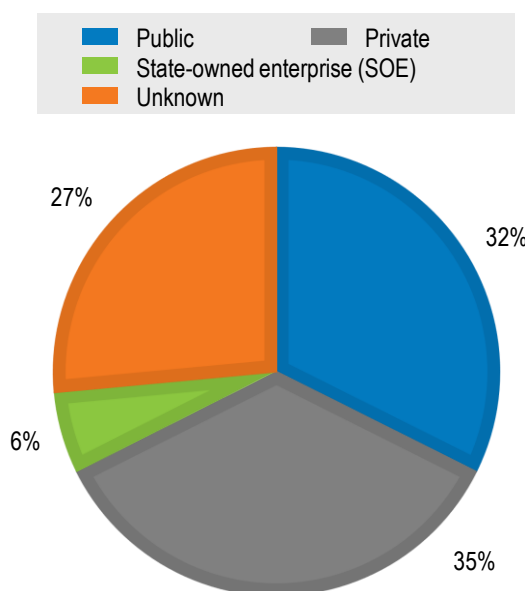
**Environmental issues in Spain concerning a Spanish multinational energy supplier and an individual:** On 31 July 2017, an individual filed a claim with the Spanish NCP regarding a potential breach of the Guidelines by a Spanish multinational energy supplier. The submitter alleged that the company had not acted in line with the Guidelines in relation to the maintenance work on a farm owned by the claimant. The NCP did not formally accept the submission due to an internal assessment that the issues raised were outside the mandate of the NCP. The NCP nevertheless mediated a dialogue between the parties resulting in an agreement between the parties under which company responded to all the requests of the submitter.

### 1.2.3. Type of companies involved in specific instances

The specific instances closed in 2018 involved primarily large enterprises (defined as companies employing over 250 employees), accounting for 23 (68%) of all closed specific instances.<sup>7</sup> Information is unavailable with respect to the size of the company involved in 8 specific instances (24%), as some final statements do not identify the name of the enterprises involved.

Companies involved in specific instances were in nearly equal parts publically listed entities representing 11 (33%) of all closed specific instances, and privately held companies also representing 12 (35%). Two of the specific instances involved state-owned enterprises (SOEs) and 1 involved a trade union. Information on the identity of 8 (24%) of the companies is unavailable (see Figure 1.2). This year saw a rise in cases involving privately owned companies compared to publically listed companies which represented the majority in 2017.

Figure 1.2. Type of companies/organisations involved in specific instances in 2018



<sup>7</sup> The most frequent upper limit designating an SME is 250 employees. See OECD Glossary of Statistical Terms, "Small and Medium Sized Enterprises." <https://stats.oecd.org/glossary/detail.asp?ID=3123>



Two specific instances closed in this period involved Fortune 500 companies.<sup>8</sup> The known headquarter locations of companies involved in specific instances cover 16 countries (see Table 2.1).

**Table 1.1. Known headquarter locations of companies/organisations involved in specific instances closed in 2018**

Headquarter location of company/organisation	Number of specific instances	Headquarter location of company	Number of specific instances
United states	4	Brazil	1
Democratic Republic of the Congo	3	Denmark	1
Argentina	2	France	1
Australia	2	Germany	1
Canada	2	Korea	1
Italy	2	Netherlands	1
Monaco	2	Norway	1
Belgium	1	Spain	1

#### 1.2.4. Final statements

The Procedural Guidance provides that NCPs will "at the conclusion of the [specific instance] procedures and after consultation with the parties involved, make the results of procedures publically available [...]"<sup>9</sup>. In particular, the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides that when the NCP "decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved"<sup>10</sup> and "if the parties fail to reach agreement or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith the NCP will make recommendations as appropriate in the public statement."<sup>11</sup> Determinations (to indicate that a company has or has not observed the recommendations of the Guidelines) can also be made by NCPs.

Statements by the NCP constitute an important tool to support the effectiveness of the Guidelines and enhance transparency, accountability and visibility of NCPs. Substantiated decisions, recommendations and determinations, by the NCP can help companies and stakeholders better understand the Guidelines and what steps, actions, policy measures they can take to fully observe them. Some NCPs have also shared that, in certain contexts, the

<sup>8</sup> Fortune 500 is a list compiled by Fortune magazine ranking the top 500 public corporations of the US as measured by their gross revenue. [USPages.com](https://www.uspages.com/fortune500.htm), "Fortune500", [www.uspages.com/fortune500.htm](https://www.uspages.com/fortune500.htm)

<sup>9</sup> Decision on the Guidelines, Procedural Guidance, I. C (3).

<sup>10</sup> Para 32.

<sup>11</sup> Para 35.

prospect of the NCP issuing a determination could be a disincentive for companies to engage with the NCP.

Final statements were published for 25 (74%) specific instances that were closed in 2018. Out of 9 specific instances for which final statements were not published 7 were not accepted for further examination during the initial assessment stage.

Ten of the 11 final statements published for concluded cases included recommendations (91%).<sup>12</sup> This is an increase from 2017 where 70% of final statements published for concluded cases included recommendations. Recommendations are especially useful in cases where parties have not been able to engage or reach agreement (see Box 1.3).

#### **Box 1.3. Examples of recommendations in NCP final statements**

**Australian and New Zealand Banking Group Limited (ANZ Group) and Equitable Cambodia (EC) and Inclusive Development International (IDI):** On 7 October 2014 a specific instance was submitted to the NCP of Australia by ED and IDI regarding ANZ's involvement with Phnom Penh Sugar (PPS), the developer of a sugar plantation and refinery project in Cambodia. The project is alleged to have forcibly displaced 681 families and dispossessed them of their land and productive resources. Mediation was concluded in December 2015, as the parties were unable to reach an agreement. In its final statement the NCP concluded that in this case "it is difficult to reconcile ANZ's decision to take on PPS as a client with its own internal policies and procedures—which appear to accord with the OECD Guidelines—as the potential risks associated with this decision would likely have been readily apparent." The NCP also included a range of recommendations including strengthening the application of its due diligence arrangements and establishing a grievance resolution mechanism.

**Vinci and Vinci Airports and ITUC in Cambodia:** On 27 July 2017, the French NCP received a specific instance submitted by two labour confederations regarding the activities of the Cambodian subsidiary of Vinci Airports in Cambodia. The facts concerned a labour dispute that started in 2012 when Cambodia Airports introduced a new method of organising work under a "multi-tasking scheme". The NCP determined that with respect to many of the issues raised Vinci had respected the recommendations of the Guidelines. However in its final statement it included eight recommendations targeted at strengthening Vinci's due diligence process and engagement with workers. It will follow up on the implementation of its recommendations within one year.

**Drummond Ltd. and the National Trade Union of Diseased and Disabled Workers of the Mining Sector (SINTRADEM); the General Federation of Labor Cesar's Office (CGT Cesar) and the General Confederation of Labor Colombia (CGT Colombia):** On 29 July 2016, the Colombian NCP received a submission by the trade unions alleging that Drummond, a US coal company, had violated the right to freedom of association and collective bargaining of unionized workers, and of the worker's human rights (specifically, the right to health). The NCP organised a series of mediation meetings which failed to result in agreement between the parties. In its final statement the NCP included several detailed recommendations to both parties including strengthening communication channels that follow-up on diseased and disabled worker cases, and promoting the continuation of a 'self-care at work' program, in order to advance in the construction of a safety oriented culture within the company.

<sup>12</sup> Recommendations were issued by the NCPs of Argentina, Australia, Colombia, Denmark, France, Germany, Netherlands, Norway, United States

Determinations of whether an enterprise observed or did not observe the Guidelines were included in 5 final statements (45% of all final statements published for concluded cases and 20% of all final statements published in 2018).<sup>13</sup> These included both determinations that a company did not observe the Guidelines as well as determinations that the Guidelines had been observed (see Box 1.4).

#### Box 1.4. Examples of determinations in NCP final statements

**FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters vs Bresser:** On 28 July 2017, three NGOs jointly submitted a specific instance to the Dutch NCP. In their submission, they noted that Bresser, an SME specialised in the relocation and maintenance of buildings and structures, failed to work with the local population before relocating an ancient tomb, in violation of the community's right to cultural heritage. All parties agreed to engage in mediation facilitated by the Dutch NCP. On 20 August 2018, the Dutch NCP issued a final statement concluding that Bresser did not "satisfy the due diligence criteria of the OECD Guidelines," and that the right to culture "should be considered a human right under the OECD Guidelines." This was the first specific instance to recognise cultural rights as human rights.

**DNO ASA and Industri Energi:** On 8 November 2016, the Norwegian trade union Industri Energi filed a submission concerning the Norwegian company DNO ASA. The key issue in the submission was an alleged lack of prior notice and consultation between DNO and the employee representatives in Yemen in connection with collective dismissals and suspension of production in the war-like situation that prevailed in 2015. The NCP conducted a mediation between the parties which failed to produce an agreement. In its final statement for the specific instance the NCP concludes that DNO has not met the expectations expressed in the Guidelines with respect to prior notice and consultation of employees during operation changes to an enterprise. It recommended that DNO in future should carry out risk-based due diligence and enhance the transparency of its guidelines and procedures for responsible business conduct.

#### 1.2.5. Follow-up

Following up on recommendations in final statements can be a valuable exercise in ensuring agreements reached through specific instance proceedings are implemented and in tracking whether recommendations are being implemented (see Box 1.5). In 2018, the NCPs of Austria, Belgium, Canada, Denmark, France, the Netherlands, Spain, Switzerland and the United Kingdom issued follow-up statements relating to 12 specific instances. In addition, plans for follow up or monitoring of recommendations was included in final statements for 10 out of 13 concluded specific instances (77%). The rate of references to follow-up in final statements doubled from that reported in 2017 (35%). Follow-up has been identified as a valuable activity by parties to specific instances and in some situations has resulted in stronger relationships between the parties and additional positive outcomes. Further analysis on the variety of approaches to follow-up and its impact is ongoing.

<sup>13</sup> Determinations were made by the NCPs of Australia, Denmark, France, Netherlands, Norway

### Box 1.5. Follow-up in NCP specific instances

**PWT Group and Clean Clothes Campaign Denmark and Active Consumers:** On 12 December 2014, the NGOs Clean Clothes Campaign Denmark and Active Consumers submitted a specific instance to the Danish NCP alleging that PWT Group had failed to carry out due diligence in relation to its supplier, the textile manufacturer New Wave Style Ltd. which was located in the Rana Plaza. A final statement for the specific instance was issued on 7 October 2016 in which the NCP included a series of recommendations and noted it would follow up within one year. A follow-up statement was issued 17 January 2018. In it the NCP concluded that PWT has complied with all recommendations issued including through making significant changes to its management and risk management systems to implement the Guidelines in its own operations and vis-à-vis its suppliers; revising its CSR policy and engaging systematically in implementing its code of conduct among its suppliers.

**Andritz Hydro GmbH and Finance and Trade Watch Austria** In April 2014, the Austrian NCP received a submission from nine NGOs related to ANDRITZ HYRO's supply of hydropower-turbines and its role in the construction and operation of the Xayaburi hydropower project in Lao People's Democratic Republic. After a mediation led by the NCP, the parties came to an agreement in which ANDRITZ HYRO committed to develop policies and procedures in relation to the implementation of human rights and environmental standards and to exchange information and involve relevant stakeholder groups in the process. The NCP issued a follow up statement in October 2018 and noted that since February 2018 four follow-up meetings have taken place to discuss mitigate efforts with respect to the Xayaburi project. ANDRITZ HYRO has also engaged with the parties and expert and NGOs to develop a new code of conduct based on international principles which will be valid for all companies in the ANDRITZ GROUP.

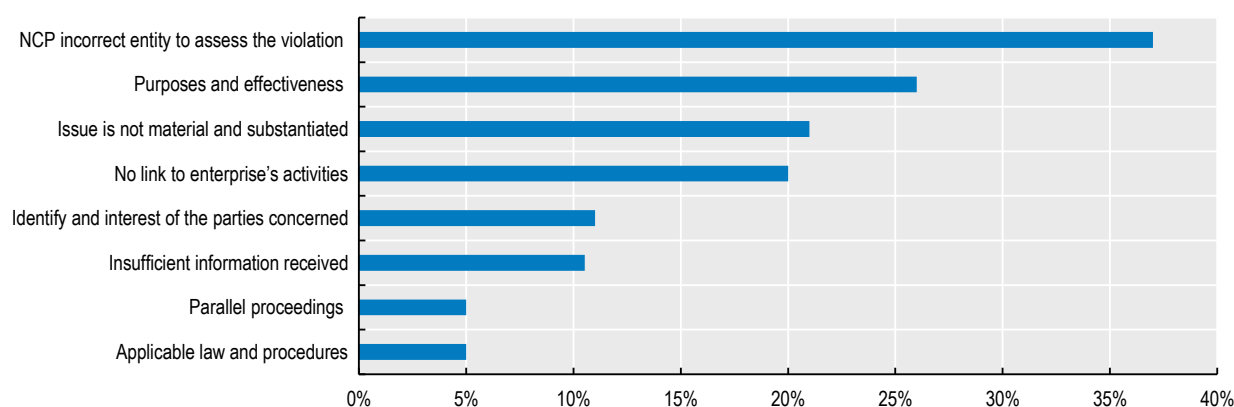
#### 1.2.6. Specific instances not accepted for further examination

As noted above 20 specific instances, 59% of specific instances closed in 2018 were not accepted for further examination. This rate exceeds historical rates of non-acceptance which have been between 25% and 40% since 2001.<sup>14</sup> One reason for the increased rate of non-acceptance may be linked to increase reporting of specific instances which fall outside the mandate of the NCP.<sup>15</sup>

The main reason for not accepting specific instances in 2018 was that the NCP considered that it was not the appropriate entity to consider the submission, 9 specific instances (37%). The second most prevalent reason, in 5 specific instances, (26%) was that the NCP concluded that considering the submission would not further the purpose or effectiveness of the Guidelines. This differs from 2017 during which a lack of materiality or substantiation was the leading reason for rejection of submissions (see Figure 1.3).

<sup>14</sup> OECD (2016)), Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015 [www.oecd.org/corporate/mne/15-years-of-ncps.htm](http://www.oecd.org/corporate/mne/15-years-of-ncps.htm).

<sup>15</sup> For example in 2018 Denmark reported 8 specific instances not accepted for further examination. Many of these were rejected within a few weeks based on the fact that the issues raised fell outside the scope of the Guidelines and were referred to other agencies.

**Figure 1.3. Reasons for non-acceptance of specific instances in 2018**

### 1.2.7. Duration of procedures

The Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides an indicative timeframe of three months for completing the initial assessment<sup>16</sup>. Of the 34 specific instances closed in 2018, an initial assessment was completed within three months in only 9 cases (26%). In 12 specific instances (35%) the initial assessment took between 3-6 months. In 4 specific instances (12%) it exceed one year. NCPs have identified this timeframe as a challenge. On the other hand, stakeholders have identified delays in the assessment as a shortcoming of the mechanism and noted that completing this process sooner would make the system more impactful and effective.

The Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides that “[a]s a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.”<sup>17</sup> In most specific instances closed in 2018, 26 (76%) proceedings were closed within a year. In 8 specific instances (24%), proceedings lasted for over a year, and in 3 of these cases they lasted several years. In some cases delays reflect extended follow-up activities, challenges in handling complex and transnational issues, or multiple mediation or dialogue sessions, sometimes requested by parties to specific instances. In some cases delays reflect capacity issues at the level of the NCP. In 2018 one case was withdrawn by the submitter because it had been originally submitted in 2011.<sup>18</sup>

<sup>16</sup> Para. 40.

<sup>17</sup> Para. 41.

<sup>18</sup> Barrick Exploraciones Argentina, S.A. and Minera Argentina Gold, S.A and Foro Ciudadano de Participación para la Justicia y los Derechos Humanos (FOCO) (2011)

**Table 1.2. Status of closed specific instances in 2018**

7	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status
1	Barrick Exploraciones Argentina, S.A. and Minera Argentina Gold, S.A and Foro Ciudadano de Participación para la Justicia y los Derechos Humanos (FOCO)	Argentina	Argentina	2011-2018	Withdrawn by the party due to delays.
2	TELECOM Argentina S.A. and Central de Trabajadores de la Tecnología y la Comunicación (CEPETEL)	Argentina	Argentina	2012-2018	Not accepted for further examination.
3	Molinos Río de la Plata S.A and Maxiconsumo S.A	Argentina	Argentina	2018-2018	Concluded without agreement between parties.
4	ANZ Banking Group - Inclusive Development International and Equitable Cambodia	Australia	Cambodia	2014-2018	Concluded without agreement between parties.
5	Complaint regarding an enterprise operating in the scientific services sector in Mali	Australia	Mali	2017-2018	Not accepted for further examination.
6	Monaco and Congolese companies and ADIMED	Belgium	Democratic Republic of the Congo	2018-2018	Not accepted for further examination.
7	Van Oord and NGOs	Brazil	Brazil	2015-2018	Concluded with agreement in parallel process
8	ENI S.p.A. and Douglas Flinto	Brazil	Brazil	2018-2018	Not accepted for further examination.
9	BHP-Billiton, Vale S.A. and BWI, IndustriALL, SITICOP, CNQ-CUT	Brazil	Brazil	2018-2018	Concluded without agreement between the parties.
10	Banro Corporation and a Former Employee	Canada	Democratic Republic of the Congo	2017-2018	Not accepted for further examination.
11	Drummond Ltd. and the National Trade Union of Diseased and Disabled Workers of the Mining Sector (SINTRADEM), the General Federation of Labor Cesar's Office (CGT Cesar), and the General Confederation of Labor Colombia (CGT Colombia)	Colombia	Colombia	2016-2018	Concluded without agreement between parties.
12	ExxonMobil de Colombia S.A. and National Trade Union of ExxonMobil Colombia Workers (SINTRAEXXOM)	Colombia	Colombia	2017-2018	Not accepted for further examination.
13	Danish Ministry of Defence concerning the Lauge Koch vessel	Denmark	Denmark	2017-2018	Concluded with agreement between parties.
14	Due diligence of a company financing a mining company in Armenia	Denmark	Armenia	2017-2018	Not accepted for further examination.
15	Danish educational institution's policy and respect to human rights	Denmark	Denmark	2017	Not accepted for further examination.
16	Danish enterprise concerning delayed delivery of ordered product	Denmark	Denmark	2017	Not accepted for further examination.
17	Danish MNE operating in Malaysia concerning abuse of position by a superior	Denmark	Malaysia	2018	Not accepted for further examination.

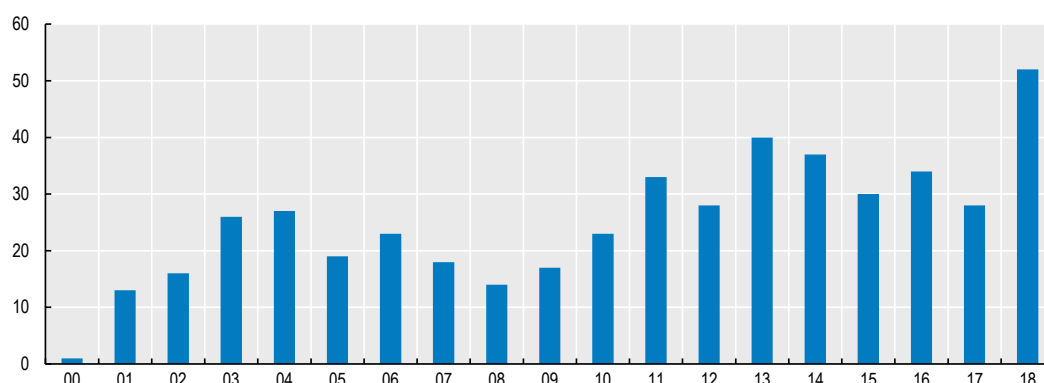
7	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status
18	Danish consultancy enterprise concerning termination of employment contract	Denmark	Denmark	2018	Not accepted for further examination.
19	Danish enterprise concerning publication of a customer review	Denmark	Denmark	2018	Not accepted for further examination.
20	Danish Union's policy and respect to human rights	Denmark	Denmark	2018	Not accepted for further examination.
21	Danish enterprise concerning fraud	Denmark	Denmark	2018	Not accepted for further examination.
22	VINCI AIRPORTS CAMBODIA and International Trade Union Confederation (ITUC-CSI), Cambodia Labour Confederation (CLC)	France	Cambodia	2017-2018	Concluded without agreement between parties.
23	Monaco and Congolese companies and ADIMED	France	Democratic Republic of the Congo	2018-2018	Not accepted for further examination.
24	Pharmakhina S.A. and ADIMED	Germany	Democratic Republic of the Congo	2018-2018	Not accepted for further examination.
25	TÜV Rheinland and European Center for Constitutional and Human Rights	Germany	Bangladesh	2016-2018	Concluded without agreement between parties.
26	Italtel S.p.A. and FIDH et al.	Italy	Iran	2017-2018	Not accepted for further examination.
27	Bekaert Figline and FIOM-CGIL Firenze	Italy	Belgium	2018-2018	Not accepted for further examination.
28	Corning Precision Materials	Korea	Korea	2017-2018	Concluded with agreement between parties.
29	MiruSystems and Samy Badibanga Ntita	Korea	Korea	2018-2018	Not accepted for further examination.
30	Nuon Energy N.V. and Hou Friesland Mooi	Netherlands	Netherlands	2017-2018	Concluded with agreement between parties.
31	Bresser and FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters	Netherlands	Turkey	2017-2018	Concluded without agreement between parties.
32	DNO ASA and Industri Energi	Norway	Yemen	2016-2018	Concluded without agreement between parties.
33	Environmental issues in Spain concerning a Spanish multinational energy supplier and an individual	Spain	Spain	2017-2018	Not accepted for further examination but agreement between the parties through mediation.
34	The Coca-Cola Company and IUF	United States	Indonesia	2017-2018	Concluded without agreement between parties.
	Specific instance	Lead NCP	Host country(ies)	Year submitted-closed	Status



### 1.3. Trends of new specific instances

A total of 52 new specific instances were submitted to NCPs in 2018 compared to 28 submitted in 2017. This represents a record high for annual submission and is significantly higher than historical rates of submissions since 2000 (see Figure 1.4).

**Figure 1.4. Number of specific instances submitted annually 2000-2018**



In 2018, 25 NCPs received specific instance submissions, representing 52% of all NCPs (see Table 1.3).

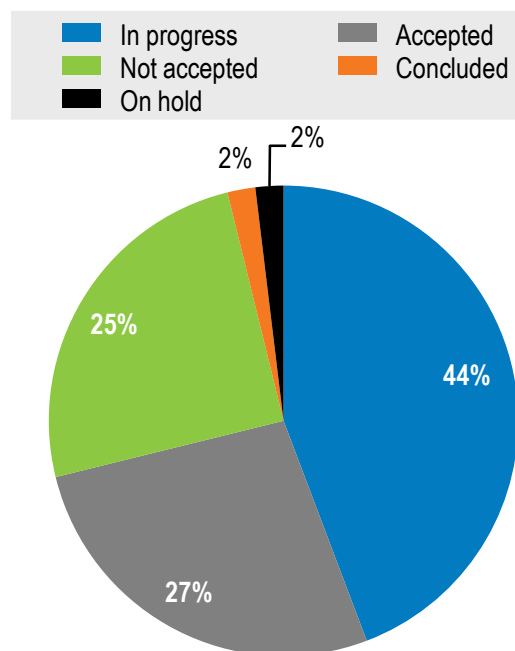
**Table 1.3. Number of specific instances received by NCPs in 2018**

National Contact Point	Number of specific instances	National Contact Point	Number of specific instances
Denmark	5	United Kingdom	2
Netherlands	5	United States	2
Brazil	4	Canada	1
France	4	Colombia	1
Italy	3	Czech Republic	1
Japan	3	Ireland	1
Argentina	2	Luxembourg	1
Belgium	2	Morocco	1
Chile	2	New Zealand	1
Germany	2	Norway	1
Korea	2	Peru	1
Poland	2	Switzerland	1
Spain	2		



At the end of 2018, the status of the 52 specific instances submitted was the following: 23 were in progress (initial assessment had not yet been completed), 13 had been closed and not accepted for further examination, 1 had been accepted for further examination and concluded, 14 had been accepted for further examination and 1 was on hold (see Figure 1.5).

**Figure 1.5. Status of specific instances submitted in 2018**



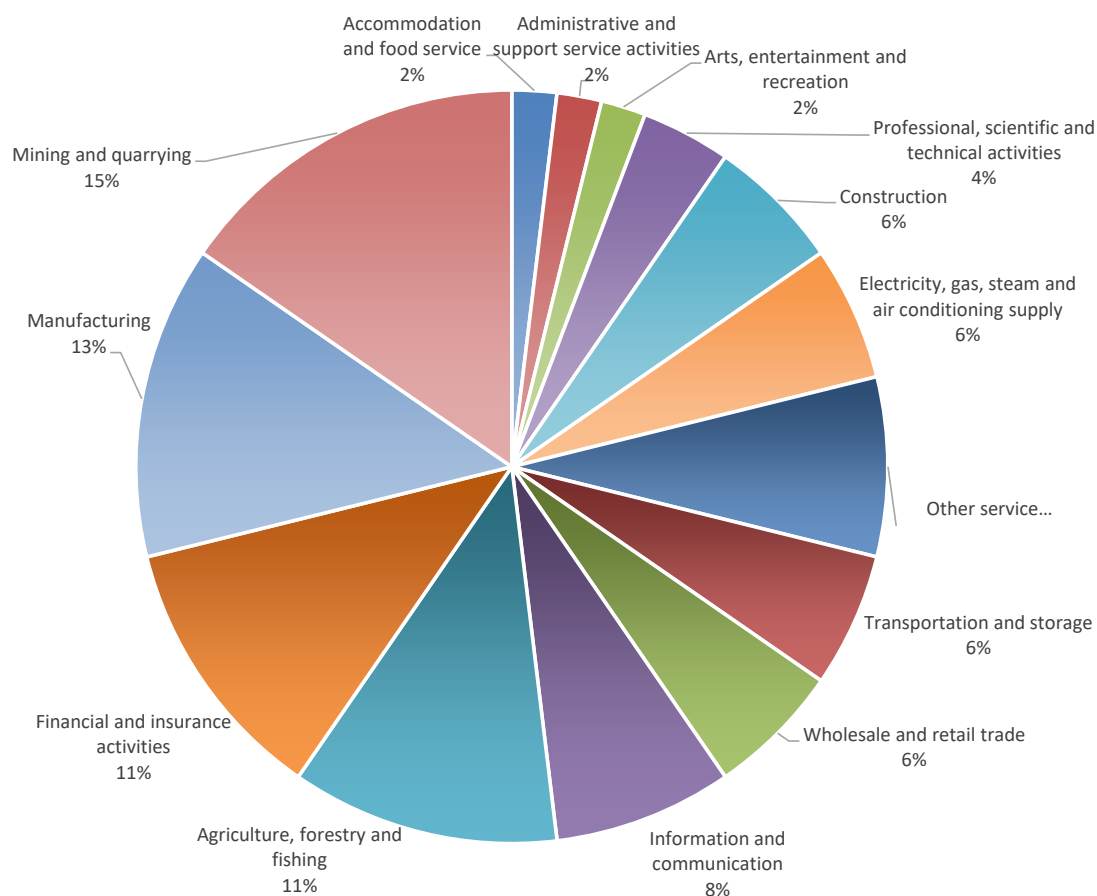
The Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides that the NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues.<sup>19</sup> It also provides that when issues arise from an enterprise's activity that takes place in several Adherent countries or from the activity of a group of enterprises organised as a consortium, joint venture or similar form, based in different Adherent countries, the lead NCP should consult with other NCPs.<sup>20</sup> 15 specific instances, 29% of those submitted in 2018, are being handled with the help of supporting NCPs. This is higher than in 2017 where 18% of specific instances filed were being handled with the help of a supporting NCP.

### ***1.3.1. Specific instances by industry sectors***

The most prevalent sectors referenced in specific instances submitted in 2018 were mining and quarrying, followed by manufacturing, agriculture and the financial sector. (See Figure 1.6). This is in line with broad historic trends but represents a decrease in submission involving the financial sector which for the period of 2015-2017 most represented sector, accounting for approximately 20% of new submissions every year. However, in 2018 several submissions involving financial misconduct were filed (see Box 1.6).

<sup>19</sup> Para 23.

<sup>20</sup> Para 24.

**Figure 1.6. Specific instances submitted in 2018 by industry sector**

### *1.3.2. Chapters of the Guidelines cited in specific instances*

The chapter on General Policies was the most frequently referenced chapter in 2018, 32 of the specific instances submitted (63%). This can be partly attributed to the fact that the due diligence expectation on companies is included in the chapter on General Policies and issues around due diligence processes often underpin adverse environmental and social impacts. Some submissions raised issues related to the due diligence of organisations whose mandate involves promoting strong social and environmental performance of companies (see Box 1.6).

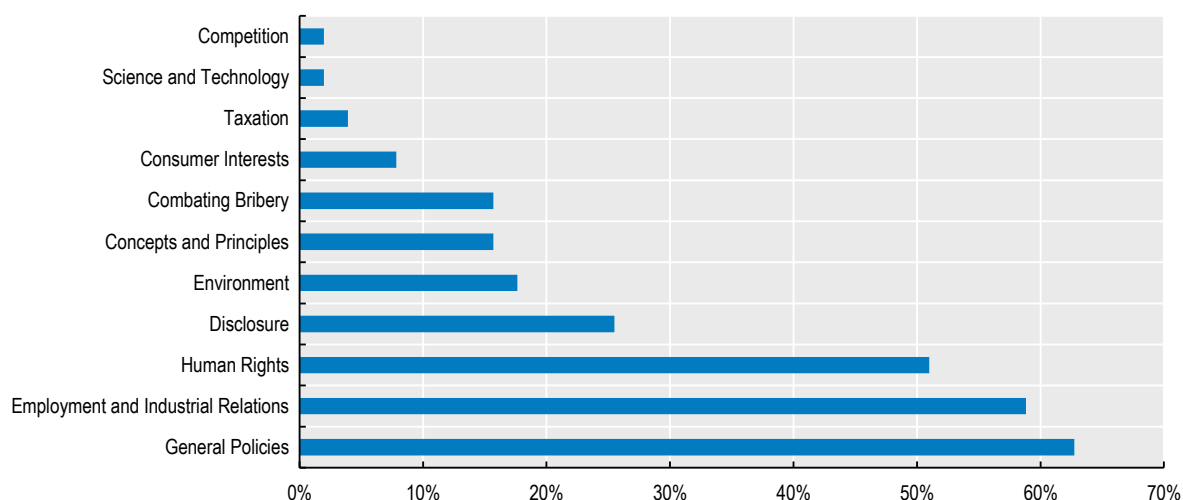
The second most frequently cited chapter was that on Employment and Industrial Relations followed by the chapter on Human Rights. This is broadly in line with trends in 2017 and 2016. In 2018 all chapters of the Guidelines were cited at least once in new submissions. This is different from previous years where certain chapters, notably the chapter on Competition, were not referenced in any new submissions <sup>21</sup> (see Figure 1.7).

<sup>21</sup> The Chapter on Competition was not referenced in specific instances submitted in 2017, 2016 or 2015.

**Box 1.6. Specific instances involving social auditors and certification organisations**

**TÜV Rheinland AG et al. and European Center for Constitutional and Human Rights ECCHR et al.:** In June 2018, the German NCP published its final statement regarding issues brought by ECCHR concerning a social audit by TÜV India of Phantom Apparel Ltd in Dhaka, Bangladesh in June 2012. The submitters alleged that TUV India – a subsidiary of TÜV Rheinland – did not comply with the Guidelines in conducting the social audit with regards thoroughly verifying whether Phantom was engaged in human rights abuses, and the safety in its factory (Rana Plaza). The NCP offered mediation however the parties were not able to reach a common understanding on how social audits conducted by private sector companies should be conducted and improved. In its final statement, the NCP recommends that parties continue to engage on the subject matter and asked both parties to report back within one year.

**Roundtable on Sustainable Palm Oil (RSPO) and TUK Indonesia:** On 25 January 2018, the NGO Transformation for Justice (TuK Indonesia) submitted a specific instance to the Swiss NCP on behalf of communities in West Kalimantan, Indonesia. The submission concerns an unsolved land conflict in Indonesia, which is being dealt by the RSPO proper complaint mechanism. The submitting party asks the Swiss NCP to support an elaboration of an action plan between TUK Indonesia and RSPO regarding the resolution of this ongoing RSPO complaint. The Swiss NCP accepted the submission for further examination on 31 May 2018, and is currently facilitating dialogue between the parties.

**Figure 1.7. Specific instances by Guidelines chapter in 2018****1.3.3. Host countries**

Specific instances submitted in 2018 dealt with issues involving companies in 34 host countries. 29 (57%) of the specific instances submitted in 2018 address issues arising in one of the 48 adherent countries and 23 (44%) address issues arising in non-adherent countries. In total, since the year 2000 NCPs have handled specific instances involving issues arising in over 100 countries and territories.

### 1.3.4. Submitters of specific instances

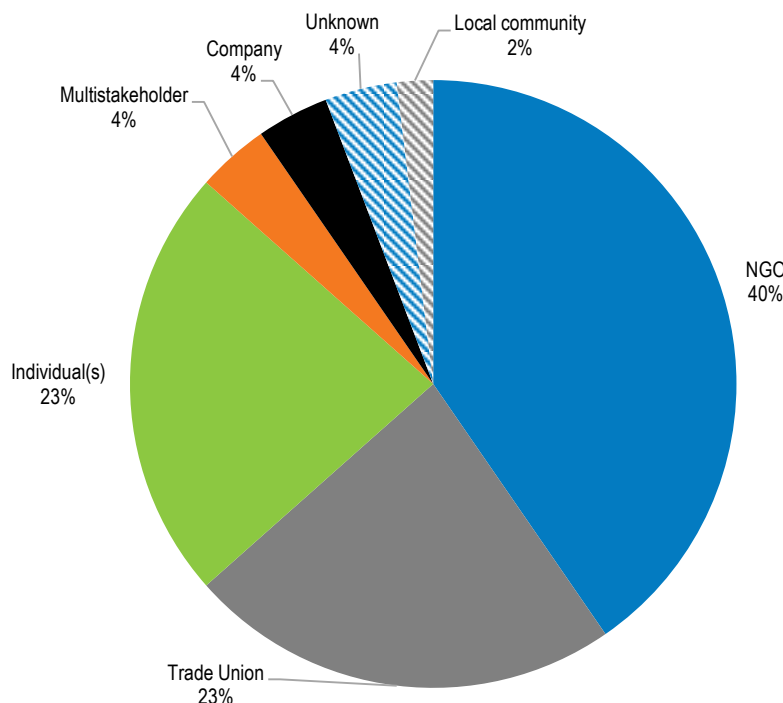
As in previous years, NGOs have continued to be the primary users of the NCP system. In 2018, their share of submissions was 41% (21 submissions) which is slightly less than in previous years where they have accounted for approximately 50% of all submissions. Trade unions made 12 submissions (23%) and individuals made 12 submissions (23%). (See Figure 1.8). This year submissions were also filed by companies regarding the conduct of other companies, and in one situation, a specific instance was initiated by the NCP itself (Denmark, see Box 1.7).<sup>22</sup>

#### Box 1.7. Self-initiated NCP specific instances

##### **Danish Ministry of Defence concerning the Lauge Koch vessel (NCP of Denmark):**

This case was initiated by the NCP at its own initiative. The Danish NCP rules of procedure are unique in that they provide that any member of the NCP may instigate a case be reviewed by their own initiative. This case concerned the use of forced labour from North Korea in the building of an inspection vessel – commissioned by the Danish ministry of defence during 2014 and 2015 – at a shipyard in Poland. The NCP concluded in its final statement that the ministry did not carry out due diligence as expected and made a number of recommendations to ensure that the ministry's policies and due diligence processes align with the recommendations of the Guidelines.

**Figure 1.8. Submitters of specific instances in 2018**



<sup>22</sup> Danish Ministry of Defence concerning the Lauge Koch vessel.

## 1.4. NCP structures and activities

### 1.4.1. Structures and locations

As established by the Decision on the Guidelines, while Adherent governments have flexibility in how to structure their NCP, they are under an obligation to make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities.<sup>23</sup> Key among these responsibilities is:

- Seeking the active support of social partners;
- Dealing with the broad range of issues covered by the Guidelines;
- Operating in an impartial manner; and
- Developing and maintaining relations with stakeholders.<sup>24</sup>

Governments are also expected to ensure that their NCP can operate in accordance with the core criteria of visibility, accessibility, transparency and accountability.<sup>25</sup> When handling specific instances, NCPs should also observe the principles of impartiality, predictability, equitability and compatibility with the Guidelines.<sup>26</sup>

In 2018, NCPs were operating with the following four decision-making structures:

- **Individualised decision-making:** Individualised decision-making means decisions are either by one individual in a single ministry, or by a group of individuals belonging to the same service in the same ministry.
  - In 2018, 20 NCPs were operating with individualised decision-making: Australia, Austria, Chile, Colombia, Estonia, Greece, Iceland, Ireland, Israel, Italy, Kazakhstan, Luxembourg, Mexico, New Zealand, Peru, Poland, Turkey, Ukraine, the United Kingdom and the United States.
- **Inter-ministerial decision-making:** Inter-ministerial decision-making means decisions are made by a group of representatives from several ministries or government agencies.
  - In 2018, the 16 NCPs with inter-ministerial decision-making included the NCPs of Argentina, Brazil, Canada, Costa Rica, Egypt, Germany, Hungary, Japan, Jordan, Korea, Morocco, Portugal, Romania, Slovenia, Spain and Switzerland. The number of entities represented on inter-ministerial decision-making bodies ranges from two (Portugal) to 12 (Brazil).
- **Multipartite decision-making:** Multipartite decision-making means decisions are taken by a group composed of members of governments and stakeholders.
  - In 2018, there were eight NCPs with multipartite decision-making. Five were tripartite, i.e. they include representatives of government, business and trade unions (Belgium, France, Latvia, Sweden and Tunisia). Three were operating with a quadripartite decision-making structure by including representatives of civil society organisations (Czech Republic, Finland and the Slovak Republic).

<sup>23</sup> Decision on the Guidelines, I (4).

<sup>24</sup> See Decision on the Guidelines, Procedural Guidance, I. A.

<sup>25</sup> Decision on the Guidelines, Procedural Guidance, I.

<sup>26</sup> Decision on the Guidelines, Procedural Guidance. Section C.

- **Expert-based decision-making:** Under this model, the NCP's decisions are made by experts who are external to governments. NCPs with expert-based decision-making are generally set up as entities independent of the government, although they are dependent upon the government for funding and for appointment of the experts. Experts may be required to act in a personal capacity and not to represent particular interests or on the contrary may represent the views of the organisations that nominated them.
  - In 2018, the NCPs of Norway, Denmark, Lithuania and the Netherlands were operating with expert-based decision-making.

Each Adherent Government can also decide on the location of its NCP, bearing in mind the core criteria for functional equivalence. In 2018:

- 31 NCPs were located in Ministries of Economy (including Ministries of Trade, Investment, Business etc.);
- 7 NCPs were located in Ministries of Foreign Affairs;
- 5 NCPs were located in Investment Promotion Agencies;
- 4 NCPs were independent.

In 2018, Tunisia announced the re-establishment of its NCP and that it will take a tripartite structure. In addition, three NCPs (Australia, New Zealand and Spain) reported changes to their structures or locations.

In 2018, the OECD published a report entitled “Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises.”<sup>27</sup> The report maps how Governments have set up their NCPs and how the mechanisms operate and make decisions in relation to their mandates.

#### **Box 1.8. Findings of the report on NCP structures and NCP activity**

The analysis shows that NCP structures vary widely across NCP network. In terms of challenges and opportunities linked to such structures, the analysis suggests that the presence of a structural connection – at decision-making or advisory level – between the NCP, other government departments and stakeholders, increases the expertise available to the NCP, opens avenues to seek the support of social partners, and fosters policy coherence. Such inclusiveness may however come at an organisational cost, since it increases the number of participants in NCP activities, the frequency and size of meetings, or the amount of time needed to reach consensus. In order to limit these costs, NCPs have implemented creative solutions to make the NCP more agile in discharging its various tasks. Finally, securing sufficient human and financial resources to effectively fulfil their responsibilities remains a challenge for NCPs. Scarce resources, particularly staff resources, limit the amount of promotion that an NCP can conduct, and can make it more difficult for NCPs to handle specific instances in an efficient and timely manner.

<sup>27</sup> OECD (2018), Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Structures-and-procedures-of-NCPs-for-the-OECD-guidelines-for-multinational-enterprises.pdf>

In addition, responding to a request by the OECD Council, the Secretariat finalised a comparative analysis of NCP activity across different NCP structures, with a view to identifying which NCP structures had the most positive impact on NCP activity (see Box 1.8). A preliminary analysis was presented at the meetings of the NCP Network in June and December 2018. This analysis may assist Governments that are in the process of establishing their NCP or considering structural reform to current arrangements.

Over the course of 2018, two NCPs made changes to their structure/mandate of note. Firstly, the Norwegian NCP now has the mandate to consider complaints under the International Labour Organization's Tripartite Declaration of principles concerning multinational enterprises and social policy (see Box 1.9). Secondly, the Australian NCP made several amendments to its structure which will take effect in 2019 following findings from an independent review in 2017 (see Box 1.10).

#### **Box 1.9. Extended mandate of the National Contact Point of Norway**

As of 2018, the Norwegian National Contact Point will also have the mandate to receive and assess complaints under the International Labour Organization's Tripartite Declaration of principles concerning multinational enterprises and social policy (Declaration). The Declaration provides guidance to companies, governments, and employers' and workers' organizations in the areas of employment, training, conditions of work and life and industrial relations. It builds on international labour standards and the obligations that States have through their ILO membership and ratification of ILO agreements. First adopted in 1976, the Declaration was most recently revised in 2017 to reflect international developments, including the adoption of the UN Guiding Principles on Business and Human Rights. Consequently, the revised Declaration establishes an independent responsibility on companies to respect human rights across their operations and business relationships and to do so through a process of due diligence, in alignment with the UN Guiding Principles and the OECD Guidelines.

The extended mandate complements the current operations of the Norwegian NCP, namely to provide Norwegian multinational enterprises and Government agencies with advice and guidance relating to responsible business conduct and to treat specific instances relating to Norwegian companies alleged non-compliance with the OECD Guidelines, including across global supply chains.

#### **Box 1.10. Independent review of the Australian National Contact Point**

In 2017, the Australian Treasury commissioned an independent review of the Australian National Contact Point with a view to evaluate the administrative structure of the NCP and its fit within the Australian Government. The final review – released in 2018 – issued a series of recommendations that highlighted the need for increased independence and expertise in decision-making, clearer procedural guidance, improved stakeholder outreach and dedicated resources.

In response to these recommendations, in 2018, Treasury committed to several changes to the role and functioning of the NCP, including:



- The appointment of an independent expert that, as of 2019, will undertake all specific instance handling work. The independent expert will benefit from administrative support from the NCP's secretariat, but will have autonomy to make independent decisions.
- The establishment of a new advisory body, comprising both government representatives and external members from companies and civil society organisations.
- Revisions to the procedural guidance, with new guidance released in July 2018.
- Strengthened commitments to ensure human and financial resources to sustain the work of the NCP and the improvement of outreach and promotional activities to increase awareness of the Guidelines and the NCP.

#### *1.4.2. Rules of procedure for the handling of specific instances*

Having clear rules of procedure is an important way to ensure a predictable process to resolve cases and to build trust among stakeholders. The NCP community has made important progress in this regard. As of 2018, 40 NCPs have rules of procedures available online, compared with 35 in 2017. Five NCPs made rules of procedure available online over the course of 2018 (Israel, Kazakhstan, Latvia, Sweden and Ukraine). and 11 NCPs modified their rules of procedure (Argentina, Australia, Chile, Costa Rica, Denmark, Estonia, Ireland, Israel, Italy, Korea, and Slovak Republic), indicating that many NCPs are also building their internal capacity to handle cases and refining their rules of procedure to ensure a more consistent approach to case-handling across the NCP network..

#### *1.4.3. Reporting*

As part of the core criteria for functional equivalence, NCPs are required to be accountable. In practice, this means that the NCP communicates publicly on what activities it has participated in or organised, and how it has assessed and concluded specific instances. Under the Procedural Guidance, NCPs must report annually to the OECD Investment Committee<sup>28</sup> and may communicate on a regular basis to Government and/or Parliament. Such reporting can be an important means to raise the internal profile of NCPs within their Governments and to ensure that budgetary challenges that the NCPs may face can be addressed.

In 2018, one NCP did not report to the OECD (Jordan), in comparison with two NCPs that did not report to the OECD in 2017 (Jordan and Tunisia).

In 2018, 33 NCPs reported on their activities to their Government, and 11 reported to Parliament.<sup>29</sup>

<sup>28</sup> Decision on the Guidelines, Procedural Guidance, Section I.D.1.

<sup>29</sup> More detailed data is available in Annex I.



#### ***1.4.4. Meeting attendance***

NCPs are required to meet regularly to share experience, in particular by attending the two annual meetings of the NCP Network at the OECD and to report annually to the OECD Investment Committee.<sup>30</sup>

In 2018, a total of 43 NCPs attended the meeting of the network in June and the same number attended in December. Three NCPs did not attend the meeting in either June or December compared to two NCPs in 2017.

#### ***1.4.5. Stakeholders as part of the institutional arrangements***

Stakeholders can be formally integrated into the institutional arrangements of the NCP, for example as members of the NCP or the NCPs' advisory or oversight bodies. Including key stakeholders – such as workers' organisations, civil society organisations and the business community – as part of the NCP's institutional arrangement can serve to enhance the expertise available to the NCP and may render it easier to maintain relations with stakeholders, to seek their support, and ultimately to gain and retain their confidence.

#### ***1.4.6. Oversight and advisory bodies***

To promote impartiality of the NCPs, the OECD Guidelines recommend that NCPs establish multi-stakeholder advisory and/or oversight bodies. While these do not normally form part of the NCP and do not have decision-making power on accepting or concluding specific instances, they can provide important advice to the NCP on a range of issues. NCP oversight and advisory bodies may be composed of different types of stakeholders (e.g. business alone; business and trade unions; business, workers' organisations and civil society representatives). In 2018:

- 17 NCPs reported having an advisory body
- 6 NCPs reported having a combined advisory/oversight body.<sup>31</sup>

In practice, the structures and mandates of current advisory and oversight bodies across the NCP Network vary significantly. For instance, NCP advisory bodies are composed of different types of stakeholders: some are composed only of government representatives, others are composed of 'external' stakeholders (business alone; business and workers' organisations; business, workers' organisations and civil society organisations), and yet others are composed of both government and stakeholders. Certain NCPs also include other actors such as National Human Rights Institutions or 'unaffiliated' independent experts (such as academics) on their advisory boards. Likewise, the role of these bodies and the topics on which they are consulted (from general matters to actual specific instance cases) also varies.

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<sup>30</sup> Decision on the Guidelines, para. 3.

<sup>31</sup> More detailed data is available in Annex I

**Table 1.4. Characteristics of NCP Advisory and oversight bodies**

NCP	Composition	Substance of advice	Frequency of meetings
Argentina	Business Trade unions NGOs Academia	Specific instances Promotion	Biannually
Austria	Government Business Trade union NGOs Academia	General matters Promotion Dialogue with stakeholders Specific instances Annual report Oversight	Biannually
Belgium	Government Business NGOs Academia	Promotion Specific instances	Yearly
Chile	Government Business Trade Unions NGOs Academia RBC Experts NHRI Council for transparency	Specific instances Dissemination Promotion	Quarterly to monthly
Colombia	Business Trade unions NGOs Academia	General matters Specific instances Promotion Oversight	3 times a year
Germany	Government Business Trade unions NGOs	General matters Specific instances Promotion	Biannually
Italy	Government Business Trade unions NGOs	General matters Specific instances	Biannually
Japan	Business Trade unions	General matters Specific instances Promotion	Yearly
Kazakhstan	Government Business Trade unions NGOs	Specific instances	Unreported
Luxembourg	Government Business Trade unions	General matters	Does not meet on a regular basis

NCP	Composition	Substance of advice	Frequency of meetings
Netherlands	Government Business Trade unions NGOs	All NCP matters General matters Promotion	Monthly Quarterly
New Zealand	Government Business Trade union NGO NHRI	General matters Specific instances OECD meetings Promotion	Biannually
Poland	Government Business Trade unions NGOs Academia	General matters Specific instances	Quarterly to monthly
Spain	Business Trade unions NGOs	General matters Promotion Rules of procedure	Biannually
Switzerland	Government Business Trade unions NGOs Academia	General matters Promotion Specific instances Rules of procedure	Biannually
Ukraine	Business Trade unions NGOs	Unreported	Unreported
United Kingdom	Government Business Trade unions NGOs	General matters Specific instances Promotion Rules of procedure Oversight	Quarterly to monthly
United States	Government  Business Trade unions NGOs Academia	General matters Specific instances Promotion General matters Specific instances Promotion	Quarterly  Quarterly to monthly

#### 1.4.7. NCP resources

As established by the Decision on the Guidelines, adhering Governments have a legal obligation to establish NCPs and to ensure that they have the human and financial resources they need to effectively promote the Guidelines and handle the broad range of specific instances that they may receive. In June 2017, the OECD Ministerial Council Statement,

entitled “Making globalisation work: better lives for all” committed to “having fully functioning and adequately resourced National Contact Points”.<sup>32</sup>

Nevertheless, insufficient human and financial resources continues to be noted as a major concern by both NCPs and stakeholders. Lack of resources has translated into a lack of skills development for several NCPs; this is a challenge since the growing complexity of specific instances demand that NCPs address increasingly complex and sophisticated issues. At present, many NCPs do not have staff that are solely devoted to the responsibilities of the mechanism: in most NCPs, members of staff are also responsible for other Government portfolios and therefore have little time to spend on NCP-related tasks. While this can have benefits – such as staff being involved in other RBC related areas of work and being exposed to expertise that is important for the NCP’s functioning – it can also have the effect of less active NCPs, as staff working on multiple issues may have little time to devote to actual NCP activities.

In 2018:

- 14 NCPs reported having both dedicated full-time and part-time staff
- 12 NCPs reported having full-time staff only
- 19 NCPs had part-time staff only
- 4 NCPs had no dedicated staff<sup>33</sup>

Furthermore, frequent turnover of staff continues to present a challenge to NCPs in terms of ensuring institutional memory and handling ongoing specific instances. In 2018:

- 24 NCPs reported that full-time or part-time staff had joined the NCP
- 23 NCPs reported that full-time or part-time staff had left the NCP

With regards financial resources:

- 24 NCPs had access to a dedicated budget for their activities.
- Of the 24 NCPs that did not have a dedicated budget, 21 reported that they could access, on an ad-hoc basis, financial resources for promotional activities and 16 reported that they could do so for specific instances.<sup>34</sup>
- All 46 reporting NCPs noted that funds would be available to them for attending NCP meetings at the OECD.

At the December 2018 meeting of the Network of NCPs, a dedicated session allowed NCPs to exchange on their various budgetary structures, current challenges with respect to human and financial resources and strategies for overcoming resource constraints. NCPs from Italy, Denmark, Canada, Chile, France, Switzerland, Colombia, Germany and Norway presented potential challenges associated with resource constraints and strategies that could be mobilised to address these.

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<sup>32</sup> See <http://www.oecd.org/mcm/documents/2017-ministerial-council-statement.htm>

<sup>33</sup> More detailed data is available in Annex I.

<sup>34</sup> More detailed data is available in Annex I.

## 1.5. Promotion of the Guidelines

Ensuring that NCPs are visible requires sustained efforts to raise awareness among the business community, worker organisations, civil society organisations and other interested parties. An important function of NCPs is to promote awareness of the OECD Guidelines and the due diligence guidance that offers tools to the private sector on how to do business responsibly.

NCPs will play a critical role in supporting the wide dissemination of the 2018 OECD Due Diligence Guidance for Responsible Business Conduct which provides practical guidance on the key elements of supply chain due diligence. In particular, the Council Recommendation specifically recommends that NCPs “ensure the widest possible dissemination of the Guidance and its active use by enterprises, as well as promote the use of the Guidance as a resource for stakeholders”.<sup>35</sup> To facilitate the broad uptake of the guidance several NCPs are also in the process of translating it into other languages (e.g. the Spanish version is being developed jointly by the NCPs of Spain and Latin American Adherents. Several NCPs also organised events in 2018 to help promote awareness and understanding of the due diligence process. See Box 1.11 for examples.

### Box 1.11. Examples of events organised by NCPs to promote due diligence

The NCP of Switzerland in cooperation with the Global Compact Network Switzerland organised an event to present the OECD Due Diligence Guidance for Responsible Business Conduct, identify implementation steps and discuss challenges. The event attracted practitioners who learned about technical aspects of the due diligence process through facilitated scenarios. Switzerland presented its guidance on human rights due diligence for commodity trading companies, which references the OECD Due Diligence Guidance, in a side-event on due diligence and commodity trading of the UN Forum on Business and Human Rights.

The NCP of Norway developed a three day training course on responsible business conduct and due diligence for Norwegian enterprises.<sup>36</sup> Related to the course, Norway launched a unique self-assessment tool, the RBC Compass, which gives an overview of the extent to which an enterprise complies with the OECD Guidelines.<sup>37</sup> Norway also launched an introduction in Norwegian to the OECD Due Diligence Guidance on RBC. The introduction was developed with input from stakeholders from business, trade unions, civil society and academia.

The NCP of the United Kingdom (UK NCP) partnered with UK Finance, an industry association representing 300 firms in the UK providing credit, banking, markets and payment-related services, to organise an awareness raising event on the OECD work on responsible business conduct and due diligence in the financial sector. The UK NCP also facilitated coordination with UK Finance to host an expert working session with practitioners to feed into the OECD’s ongoing work on defining due diligence approaches for general corporate lending and underwriting securities transactions.

<sup>35</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443].

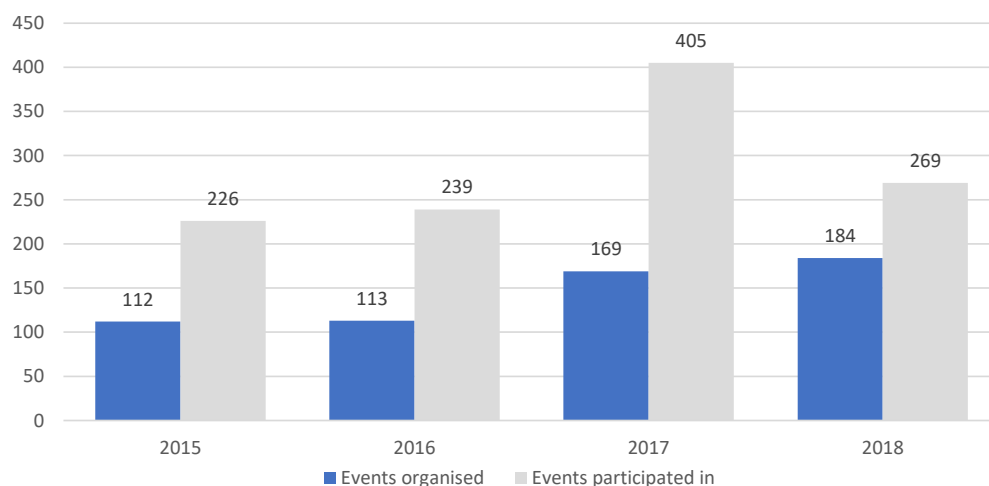
<sup>36</sup> See <https://www.responsiblebusiness.no/courses-in-due-diligence-for-responsible-business-conduct/>

<sup>37</sup> See <https://www.responsiblebusiness.no/news/the-rbc-compass-new-tool/>

In 2018, NCPs continued to take important steps in promoting both the Guidelines and due diligence guidance. In 2018 a total of 184 events were organised or co-organised by 34 NCPs. This represents a steady increase from 2015 where the number of events organised by NCPs was 112 (see Figure 1.9.).

Fourteen NCPs did not organise or co-organise any promotional events.<sup>38</sup>

**Figure 1.9. Promotional events organised by or involving NCPs (2015-2018)**



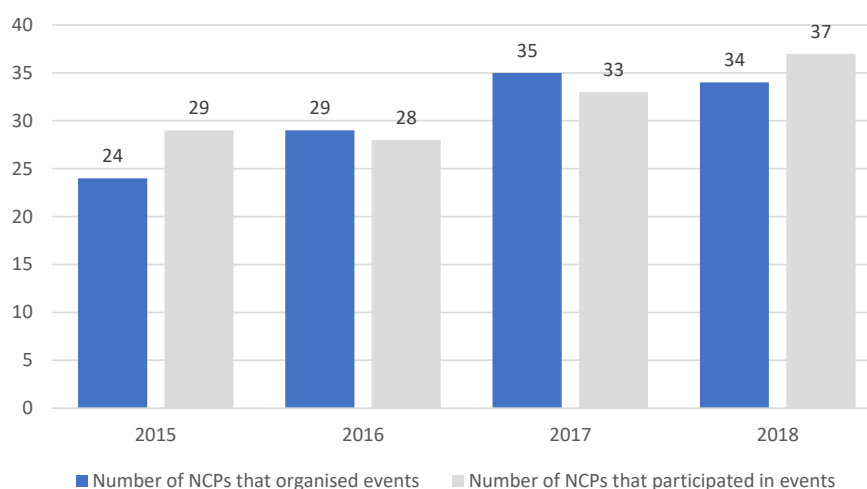
The types of events ranged from training, official meetings with stakeholders, annual meetings with stakeholders to report on NCP activities, to larger conferences on topics such as due diligence and responsible supply chains across different economic sectors. In 2018, 26 NCPs (55% of NCPs)<sup>39</sup> hosted an annual meeting with stakeholders.

In addition to organising or co-organising events, 37 NCPs reported taking part in a total of 269 events organised by others, during which they participated in presentations, panels and discussions. A total of eleven NCPs did not participate in any promotional events.

Since 2015, the number of NCPs that organised promotional events grew from 24 to 34 in 2018 (see Figure 1.10.). The number of NCPs participating in events has also increased. In 2018, 37 NCPs participated in events, up from 29 in 2015 (see Figure 1.10.).

<sup>38</sup> More detailed data is available in in Annex I.

<sup>39</sup> This figure excludes non-reporting NCPs, which was a single NCP for 2018.

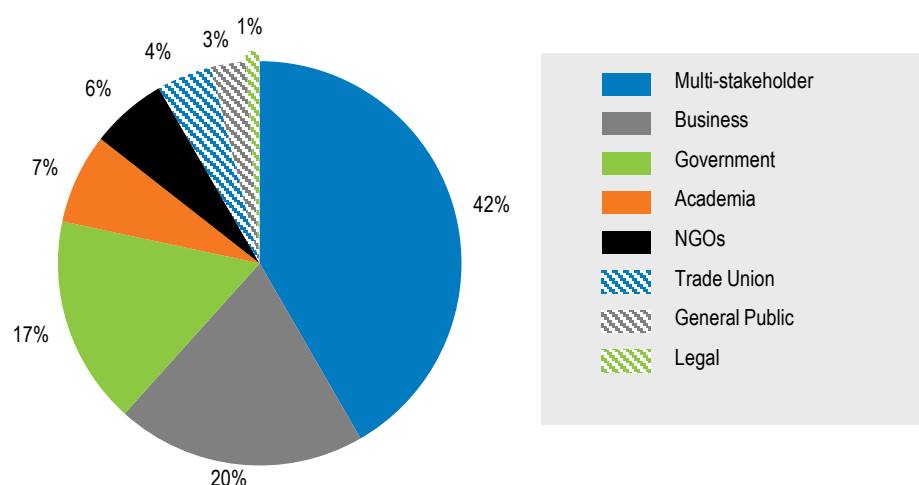
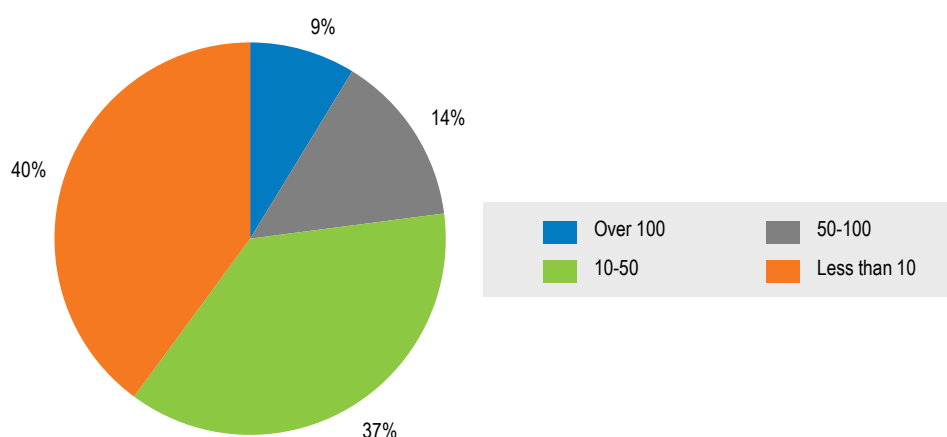
**Figure 1.10. Number of NCPs that Organised and Participated in Events (2015-2018)**

NCPs also continued to use a variety of tools to promote the Guidelines and the specific instance mechanism. For example, 4 NCPs (Switzerland, Ukraine, Denmark, and the Netherlands) have conducted surveys among the business community and other stakeholders to measure awareness of the Guidelines and the NCP. These kind of surveys have offered unique insight into the impact of NCPs' promotional work, and allowed NCPs to develop targeted activities to maximise the impact of their promotional activities.

At the NCP meeting in June 2018, several NCPs presented recent initiatives to measure awareness of the Guidelines and the NCPs' functioning. The NCPs of Switzerland and Ukraine presented recent initiatives taken to measure stakeholder awareness of the OECD Guidelines, in particular by the use of surveys and indicators to monitor progress. NCPs highlighted the importance of measuring awareness not only about the existence of the OECD Guidelines, but also about that specific elements of the Guidelines, in particular risk-based due diligence and the thematic chapters. Noting the proliferation of international standards and good practice addressing responsible business conduct and corporate social responsibility, NCPs also highlighted the need for promotional activities and targets to focus on articulating the benefits of the OECD Guidelines and what their relationship is with other international RBC/CSR initiatives.

In 2018, multi-stakeholder groups were the largest target audience for NCP events, consisting of 42% of total event audiences. This group was followed by business (20%), government (17%), and academia (7%) (see Figure 1.11.). Additionally, the large majority of NCP events had an audience size of less than 10 or between 10-50 participants (see Figure 1.12.).



**Figure 1.11. Overview of NCP Event Audiences in 2018****Figure 1.12. Overview of NCP Event Audience Size in 2018**

In addition to promotional events, several NCPs also participate in advisory groups supporting sector projects on responsible business conduct led by the OECD. See Table 1.5 below and Chapter 2 for further information.

**Table 1.5. NCP participation in Advisory Groups to OECD Sector Projects**

RBC Sector Projects	NCP Participation in Advisory Groups
Agriculture	Belgium, Chile, Colombia, France, Germany, Norway
Financial	Canada, Sweden, Switzerland, UK
Garment and Footwear	France, Italy, Sweden
Minerals	Switzerland

A total of 38 NCPs reported having a promotional plan in place for 2019, setting out target activities and audiences over the coming year. Many NCPs have adopted an analytical approach to promotional activities, developing detailed plans with key targets and objectives.

***1.5.1. Accessibility of information – NCP websites***

Although there is no specific requirement for NCPs to have a website, an important aspect of being visible is online presence through a dedicated website where rules of procedures and regular updates about NCP activities and specific instance outcomes are made public. For many stakeholders, NCP websites have served as a principal point of contact for submitting specific instances.

- A total of 46 NCPs have dedicated websites or dedicated webpages on the Ministry's website that provide information about the Guidelines and the NCP, including contact information for reaching the mechanism.
- 15 NCPs reported creating new or improved websites in 2018.

***1.5.2. NCP hosted peer-learning events***

The Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises provides that “NCPs will engage in joint peer learning activities.”<sup>40</sup> On 5-6 September 2018, at the initiative of the NCPs of Norway and Denmark, the Lithuanian NCP hosted a workshop in Vilnius for NCPs from the Nordic-Baltic countries: Sweden, Finland, Iceland, Denmark, Norway, Latvia and Lithuania. The focus of the peer-learning event was how NCPs can best meet the core criteria of visibility, accessibility, transparency and accountability. The peer-learning event addressed institutional arrangements with dedicated staff and budget, rules of procedures, website and activities to promote the OECD Guidelines and the NCP. A similar Nordic-Baltic peer-learning event is set to take place in Oslo, Norway, in May 2019.

On 10 October 2018, the Dutch NCP organised an international conference – also serving as a peer-learning event – in The Hague, Netherlands. This conference – which brought together companies, government representatives, civil society organisations, academics and 10 NCPs – emphasized the positive impacts that NCPs can generate through a variety of presentations that highlighted best practices and lessons learned.

In 2018, the Ukrainian NCP also conducted a study visit to the Dutch NCP to learn about the way the NCP of the Netherlands has been structured and how it functions.

***1.5.3. UN Annual Forum on Business and Human Rights***

The seventh annual UN Annual Forum on Business and Human Rights took place on 26-28 November 2018 in Geneva, Switzerland. Under the theme “Business respect for human rights – building on what works”, the Forum focused on the corporate responsibility to respect human rights, and in particular the requirement that companies exercise human rights due diligence to prevent adverse impacts on people. It highlighted emerging practices in different sectors and across value chains, and what human rights due diligence implies in relation to specific human rights risks and impacts. Several NCPs attended the event and participated in panels.

**1.6. Global Forum on Responsible Business Conduct**

Several NCPs participated in the Global Forum on Responsible Business Conduct in June 2018. Dedicated sessions involving NCPs included:

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<sup>40</sup> Para. 19.

- *NCPs: a mechanism to promote social dialogue.* This session highlighted that involvement in a specific instance can become the start of a longer-term relationship of social dialogue between parties to the process and highlighted the key lessons learnt from three successful NCP cases (FIFA, Unilever and Natixis) that have served as a springboard for continued social dialogue.<sup>41</sup>
- *The role of National Contact Points and National Human Rights Institutions in RBC Policy Making.* The session offered a forum for discussion on how NCPs and NHRIs can engage in relation to RBC policy making – and have already done so – despite their different structures and mandates. Representatives from Chile, Morocco and New Zealand (NCPs, NHRIs and Governments) presented various types of engagement models between NCPs and NHRIs, ranging from formal arrangements through the signing of a Memorandum of Understanding for cooperation (Chile) or the inclusion of the NHRI in the decision-making body of the NCP (Morocco) to more informal engagement on specific issues (New Zealand).
- *Accountability and Remedy.* Organised by the Office of the UN High Commissioner for Human Rights (OHCHR), this session presented findings from OHCHR's Accountability and Remedy project on the role of State-based non-judicial grievance mechanisms, including NCPs, in providing access to effective remedy. With the participation of the NCPs of Denmark and France, the session focused on specific steps that States can take to ensure effective non-judicial grievance mechanisms, drawing on the effectiveness criteria established by the UN Guiding Principles on Business and Human Rights.

### 1.7. Action Plan to strengthen NCPs

The first Action Plan to strengthen NCPs (2016-2018) continued to be implemented over the course of 2018 under its three overarching priority areas: peer reviews and capacity-building, peer learning, and the development of tools to support NCPs, mainly on the forms of reports developed jointly with NCPs. NCP publications issued in 2018 are listed in Box 1.7.

NCP Peer reviews offer an important opportunity to appreciate and share the internal workings of an NCP and any barriers the NCP may face in realising its objectives, as well as achievements and good practices in discharging its functions. The peer reviews also include an examination of the NCP's procedures and approach to handling of specific instances which can help improve consistency going forward.

In 2018, the peer reviews of five NCPs (Austria, Canada, Chile, Germany and the United States) were concluded. Of the 48 NCPs, 13 have been peer reviewed with one review ongoing. In addition, two NCPs underwent significant reviews as part of the process of accession to the OECD. An additional seven governments have a peer review of their NCP scheduled (Table 1.6). This leaves a total of 25 governments having not yet committed to a peer review of which 15 are OECD members (Table 1.7).

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<sup>41</sup> This session drew from OECD (2018), Facilitating social dialogue under the OECD Guidelines for Multinational Enterprises,

<https://mneguidelines.oecd.org/facilitating-social-dialogue-under-the-OECD-Guidelines-for-MNEs.pdf>

Peer reviews are funded by the government of the NCP under review. The amount of the contribution is as established in the document: Funding the NCP Action Plan (2016-18) and in the new [Action Plan to Strengthen National Contact Points for Responsible Business Conduct](#) (2019-2021). For some governments, providing funding has been an obstacle to committing to a peer review or to delivering on their commitment.

**Table 1.6. NCP Peer Reviews completed and committed**

Peer review completed	Peer Review ongoing	Peer review commitment made	Review completed for the accession process
Netherlands	United Kingdom	Spain (2019)	Costa Rica
Japan		Korea (2019)	Lithuania
Norway		Argentina (2019)	
Denmark		Australia (2020)	
Belgium		Sweden (2020 tbc, funds permitting)	
Italy		Greece (2021)	
Switzerland		Slovenia (2022)	
France			
Germany			
Chile			
United States			
Austria			
Canada			

**Table 1.7. NCP peer reviews: not yet committed**

<i>OECD member countries</i>	<i>Czech Republic, Estonia, Finland, Hungary, Iceland, Ireland, Israel, Latvia, Luxembourg, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Turkey (15)</i>
<i>Adherent countries</i>	<i>Brazil, Colombia, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, Ukraine (10)</i>

Recommendations from the completed peer reviews are included in Annex II. The peer reviews of the NCPs of Spain, Korea and Argentina are scheduled for 2019, the peer reviews of the Australian and Swedish NCPs for 2020, the peer review of the Greek NCP for 2021 and the peer review of the Slovenian NCP for 2022.

Since 2015, peer reviews were done using a core template for assessing NCP performance, addressing the core criteria – visibility, accessibility, transparency, accountability, and principles for handling cases – impartiality, predictability, equitability, and compatibility with the Guidelines. On the basis of feedback from peer review participants (including NCPs, representatives from governments as well as business, trade unions and NGOs), a paper with proposed areas for improvement to the current peer review methodology was discussed by the WPRBC at its December 2018 meeting. Proposals for amendments to the core template were discussed by the Working Party at its meeting in March 2019. A new version of the revised core template taking comments into account will be shared for approval by the Secretariat.

The current Action Plan to strengthen NCPs covered the period January 2016 – December 2018. A second Action Plan for the years 2019-2021 was discussed by the WPRBC in December 2018 and approved in February 2019. Building upon the lessons learnt from the implementation of the first Action Plan, the second Action Plan suggests new areas of focus to support the NCPs to better meet their mandate and cooperate more effectively. It sets the

target of ensuring six NCP peer reviews per year to meet the goal of having all NCP peer reviewed by 2023.

Subject to availability of funding, the Action Plan will deliver additional peer support to NCPs facing challenges meeting the core criteria, sharing of expertise and skills among the NCPs, capacity-building among peers through regional and thematic NCP networks, Secretariat support to NCPs to assess and address capacity-building needs among key stakeholders, developing websites and other support tools, and supporting the mechanisms to identify and engage with national-level opportunities to provide their expertise to RBC developments.

Since 2016, the Secretary-General of the OECD has communicated with Ministers in adhering countries whose NCPs do not yet exist, have not reported to the OECD Investment Committee, do not have a website, have not conducted or participated in promotional events, or do not have rules of procedures. In December 2018, 10 adhering Governments (Egypt, Estonia, Greece, Iceland, Jordan, Portugal, Romania, Slovenia, Tunisia and Ukraine) received such letters and were invited to report back on progress made.

### 1.8. Substantiated submission by OECD Watch

In November 2017, OECD Watch made the first substantiated submission under the Procedural Guidance of the Guidelines. Under the Procedural Guidance, the Investment Committee “will consider a substantiated submission [...] on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.”<sup>42</sup> The submission was made by OECD Watch in respect of the Australian NCP’s handling of a specific instance that raised concerns over the role of a private security company in Papua New Guinea.

The substantiated submission was considered by the Investment Committee in 2018. In its response, the Investment Committee issued several recommendations with a view to promote increased transparency and to build trust with all parties to a specific instance process (see Annex III).

During its meeting of October 2018, the Investment Committee called on the Working Party for Responsible Business Conduct to further elaborate the procedure for responding to substantiated submissions to address current gaps as well as comments raised by OECD Watch and the Australian NCP. The original procedure was included in “Addressing issues relating to the functioning and performance of NCPs” DAF/INV/RBC(2015)1. A paper presenting suggestions for how the procedure can be further strengthened to promote transparency, predictability, equitability and efficiency, based on lessons learned from development of a response to the first submission was presented to the Working Party at its December 2018 meeting and a new procedure will be shared for approval in 2019.

The paper sought to improve the clarity and transparency of the process and suggested, amongst other things, that consultations on the substantiated submission be equal in number between the NCPs under review and the submitter(s), that quarterly updates to all parties on how the process is unfolding should be provided. It also put forward the suggestions that where a member or national of the country of the NCP whose conduct is in question in the substantiated submission is also a member of the Working Party Bureau in their personal capacity, they may be asked to excuse themselves from consultations at the level of the Bureau.

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<sup>42</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)], Section II, 2. b).

### Box 1.11. NCP publications

In 2018 several reports were developed regarding NCP activities and functioning:

OECD (2018) *Facilitating social dialogue under the OECD Guidelines for Multinational Enterprises*: This study explores the role of the National Contact Points (NCPs) in dealing with cases relating to the implementation of the OECD Guidelines with a particular focus on labour issues and social dialogue. Historically, a significant number of cases brought before NCPs have involved the OECD Guidelines' chapter on employment and industrial relations. It includes four case studies each of which describes specific instance and offers some insight into how dialogue was promoted and why a particular outcome was achieved. These observations are informed by multiple sources including, most importantly, a number of stakeholder interviews conducted with trade union, business and NCP representatives.

OECD (2018), *Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises*: This report describes how governments have set up their NCP and how NCPs operate and make decisions related to the implementation of their mandate. The findings of this work aim to facilitate co-operation among NCPs, and to help stakeholders and the wider public better understand how NCPs work and take decisions. The content is based on interviews with representatives from 15 NCPs, the institutional stakeholders to the OECD Guidelines (the Business and Industry Advisory Committee, the Trade Union Advisory Committee and OECD Watch) and other stakeholders.

OECD (2018), *Issues paper: Coordination between OECD National Contact Points during Specific Instance Handling*: The paper considers current challenges in specific instance coordination amongst NCPs and identify good practice to help ensure consistency and encourage resolution of issues. It provides guidance on the following questions: What does the Procedural Guidance say about coordination on specific instances between NCPs? How do NCPs coordinate on specific instances in practice? What are the perspectives of institutional stakeholders with respect to coordination on specific instances? What are some of the good practices for coordination on specific instances?

OECD (2018) *Issues paper: Confidentiality and Campaigning during Specific Instances Handling by OECD National Contact Points*: The paper considers current challenges with respect to confidentiality and campaigning issues in the context of handling specific instances. This paper provides guidance on the following questions: What does the Procedural Guidance say about transparency, confidentiality, campaigning and good faith participation? How do NCP's address issues of confidentiality and campaigning through their own rules of procedure and policies? How have other grievance or mediation platforms approached confidentiality and campaigning issues? What are the various stakeholder perspectives on confidentiality and campaigning? What good practices should NCPs take into account in developing effective approaches for balancing transparency and confidentiality concerns?



## Chapter 2.

### Due diligence to implement the Guidelines

#### 2.1. Convergence and alignment on OECD Due Diligence Guidance

Companies are increasingly basing their decisions about where to do business on the ability to ensure predictable and reliable supply chains and sustainability criteria are playing an increasing role in the choice of suppliers or business relationships. The Guidelines embed the expectation that enterprises carry out due diligence to identify, prevent and mitigate real and potential adverse impacts across their operations and business relationships and to account for how those impacts are addressed. Due diligence for responsible business conduct helps businesses contribute to economic and social growth without causing or contributing to adverse impacts. It also contributes towards holding businesses accountable for adverse impacts where they do occur.

Encouraging companies across sectors to carry out due diligence for responsible business conduct is increasingly on the global agenda. There has been political demand amongst Members and within the G7 and G20 for greater clarity on how companies can operate responsibly in global supply chains. The 2016 G7 Leader's Declaration noted that G7 countries will continue to strive for better application of internationally recognised labour, social and environmental standards in global supply chains. The 2017 G20 Leaders' Declaration noted they would work towards establishing adequate policy frameworks such as national action plans on business and human rights and underline the responsibility of businesses to exercise due diligence.

To respond to these calls, foster convergence and set a common standard for due diligence the OECD developed the *Due Diligence Guidance for Responsible Business Conduct*. An OECD Council Recommendation on the Guidance was adopted by Ministers on 30 May 2018 with the aim of providing support to all types of companies operating in all countries and sectors of the economy by setting out practical, clear explanations of how to implement due diligence as recommended in the OECD Guidelines for Multinational Enterprises.<sup>1</sup> The Guidance and Recommendation were a key deliverable of the 2018 OECD Ministerial Council Meeting and were adopted by all 48 Adherents to the Guidelines. They respond to a call by ministers to develop a set of general due diligence guidelines that can be applied to any sector. Governments, through the Investment Committee and its Working Party on Responsible Business Conduct, will



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<sup>1</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].



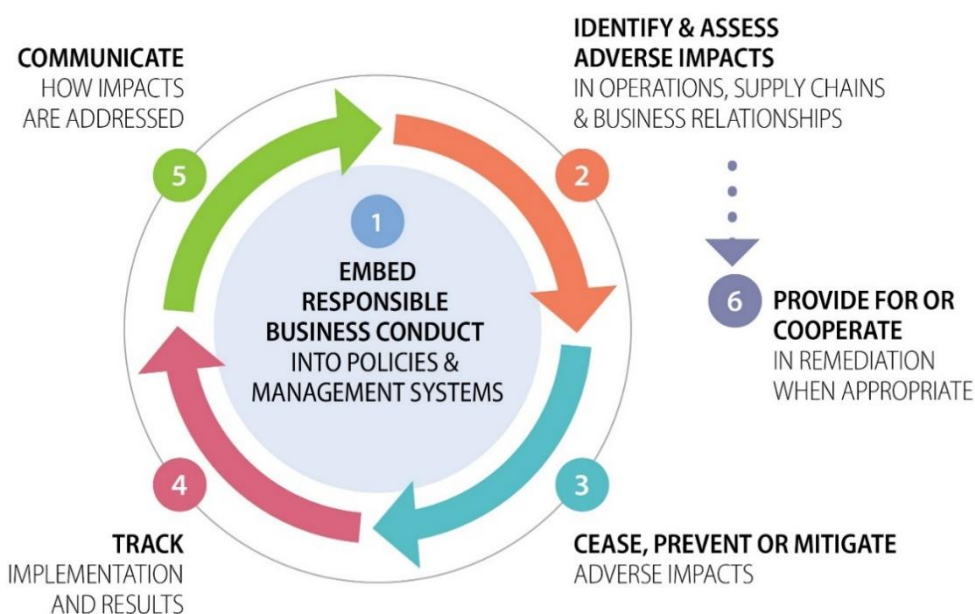
monitor the implementation of the Recommendation and report to the OECD Council thereon no later than 2024.

This Guidance is the first government backed reference on due diligence which is relevant for all types of companies and helps companies respond to the expectations set out in the MNE Guidelines that they carry out due diligence to identify, prevent and mitigate real and potential adverse impacts across their operations and business relationships and to account for how those impacts are addressed.

The Guidance represents a common understanding among governments and stakeholders on due diligence for responsible business conduct and can also be used by businesses to respond to due diligence expectations of the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. It was developed through a multi-stakeholder process including representatives from OECD and non-OECD Member countries, international organisations, business, trade unions and civil society. The UN Working Group on Business & Human Rights underscored the status of the Guidance as an important authority on due diligence and on alignment with the UN Guiding Principles on Business and Human Rights. In a report it notes that “[t]he recently issued OECD Due Diligence Guidance for Responsible Business Conduct [...] provides a comprehensive practical tool for supporting implementation of human rights due diligence in line with the Guiding Principles, which is based on comprehensive multi-stakeholder inputs and dialogue.”<sup>2</sup> The diagram below shows the due diligence framework foreseen in the Guidance.

**Figure 2.1. Due Diligence framework of the OECD Guidance for Responsible Business Conduct**

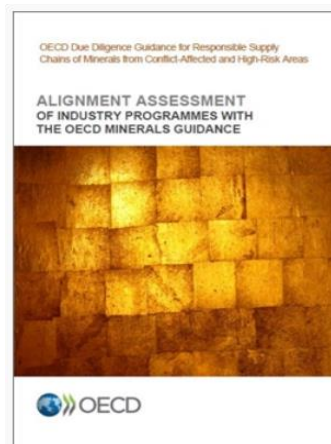
#### DUE DILIGENCE PROCESS & SUPPORTING MEASURES



<sup>2</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163)

The OECD worked closely with the OHCHR and members of the UN Working Group on Business & Human Rights in developing the Guidance. Bringing clarity and alignment to stakeholders and reinforcing the linkages between international instruments ultimately facilitates uptake of OECD standards on due diligence by business and facilitates outreach activities to countries that do not adhere to the relevant OECD instruments. The Guidance was formally launched during the 2018 OECD Global Forum on Responsible Business Conduct and was also heavily showcased at the 2018 UN Forum on Business and Human Rights, which featured due diligence as its theme. An implementation plan for the Guidance to support its dissemination and uptake was approved by the WPRBC in March 2019. In the second half of 2018, the OECD Secretariat developed and provided training on the Guidance to enterprises, governments and NCPs.

Convergence around OECD standards was furthermore fostered through the Secretariat's work on alignment. A methodology to assess the alignment of industry-led programmes in the minerals sector with the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*<sup>3</sup> ('Minerals Guidance') was released in April 2018. The alignment assessment<sup>4</sup> has already led to major changes in the standards of the participating programmes. The standards of the five pilot participants were 64% aligned to the OECD Minerals Guidance prior to the assessment; this figure went up to an average of 97% alignment of standards after changes that were recommended as part of the project.



The OECD alignment assessment methodology was furthermore embedded into a Delegated Act of the European Commission, which foresees a consultative role for the OECD Secretariat in the EU's recognition of industry schemes deemed compliant with the EU Regulation 2017/821.<sup>5</sup> The regulation – which comes into force in 2021 – lays down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas in line with the OECD Minerals Guidance.

The same approach was launched in 2018 in the garment sector.<sup>6</sup> To help reinforce a common framework for due diligence while also enabling cross-recognition between programmes, the OECD has developed an Alignment Assessment methodology to evaluate programmes against the OECD Garment Guidance. The draft assessment tool and methodology were launched in January 2018 and a pilot with the Sustainable Apparel Coalition carried out.

<sup>3</sup> OECD (2016), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*: Third Edition

<sup>4</sup> For more information of the OECD Alignment Assessment in the minerals sector, please refer to <http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>

<sup>5</sup> EU Regulation 2017/821 – which comes into force in 2021 – lays down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas in line with the OECD Minerals Guidance.

<sup>6</sup> Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)].

## 2.2. Digital solutions to support supply chain due diligence

To identify the areas of the value chain where risks are most likely to be present and most significant, businesses need reliable and easily accessible information, particularly from midstream and upstream supply chain actors on these risks. Distributed ledger technology such as blockchain may offer an ability to more easily manage increasingly complicated networks of suppliers with a greater level of trust, ideally establishing proof of quality, provenance, and payment on the raw materials and products being tracked. Recently, a multitude of supply chain due diligence blockchain initiatives have developed across different sectors to help address issues of traceability, sharing of risk information and data integrity. However, concerns have been raised about the lack of controls on the quality of information initially entered into the system, lack of access by vulnerable groups to this technology, scalability and incentives for uptake, the emergence of multiple competing databases for similar supply chains and lack of interoperability for various systems. However, by design, blockchains are inherently resistant to modification of the data, rather than relying on easy-to-forge paper documents. Blockchain may offer an ability to more easily manage increasingly complicated networks of suppliers with a greater level of trust, ideally establishing proof of quality, provenance, and payment on the raw materials and products being tracked.

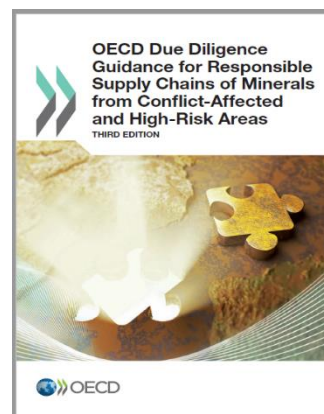
As part of a broader effort to promote and coordinate best practice in the area of supply chain due diligence, the OECD has launched research on how blockchain technology is being developed to facilitate responsible business conduct and how due diligence standards can be integrated into emerging blockchain initiatives in a consistent and effective way. This research will explore the application of blockchain technology for due diligence across different sectors, and analyse the strengths and weaknesses of each potential use. This includes, in particular, the use of blockchain for establishing traceability of goods and services in supply chains, for mapping of supply chain actors and locations, for sharing of information on risk (e.g. relating to human rights, conflict finance, or financial crime) and certification, the use of smart contracts to allow for greater inclusiveness, and use of tokens and incentives to drive implementation and create value due diligence information and efforts. The research will also discuss good practice for business and governments to follow in setting up or supporting blockchain systems and pitfalls for businesses and policy makers to avoid as initiatives begin developing.

The OECD furthermore convened a number of enterprises, policy makers and industry initiatives to explore together the role blockchain technology could play in assisting enterprises to carry out due diligence on labour and human rights, environment and corruption risks in global garment supply chains at two meetings in 2018, one alongside the Garment forum and the other during the OECD Blockchain Forum. The key outcome of these discussions was the recognition of the need for a data ontology and guidance for companies and initiatives that are planning blockchain pilots to address the issues discussed above. The Secretariat is also coordinating with other agencies (for example, UNECE-UN/CEFACT) to promote alignment of forthcoming traceability or blockchain initiatives with the OECD Garment Guidance.

## 2.3. Responsible mineral supply chains

### 2.3.1. Results and impact measurement

One of the central hypotheses of the OECD Guidance is that companies involved in responsible mining and trade in minerals have the potential to generate income, growth and prosperity, sustain livelihoods and foster local development. This is the case even in conflict-affected and high-risk areas. However, companies operating in or sourcing from such areas are also at risk of contributing to or being associated with significant adverse impacts. By implementing supply chain due diligence, as recommended by the OECD Minerals Guidance, companies can avoid contributing to serious human rights abuses, support to non-state armed groups, public or private security forces, bribery and fraudulent misrepresentation of the origin of minerals, money laundering and improper payment of taxes, fees and royalties due to governments.



The past eight years of implementation of the OECD Minerals Guidance have resulted in increased awareness amongst stakeholders that companies have a responsibility to cut the link between the mineral trade, serious human rights abuses and conflict. However, despite anecdotal reports of various results, there appears to be a continued lack of comprehensive and empirically-based evidence. To address this, the OECD Secretariat in 2018 launched a project on developing a monitoring and evaluation framework to measure results of the implementation of the OECD Minerals Guidance.

The aim of this project is to establish a monitoring and evaluation framework to measure the outcomes of the implementation of the OECD Guidance in mineral-producing countries. The monitoring framework will allow the OECD Secretariat to gather data on the implementation of the OECD Minerals Guidance according to a standardised set of indicators. It will furthermore allow the Secretariat to define the conceptual link (including degrees of correlation or other forms of attribution) between the uptake of the OECD Minerals Guidance and outcomes on the ground. The findings will help improve understanding of the contribution of due diligence efforts to social and economic development in mining communities, inform decisions about future interventions in mineral producing countries, and identify potential implementation gaps. The framework will be finalised and pilot tested in 2019.

### 2.3.2. Supporting the implementation of the Minerals Guidance beyond tin, tantalum, tungsten and gold

While continuing to work on tin, tantalum, tungsten (3Ts) and gold, in 2018 the OECD Secretariat increasingly worked on the uptake of the OECD Minerals Guidance in other minerals, including cobalt, diamonds and base metals.

Among the tools being developed to assist companies to implement supply chain due diligence, the OECD Secretariat is in the process of launching a Portal for Supply Chain Risk Information (Risk Portal). The Risk Portal is envisioned to be a free-to-access website that companies can use to gain an initial understanding of the risks in their supply chains and to guide them towards further research resources. The primary purpose of the Risk Portal is to provide information about risks that could lead those companies to ask further questions and conduct a thorough review of what is alleged to have occurred. As such, the

website will contain three primary sets of information: (1) data on the production and trade of raw materials, organised by material, (2) useful links to research resources on risks, organised by country, and (3) links recent third party reports on risks allegedly associated with the trade and production of specific raw materials. The pilot version of the Risk Portal will cover 40 mineral supply chains and risks mentioned in the Minerals Guidance. The pilot is expected to be ready to launch by the end of 2019. In the long term, the Risk Portal scope can be expanded to include raw materials and risks in other sectors.

Also looking beyond 3Ts and gold, the London Metal Exchange (LME) in October 2018 published a position paper outlining requirements for all brand-listed producers to comply with the OECD Minerals Guidance for all metals traded on the LME (among others zinc, aluminium, tin, copper, cobalt, steel, molybdenum and nickel). The LME supports physical clearance, pricing and hedging services for over 75% of metal trading globally. Initial consultations on standard setting were furthermore held with aluminium, copper and steel industry bodies to ensure alignment with the OECD Minerals Guidance as those bodies look to develop or adapt standards on responsible sourcing.

Throughout 2018 the Secretariat also continued its engagement with stakeholders in the precious stones supply chain. This included providing support and technical advice to leading industry bodies and initiatives such as the Responsible Jewellery Council, the World Diamond Council and the World Jewellery Confederation.

At the margins of the OECD Forum on Responsible Mineral Supply Chains the Secretariat organised a one-day meeting on cobalt, gathering key stakeholders in the global cobalt supply chain, including downstream companies, battery manufacturers, commodity traders, exporters, miners and officials from the Democratic Republic of Congo, which produces more than half the global cobalt output. The meeting clarified the role of fine refiner as the point in the supply chain where third party audits should take place and encouraged supply chain actors to review the scope of their risk assessment in line with the OECD Minerals Guidance.

### ***2.3.3. Outreach and engagement with key markets***

Given the global nature of mineral supply chains, the OECD throughout 2018 continued to work closely with a wide range of Adherent and non-Adherent countries to promote the understanding and implementation of the OECD due diligence guidance.

In October 2018, the OECD Secretariat launched a capacity building programme on the Mineral Guidance for stakeholders of the Colombian mineral supply chain. The inaugural workshop, opened by the Colombian Vice-Minister of Mines, saw the participation of various private sector actors from the gold and emerald supply chains, government officials and civil society organisations. The capacity building programme follows a train-the-trainer approach, with two implementing partners - a civil society organisation and a research centre - carrying out trainings on the ground throughout 2019 in the capital and in the main mineral producing departments of Antioquia, Chocó, Cauca and Nariño. Capacity building is one of the five areas covered by the recommendations formulated by the OECD Secretariat to the Colombian government and its agencies in 2018 to continue strengthening existing measures for a responsible, transparent and sustainable mining sector. The other four areas for action are regulatory and strategic initiatives; reform of the single registry RUCOM; mine site inspections, monitoring and mapping; and law enforcement cooperation.

In 2018, outreach work on responsible mineral supply chains also continued to deepen in Africa, building on the long-standing collaboration with governments, business and civil



society in the Democratic Republic of the Congo and Rwanda, as well as expanding to West Africa notably Burkina Faso, Mali and Niger. In West Africa, the OECD has been working since early 2016 with the Integrated Development Authority of the Liptako-Gourma Region (LGA) to promote the use of the Minerals Guidance recommendations in its three Member States Burkina Faso, Mali, and Niger. In 2018, the OECD released a baseline assessment of the supply chains of gold produced in those three countries in partnership with the LGA.<sup>7</sup> This study mapped the actors involved in production, trade and export of gold in both the private sector (formal and informal) and the public sector, covering industrial production as well as artisanal and small-scale mining and identified associated risks. A 2019-2020 work plan to implement recommendations based on the findings has been agreed with the LGA.

Since 2015, the Secretariat is furthermore engaged with Indian officials and private sector representatives to support the development of due diligence recommendations for the responsible sourcing of gold. India is the second largest importer of gold in the world and a key destination for gold produced in Africa and Latin America. In 2018, the Secretariat has been invited to speak in three major industry events in March, July and August. However, progress have been limited, and discussions with Indian and international stakeholders are ongoing to develop a roadmap with the local industry to finalise the adoption of the due diligence recommendations in 2019.

The OECD Secretariat also continued its cooperation with the China Chamber of Commerce for Metals, Minerals and Chemicals Importers and Exporters (CCC MC) and the Responsible Cobalt Initiative on Chinese-led efforts for responsible sourcing of 3Ts, gold and cobalt. This work consisted of technical support to develop audit protocols for Chinese importers, smelters, and refiners in line with the Minerals Guidance as well as the convening of global cobalt stakeholders during the annual OECD Forum on responsible mineral supply chains in April 2018.

#### **Box 2.1. Forum on responsible mineral supply chains**

The Forum on Responsible Mineral Supply Chains is one of OECD's largest events and in 2018 gathered over 850 participants, with 20% from governments including many non-OECD member countries, 55% from business, including large multinationals and small mining cooperatives, and 25% from civil society. It featured more than 30 sessions covering a wide variety of topics, from responsible cobalt, diamonds and gold, to thematic issues on responsible mineral sourcing like the use of data driven tools and blockchain technology to support due diligence, cost recovery along the supply chain, the gender perspective to responsible mining, and the role of customs authorities.

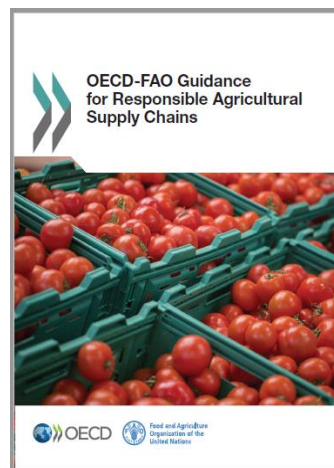
Collaboration with the European Union continued following the adoption of the aforementioned EU Regulation 2017/821 on responsible mineral supply chains, which is based on the OECD Minerals Guidance. The OECD Secretariat continued to work closely with the European Commission to define technical standards on due diligence and clarify due diligence expectations for EU members, Adherents and newly appointed National Competent Authorities for the EU Regulation.

<sup>7</sup> [Gold at Crossroads: Assessment of the Supply Chains of Gold Produced in Burkina Faso, Mali and Niger](#), OECD 2018

## 2.4. Responsible agricultural supply chains

### 2.4.1. OECD-FAO pilot project on Responsible Agricultural Supply Chains

The work on responsible agricultural supply chains includes collaboration with the Trade and Agricultural Directorate (TAD) of the OECD as well as the Food and Agriculture Organization of the United Nations (FAO). In February 2018, the OECD and FAO joined efforts to launch a pilot project with agribusiness companies, including investors, food manufacturers and retailers to promote the *OECD-FAO Guidance for Responsible Agricultural Supply Chains*<sup>8</sup> (OECD-FAO Guidance). The pilot aims to promote the practical understanding and application of the OECD-FAO Guidance with enterprises. Through the study of company implementation of the OECD-FAO Guidance and other related international standards the pilot raises awareness of challenges in due diligence implementation but also potential solutions to address these challenges.



The pilot includes the active participation of 27 companies and seven industry initiatives along the full agricultural value chain. The group represents mainly MNE businesses from each part of the value chain from input providers, to investors, as well as food producers, food and beverage manufacturers and retailers. Pilot participants come from a diversity of food and non-food commodity chains including bananas, cocoa, cotton, livestock, palm oil, soya, sugar and tobacco. Participating companies are based in Europe, the US, Latin America, Asia, North Africa and the Middle East.

A pilot baseline report<sup>9</sup> was released in September 2018. The report found that all participating pilot companies had made commitments to addressing many responsible business conduct issues and taken significant steps to implement such commitments. In addition, 82% of pilot participants reported a high level of senior management support for their policy commitments and 46% were in line with all six crosscutting standards recommended by the OECD-FAO Guidance. However, unsurprisingly many enterprises saw challenges in traceability and supply chain mapping beyond Tier 1 suppliers. This challenge increases in complex supply chains where visibility into the full supply chain is poor or where commodities are purchased from hundreds or thousands of small producers. The report also showed gaps between companies' commitments to RBC and the implementation of such commitments along the supply chain. This gap between commitments and action was an area which companies explored further through the peer-learning webinars hosted by the OECD and FAO in 2018. Peer learning session themes included challenges on supply chain mapping, and the limits and opportunities of technology, and strengthening collaboration with third parties (such as certification systems as well as civil society) to improve risk management.

<sup>8</sup> OECD/FAO (2016), *OECD-FAO Guidance for Responsible Agricultural Supply Chains*, see also Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [[OECD/LEGAL/0428](https://www.oecd.org/legal/0428)].

<sup>9</sup> Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains - Baseline report: <https://mneguidelines.oecd.org/Baseline-Report-on-OECD-FAO-Guidance-For-Responsible-Agricultural-Supply-Chains.pdf>



Pilot participants have also formed an informal working group to explore links between the OECD-FAO Guidance and the Sustainable Development Goals (SDGs). The working group has committed to producing a communications tool that helps enterprises make the link between their due diligence actions and specific targets of the SDGs. This tool, along with the final report from the pilot project, will be published in 2019 at the end of the OECD-FAO pilot.

#### 2.4.2. OECD-FAO roundtable on responsible agricultural supply chains

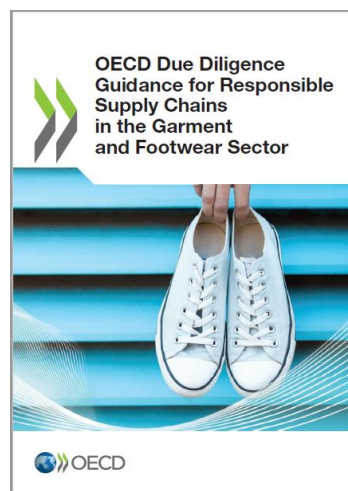
The OECD and FAO hosted a multi-stakeholder Roundtable on Responsible Agricultural Supply Chains on the margins of the 2018 Global Forum on Responsible Business Conduct at the OECD. The roundtable was attended by a wide diversity of stakeholders including from civil society, policy makers, international organisations such as the ILO and industry. Discussions at the roundtable were informed by the findings from the pilot baseline report. The OECD and FAO continue to work collaboratively on promoting the OECD-FAO Guidance and the Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security (CFS-RAI Principles).

### 2.5. Responsible garment and footwear supply chains

In 2018 the OECD deepened its activities under its implementation program to convene stakeholders to engage on shared learnings - particularly around meaningful engagement with workers in the due diligence process, enabling traceability, and integrating a gender lens into due diligence - promote alignment with OECD recommendations and facilitate multi-stakeholder collaboration in key markets.

The January 2018 OECD Forum on Due Diligence in the Garment and Footwear Sector set the strategic direction of the OECD's work in the sector with feedback from the Advisory Group. The 2018 Forum marked one year since the launch of the *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*<sup>10</sup> (Garment Due Diligence Guidance) and convened over 350 representatives from government, business, trade union and civil society. This two day Forum provided an opportunity to learn about the role of government-backed initiatives to support due diligence in the sector, and facilitated the sharing of lessons through sessions on a broad range of due diligence topics including traceability, purchasing practices, worker engagement, the role of financial institutions, SMEs, commercial contracts, alignment of RBC initiatives in the sector and due diligence in the leather supply chain.

In 2018, the OECD Secretariat published translations of the guidance in French and Chinese, and coordinated with the Polish and Japanese NCPs which both produced translations in their respective languages. The OECD Secretariat also continued its



<sup>10</sup> OECD (2018), OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, see also the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](https://www.oecd.org/LEGAL/0437)].

engagement on crosscutting issues such as alignment, gender, meaningful stakeholder engagement, and blockchain for transparency.

### ***2.5.1. Engagement in key markets***

In 2018, the OECD partnered with the Confederation of Indian Industry (CII) to establish an industry platform on responsible business conduct bringing together Indian manufacturing businesses and global brands sourcing from India. The objective of the platform is to address due diligence challenges and opportunities in Indian supply chains through shared research and capacity building activities. Initial roundtables were held in New Delhi and in Coimbatore, Tamil Nadu, engaging national, local and regional businesses and business associations, and establishing a programme of work for 2019.

The OECD signed a Memorandum of Understanding (MoU)<sup>11</sup> with the China National Textile and Apparel Council (CNTAC) at the Garment and Footwear Forum in January 2018. Through this agreement, China committed to developing and implementing sector guidance that is aligned to the OECD's due diligence guidance, and the OECD committed to providing technical support. This will have a significant impact in expanding the reach of RBC instruments in the industry, as China accounts for a 40% market share in the global trade in textiles.

### ***2.5.2. Capacity building on meaningful stakeholder engagement***

While the Garment Guidance provides a framework for meaningful engagement with workers, this can be a challenging process to navigate across diverse operating contexts and risks in practice. In 2018, the OECD engaged with businesses and trade unions to build capacity and provide an opportunity to share learnings on meaningful stakeholder engagement, particularly within the context of global framework agreements. Within this context, the OECD held a session at the Forum on Due Diligence in the Garment and Footwear Sector which examined lessons learned from three cases studies in Bangladesh and Turkey. The session included participants from Inditex, H&M, IndustriALL Global Union and their affiliates. In 2018, the OECD continued to explore the practical application of stakeholder engagement with trade unions and business at a meeting on global framework agreements within Turkey and an OECD-H&M-IndustriALL workshop in Cambodia.

### ***2.5.3. Purchasing practices***

The OECD Garment Guidance was the first government backed instrument to recognise the role of due diligence applied to a company's own purchasing practices. Within this context, the OECD plays an important role in facilitating shared learnings on implementing responsible purchasing practices. In 2018, the OECD hosted its second session on responsible purchasing practices at the Garment Forum and introduced for the first time the link between poor purchasing practices and environmental impacts. In June the EU and OECD co-hosted a workshop on purchasing practices focusing on apparel brands sourcing from Bangladesh, and including Bangladeshi manufacturers. Research was presented by the ILO and Better Buying, followed by breakout discussion groups on thematic purchasing practices issues led by representatives of ACT, Better Buying and industry initiatives,

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<sup>11</sup> OECD-CNTAC Memorandum of Understanding, signed 30 January 2018: <http://www.oecd.org/corporate/cntac-oecd-partner-to-strengthen-cooperation-textile-apparel-supply-chains.htm>

global brands and Bangladeshi industry. A follow up workshop is planned to take place in Dhaka, Bangladesh in 2019.

## 2.6. Responsible Business Conduct in the financial sector

### 2.6.1. Clarifying expectations for banks

The project Responsible Business Conduct (RBC) in the Financial Sector aims to support practitioners in the financial sector implement the OECD Guidelines. Under this project, the OECD is currently developing guidance to identify due diligence approaches for banks to ensure they adequately avoid and address adverse environmental and social impacts associated with their clients in general corporate lending and securities underwriting transactions. Currently no broadly recognised standard on environmental and social due diligence exists for these transactions although they represent the majority of financing activity by banks.

In 2018, the OECD organised two expert working sessions to collect input on this work: one in New York City hosted by Citibank and one in London, hosted by UK Finance. These working sessions, respectfully, brought together over 50 leading practitioners and experts to share experience and develop consensus around practical and progressive due diligence approaches for transactions of this nature.

Based on feedback provided by advisory group members to the project and other experts the OECD has developed a draft paper on *Due Diligence for responsible Business Conduct in General Corporate Lending and Securities Underwriting*. The paper provides guidance on when enhanced due diligence can be triggered in the context of general corporate lending and underwriting transactions, the role of banks in stakeholder engagement and remediation, and how duties with respect to client confidentiality can be respected throughout the due diligence process. The paper will be finalised in 2019.

Various other initiatives are seeking to define the responsibility of banks with respect to their financing activities. The OECD has been active in engaging with these processes to ensure alignment with the due diligence approach recommended under the Guidelines. For example, the OECD has been active in providing technical inputs to the Expert group on Enabling Remediation of the Dutch Banking Sector Agreement (DBA) on International Responsible Business Conduct Regarding Human Rights. The OECD has been active in providing technical input to the revision of the Equator Principles (EP) through members of the EP Association to strengthen linkages to the due diligence process and in the development of the UN-EP FI Principles for Responsible Banking.<sup>12</sup> The OECD's ongoing work on due diligence in the banking sector was also featured at the 2018 UN Forum on Business and Human Rights.

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<sup>12</sup> Designed to reflect the PRI, this instrument includes six high-level principles and a reporting expectation of signatories. For more information see <http://www.unepfi.org/wordpress/wp-content/uploads/2018/12/PRB-consultation-brochure.pdf>

### 2.6.2. Promoting RBC due diligence for institutional investors

The OECD has been active in promoting its recommendations on RBC for institutional investors<sup>13</sup> in collaboration with delegates and key partners. For example the OECD organised workshops on due diligence for institutional investment during the Global Pension Dialogue in Amsterdam,<sup>14</sup> Roundtable on Responsible Investment in Vienna, Annual Corporate Social Responsibility Conference of Cyprus<sup>15</sup>, Conference on Initiatives for Sustainable Global Value Chains organized by the European Social and Economic Committee in Brussels, and as a co-host of a conference on ESG Investing with the Thai Government Pension Fund in Bangkok.

As a result in 2018 the OECD's due diligence approach was underscored by various key actors. For example, the European Parliament called on European Commission to introduce a mandatory due diligence framework based on the OECD's paper on Responsible Business Conduct for Institutional Investors.<sup>16</sup> In this respect the European Parliament also proposed strong references to OECD recommendations on due diligence for institutional investors in the context of the draft EU regulation on Investor Disclosure currently being negotiated at the level of the EU.<sup>17</sup>



<sup>13</sup> See OECD (2017) Responsible Business Conduct for Institutional Investors (<http://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>).

<sup>14</sup> See agenda here <https://www.pensioenfederatie-jaarcongres.nl/global-pension-dialogue-30-may-2018>

<sup>15</sup> Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

<sup>16</sup> See 8 May, 2018, Motion for a European Parliament Resolution on Sustainable Finance (2018/2007(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2018-0164+0+DOC+XML+V0//EN&language=en>

<sup>17</sup> See 9 November 2018, Draft European Parliament Legislative Resolution on the proposal for a regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2018-0363+0+DOC+XML+V0//EN&language=EN>

The Dutch Pension Fund Agreement, introduced in December of 2018 likewise recognizes the OECD's recommendations on RBC for institutional investors as the basis for their approach to environmental and social risk management.<sup>18</sup>

In December of this year the PRI called on the OECD to engage in follow up work on RBC for institutional investors by engaging with other relevant committees at the OECD to integrate sustainable finance and investment into research agendas and dialogue amongst policy makers.<sup>19</sup> In this respect collaboration between the RBC unit and Center for Green Finance has been ongoing throughout 2018 and has resulted in strong references to the due diligence framework in the context of events and publications developed by the center.

The 2019 Business and Finance Outlook, the annual flagship publication of the OECD Directorate will include a chapter on Trust in Financial Institutions which will highlight how RBC can enable trust in financial institutions and present trends with respect to policy approaches to promoting RBC in the financial sector. Initial research and drafting of this chapter took place in the second half of 2018.

## 2.7. Highlights of projects in specific sectors

Responsible supply chains of minerals from conflict-affected and high-risk areas	
<b>Key outcomes</b>	<p>The London Metal Exchange (LME) announced due diligence requirements aligned with the OECD Minerals Guidance for brands delivering metals on the exchange in a position paper in October 2018. The LME action will help reinforcing global convergence of efforts, and mutual recognition and efficiency as a result.</p> <p>A capacity building exercise on the OECD Minerals Guidance for all stakeholders in the supply chains (business, government and civil society) was launched in Colombia using a train-the-trainer approach. The lessons learnt from the programme in Colombia will inform similar capacity building projects in West Africa and Central Africa in 2019.</p> <p>The Informal Advisory Group on Results measurement was formed to help the Secretariat develop a monitoring and evaluation framework to measure the outcomes of the implementation of the OECD Minerals Guidance. The Informal Advisory Group held its first meeting in late 2018, and is formed by academics and development practitioners with expertise in monitoring and evaluation in conflict-affected and high-risk areas.</p> <p>Outreach to stakeholders in the cobalt industry clarified the applicability of the OECD Guidance to all actors in the supply chain. It was also agreed that fine refiners are the control point in the supply chain as per the OECD Guidance, where third party audits should take place.</p> <p>Engagement with stakeholders in the diamond supply chain led to consultations with various industry bodies and initiatives on the revision of standards and policies to increase alignment with the OECD Minerals Guidance.</p>
<b>Key events</b>	<p><a href="#">12th Forum on Responsible Mineral Supply Chains</a>, 17-20 April 2018, Paris, France</p> <p><a href="#">International Conference on Artisanal and Small-scale Mining and Quarrying</a>, 11-23 September 2018, Livingstone, Zambia</p> <p>Opening Workshop of the Capacity Building Programme on Responsible Mineral Supply Chains in Colombia, 19 October 2018, Bogota, Colombia.</p>
<b>Publications</b>	<a href="#">Alignment Assessment of Industry Programmes with the OECD Minerals Guidance</a>

<sup>18</sup> The agreement provides that The Parties wish the Dutch Pension Funds Agreement on Responsible Investment for pension funds to meet the expectations set for pension funds under the OECD Guidelines and the UNGPs, whereby the OECD guidance 'Responsible business conduct for institutional investors' provides support for implementation. See Responsible Business Conduct Agreement on responsible investment by Pension Funds [https://www.imvoconvenanten.nl/pensioenfondsen?sc\\_lang=en](https://www.imvoconvenanten.nl/pensioenfondsen?sc_lang=en)

<sup>19</sup> PRI (2018), Aligning Investors with Sustainable Finance: A focus on the OECD [https://www.unpri.org/Uploads/q/b/f/aligninginvestorswithsustainablefinance\\_738858.pdf](https://www.unpri.org/Uploads/q/b/f/aligninginvestorswithsustainablefinance_738858.pdf)



	<a href="#">Methodology for the Alignment Assessment of Industry Programmes with the OECD Minerals Guidance</a> and <a href="#">Alignment Assessment Tool</a> <a href="#">Due Diligence in Colombia's Gold Supply Chain - Where Does Colombian Gold Go?</a> <a href="#">Gold at Crossroads: Assessment of the Supply Chains of Gold Produced in Burkina Faso, Mali and Niger</a>
<b>Responsible agricultural supply chains</b>	
<b>Key outcomes</b>	<p>The OECD and FAO launched <a href="#">a pilot project</a> in February 2018 with 27 companies and seven industry initiatives along the full value chain of multiple commodities to support the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD-FAO Guidance)</p> <p><a href="#">The pilot project baseline report</a> was published in September 2018 and the findings helped outline a series of seven peer learning sessions from September 2018 to April 2019</p> <p>Three peer learning webinar sessions on key challenges have been conducted since September 2018 with a high-level of engagement from pilot participants</p> <p>An informal working group was formed with volunteering five pilot participants to produce practical tools in 2019 that demonstrate links between the OECD-FAO Guidance and the Sustainable Development Goals (SDGs) and help companies more contributing to the achievement of the SDGs</p>
<b>Key events</b>	The OECD-FAO Roundtable on Responsible Agricultural Supply Chains, Paris, June 2018
<b>Publications</b>	<a href="#">Baseline report on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains</a>
<b>Garment and footwear supply chains</b>	
<b>Key outcomes</b>	<p><a href="#">China-OECD Memorandum of Understanding</a> to promote Responsible Business.</p> <p><a href="#">Alignment assessment tool</a> and pilot launched</p> <p>Establishment of CII-OECD-industry platform for Responsible Business Conduct in the Indian textile sector</p> <p>Guidance translations published in French and Chinese (OECD publications) and Polish (Partner publications)</p>
<b>Key events</b>	<p><a href="#">4th Forum on Due Diligence in the Garment and Footwear Sector, Paris, 30-31 January 2018</a></p> <p>EU-OECD Workshop on Responsible Purchasing Practices in the Garment and Footwear sector – a Bangladesh focus, Brussels, 26 June 2018</p> <p>Two CII-OECD Roundtables: Responsible Business Conduct for Textiles Value Chains, New Delhi, 18 July 2018 and Coimbatore, India, 18 December 2018</p> <p>OECD-H&amp;M-IndustriALL workshop on meaningful stakeholder engagement, Phnom Penh, Cambodia, 13 December 2018</p> <p>Two Roundtables exploring blockchain for enabling due diligence in garment supply chains, Paris, 30 January 2018 and 06 September 2018.</p>
<b>Publications</b>	<a href="#">Alignment assessment tool</a>
<b>Financial Sector</b>	
<b>Key outcomes</b>	<p>Developed recommendations and achieved consensus on various issues with respect to due diligence for RBC in general corporate lending and securities underwriting. These recommendations will be included in an official publication in early 2019.</p> <p>OECD paper on RBC for the financial sector was referenced as authoritative guidance in the context of the Dutch Pension Agreement and forthcoming position on enabling remediation in the banking sector, as part of the Dutch banking agreement.</p> <p>European Parliamentarian called for mandatory diligence for institutional investors in line with OECD paper on RBC for Institutional Investors.</p>
<b>Key events</b>	<p>1st Expert working session on Due Diligence for Corporate Lending and Underwriting, New York, 13 March 2018</p> <p>2nd Expert working session on Due Diligence for Corporate Lending and Underwriting, London, 28 September 2018</p>

## Chapter 3.

### Policy action to promote and enable Responsible Business Conduct

#### 3.1. Moving toward policy coherence remains a trend in 2018

This chapter summarises policy action in support of responsible business conduct (RBC) in 2018 and gives an overview of concrete examples of how the OECD has supported integration of RBC in other policy areas. A common theme has been a strong focus on action in face of global challenges, as well as moving toward policy coherence. The OECD Guidelines for Multinational Enterprises (the OECD Guidelines) are a core framework for these efforts, notably considering the practical nature of various OECD Due Diligence Guidances, which are a key tool for reaching out to business, but also the role of NCPs in promoting coherence and providing a venue for resolution of issues. The OECD's value add is unique in terms of its mandate, which covers a wide range of policy areas where technical experts from governments work together to share experiences and set international standards relating to economic policies that have a bearing on RBC. This evidence-based approach to policy making is complemented by various efforts to implement the OECD Guidelines as well as further evidence of what works in practice collected in the context of regional programmes, in particular in Asia.

Developments in 2018 point to an increasing focus among governments to promote policy coherence on RBC and to integrate RBC in other policy areas. The value-added of using OECD Guidelines as a core framework for these efforts is notable as the Guidelines promote RBC across the entire spectrum of issues where business operations intersect with society, including labour and human rights, but also corruption, environment, consumer protection, taxation, and others. A strong policy framework that is clear on what is expected on RBC can both bring more clarity to the market and to businesses but also assist governments align internal objectives of all agencies that work with the private sector or engage in economic activities using public funds, such as public procurement offices or development financing agencies and institutions.

Achieving policy coherence was a central theme of the 2018 OECD-hosted Roundtable for Policy Makers on RBC (the Roundtable). The Roundtable, which has taken place since 2015 as part of the Global Forum on Responsible Business Conduct (GFRBC), is designed to address concrete challenges policy makers face in designing and implementing RBC-related policies and instruments. Specific topics addressed in 2018 included: the role of National Action Plans (NAPs) on Business and Human Rights or RBC in enabling policy coherence; the role of NCPs and national human rights institutions (NHRIs) in RBC policy making; the role of governments in promoting due diligence, as well as three deep-dive sessions, on RBC in government procurement practices, development finance and co-operation, and the OECD Framework on Policy Coherence for Sustainable Development.

The session on NAPs, which was once again jointly organised with the UN Working Group on Business and Human Rights, showed that elaborating (and concluding) a NAP is an



effective way to unifying national efforts on RBC. Given the broad scope of RBC, two elements in the development of NAPs were highlighted by various governments to be particularly helpful in framing efforts and achieving a successful outcome. Namely, this included 1) using baseline assessments to develop an evidence-based NAP that responds to key challenges, rather than to perceived challenges; and 2) ensuring an action-oriented and not solely descriptive NAP.<sup>1</sup>

As of January 2019, 22 countries have adopted a NAP and four countries are in the process of developing one – all of which are Adherents to the OECD Guidelines (see table 3.1 below). In 2018, Luxembourg and Slovenia adopted a NAP for the first time. Both NAPs rely on the OECD Guidelines as a core framework, and place emphasis on the NCPs as a key mechanism to promoting access to remedy. The first iteration of the Luxembourg NAP, covering a period of 18 months (2018-2019), sets out a work programme which will be assessed by an Inter-ministerial Committee for Human Rights, with a view to reflect on next phases and a draft 2020-21 NAP by the end of 2019.<sup>2</sup> Similarly, Slovenia established an interdepartmental working group, of which the NCP is a member, to report and implement the activities of the NAP. Colombia and Lithuania are currently in the process of updating their respective NAPs and more actively including the NCPs in this process. Although the NAP process in Brazil is paused at this stage, a presidential Decree was issued in November 2018, establishing National Guidelines on Business and Human Rights for Brazilian medium and large companies, including multinational enterprises operating in Brazil. The Decree is non-binding and calls on companies to internally disseminate corporate responsibility instruments, including the OECD Guidelines.<sup>3</sup> At the initial stage of the NAP formulation process to conduct the baseline study, Japan organised multi-stakeholder meetings.

Implementation and monitoring of NAPs has continued in a number of countries and NCPs have been closely involved in these processes. For example, the Italian NCP participated in the mid-term review of the Italian NAP. For the purpose of the implementation of the NAP in Chile, at the end of 2018, the civil society committee of the NCP was merged with the NAP multi-stakeholder advisory body, thereby sending a strong signal on policy coherence within the Government.

Recent OECD Investment Policy Reviews recommend to governments under review to adopt a NAP based on good international practice even if they are not an OECD Guidelines Adherents. The OECD has been providing support in this regard in the framework of the EU-funded programme on *Promoting Responsible Supply Chains in Asia* (see Box 3.1). For example, the OECD presented various elements of RBC work at the request of the Royal Government of Thailand during the *Bangkok Business and Human Rights Week* in June 2018, including how NCPs function. The Government of Thailand is currently elaborating a NAP.

<sup>1</sup> For more information, please refer to the Session Note: National Action Plans to Enable RBC Policy Coherence, available here: <http://mneguidelines.oecd.org/global-forum/2018-GFRBC-Session-Note-The-Role-of-NAPs-Policy-Coherence.pdf>

<sup>2</sup> For more information, see: [https://www.ohchr.org/Documents/Issues/Business/NationalPlans/LuxembourgNP\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Business/NationalPlans/LuxembourgNP_EN.pdf)

<sup>3</sup> Brazil, Presidential Decree on the National Guidelines on Business and Human Rights; (Decree n. 9.571, 21/11/2018: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2018/Decreto/D9571.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Decreto/D9571.htm))

**Table 3.1.** National action plans on business and Human Rights in adherent countries

Country	Status of NAP	Reference to the OECD Guidelines	Reference to NCPs
Argentina	In progress	Yes	Yes
Australia			
Austria			
Belgium	Completed 2017	Yes	Yes
Brazil			
Canada			
Chile	Completed 2017	Yes	Yes
Colombia (Spanish)	Completed 2015, update in progress	Yes	Yes
Costa Rica	NAP on RBC completed 2017	Yes	Yes
Czech Republic			
Denmark	Completed 2014	Yes	Yes
Egypt			
Estonia			
Finland	Completed 2014	Yes	Yes
France	Completed 2017	Yes	Yes
Germany	Completed 2016	Yes	Yes
Greece			
Hungary			
Iceland			
Ireland	Completed 2017	Yes	Yes
Israel			
Italy	Completed 2016	Yes	Yes
Japan	In progress		
Jordan			
Korea			
Latvia			
Lithuania	Completed 2015, update in progress	No, Yes in update	No, Yes in update
Luxembourg	Completed 2018	Yes	Yes
Mexico	In progress	Yes	Yes
Morocco	In progress	Yes	Yes
Netherlands	Completed 2013	Yes	Yes
New Zealand			
Norway	Completed 2015	Yes	Yes
Peru			
Poland	Completed 2017	Yes	Yes
Portugal			
Romania			
Slovak Republic			
Slovenia	Completed 2018	Yes	Yes
Spain (Spanish)	Completed 2017	Yes	Yes
Sweden	Completed 2015	Yes	Yes
Switzerland	NAP on RBC completed 2015	Yes	Yes
	NAP on Business and Human Rights completed 2016	Yes	Yes
Tunisia			
Turkey			
United Kingdom	Completed 2013, Updated 2016	Yes	Yes
United States	NAP on RBC completed 2016	Yes	Yes

The importance of policy coherence was also reinforced in a number of sessions at the 2018 GFRBC, notably by the business community. The 6<sup>th</sup> edition of the GFRBC (20-21 June 2018) brought together over 750 participants, mostly from businesses but also representatives from 60 governments and various UN agencies.<sup>4</sup> Participants discussed a wide range of topics in over 35 sessions. During the opening plenary session that focused on the purpose of business in society, panellists called on governments to not shy away from their responsibilities to ensure that businesses operate in a responsible manner. As experience shows, governments have a range of tools at their disposal, including for example, providing incentives through procurement policies or licensing processes favourable to businesses with strong due diligence approaches, providing resources and guidance to companies to conduct due diligence, or introducing regulations with respect to RBC. The “toolbox” for governments has expanded significantly since the 2011 revision to the OECD Guidelines. The wide consensus build around the new *OECD Due Diligence Guidance for Responsible Business Conduct* was highlighted as an important opportunity for governments in terms of implementation. The session on *Promoting due diligence: the role of Governments* also echoed this message - experience shows that promoting uniformity and clarity around expectations on due diligence is an important element of how successful various regulatory and policy directives are.<sup>5</sup>

Furthermore, policy coherence on RBC is relevant in the context of the Sustainable Development Goals (SDGs). The importance of RBC for achieving the SDGs is being recognised on regional and country levels. On 30 January 2019, the European Commission issued a Reflection Paper *Towards a Sustainable Europe by 2030* which sets out key policy foundations and horizontal enablers for achieving the SDGs.<sup>6</sup> The paper was elaborated over the course of 2018 and it incorporates input from the High-Level Multi-stakeholder Platform on the SDGs, where OECD participated as an observer and provided inputs on RBC. The paper also incorporates the work by the Commission on the Action Plan on Sustainable Finance and the ongoing developments in this regard, which has been informed by the OECD’s work on RBC and institutional investors and Centre for Green Finance. (For more information, see Chapter 2).

The Reflection Paper notably recognises RBC as a horizontal enabler for the sustainability transition and puts forward three scenarios for stimulating a discussion on how the EU could follow up on the SDGs, e.g. through an overarching EU SDGs strategy guiding the actions of the EU and its Member States, by continuing mainstreaming the SDGs in all relevant EU policies, and through an enhanced focus on external action.

Similar reflections are taking place at the country level. For example, in September 2018, the Dutch Minister of Foreign Trade and Development Cooperation asked the Social and Economic Council of the Netherlands to provide advice to the Government on the relationship between the SDGs, RBC, more sustainable global value chains and public-private partnerships, and what this means for businesses and government. The request for advice is linked to the new policy for Foreign Trade and Development Cooperation. The SDGs form the framework for that policy, with cooperation and an increased role for the private sector emphasized in terms of its implementation. Poland also includes RBC issues as part of its national SDG implementation plan, *Strategy for Sustainable Development*.

<sup>4</sup> For more information, please refer to the Summary Report for the 2018 GFRBC, available here: <http://mneguidelines.oecd.org/GFRBC-2018-Summary.pdf>.

<sup>5</sup> For more information, please refer to the Session Note: Promoting due diligence: the role of Governments, available here: <http://mneguidelines.oecd.org/global-forum/2018-GFRBC-Session-note-Role-of-Government-for-DD.pdf>

<sup>6</sup> [https://ec.europa.eu/commission/files/reflection-paper-towards-sustainable-europe\\_en](https://ec.europa.eu/commission/files/reflection-paper-towards-sustainable-europe_en)

### 3.1.1. *Promoting responsible supply chains in Asia*

2018 also saw the launch of the regional EU-funded programme on *Promoting Responsible Supply Chains in Asia*, which includes activities to promote policy coherence on RBC and increase stakeholders, notably businesses, but also civil society, worker representatives and academics, understanding of OECD recommendations on due diligence and responsible supply chains. The programme, implemented in collaboration with the ILO and funded by the European Union, covers activities in six countries in the region: Japan (OECD Member), China (Key Partner country), Thailand, Myanmar, the Philippines, and Viet Nam. In 2018, activities focused primarily on building partnerships with relevant stakeholders and initiatives on the ground, notably with government agencies and businesses and associations in specific sectors, such as electronics in China or agriculture in Southeast Asia (see Box 3.1).

#### **Box 3.1. EU-ILO-OECD Programme on Promoting Responsible Supply Chains in Asia**

The programme activities started in January 2018 and will continue until 2020. The programme was initially publicised at the EU-ASEAN Business Summit in March 2018 by the EU Trade Commissioner and launched at a high-level by the OECD Secretary General at the June 2018 Global Forum on RBC. The forum also included a dedicated session with high-level participation from Japan, China, Myanmar, and Thailand, as well as the EU and the ILO.

The OECD organised several events and integrated RBC components in events organised in the countries under other OECD workstreams. Examples include co-hosting a seminar in Japan in October with Keidanren and the ILO on Responsible Business of Japanese Companies and their Supply Chains. The translated Japanese version of the OECD Due Diligence Guidance on RBC is expected to be launched in the first half of 2019, with activities to support the promotion and implementation of the Guidance in Japan planned for 2019 and 2020 under the Programme.

In China, the OECD organised a technical seminar in December 2018 to raise awareness of key RBC concepts. The Chinese version of the Due Diligence Guidance for RBC is underway and is expected to be completed by first half of 2019. A study on RBC in China is also being prepared together with partners.

Thailand and the OECD signed an enhanced co-operation programme in May 2018 and RBC is featured as a key area of co-operation. The OECD co-organised the ASEAN Inter-regional Dialogue on Business and Human Rights on 4-6 June 2018 and a conference for business on “Strengthening responsible business conduct through international standards” together with the Thai Ministry of Justice and Joint Standing Committee on Commerce Industry and Banking (JSCCIB), the main Thai business association. In Myanmar, the Ministry of Planning and Investment and the OECD launched a second Investment Policy Review of Myanmar in July 2018.

Missions to Viet Nam and the Philippines took place in February and October respectively and included participation of the OECD at the EU-Philippines Business Summit held in Manila in October 2018 and several preparatory meetings with the governments and relevant stakeholders regarding future activities. The 2018 Investment Policy Review of Viet Nam was finalised in 2018 and the regional programme on RBC was presented at the November OECD-ASEAN event on Making Agro-Food Markets Work for ASEAN.\*

\*More information on the activities and events under the EU-ILO-OECD programme on responsible supply chains in Asia can be found on the OECD website: <http://mneguidelines.oecd.org/globalpartnerships>

### 3.2. Integrating RBC in specific policy areas

One way to build coherence and collaboration on RBC is by making a link between RBC and existing policy areas. The OECD brings valued added in this regard since OECD's mandate covers a wide range of policy areas, in which technical experts from governments work together to share experiences and set international standards relating to economic policies that have a bearing on RBC. In 2018, integration of RBC in specific policy areas continued in areas where the state acts as an economic actor.

#### 3.2.1. Leveraging public procurement for RBC

Expectations are growing for governments to spend public money in a responsible way and ensure supply chain due diligence of public procurement. Public procurement in OECD Member countries represents on average 12% of GDP and 29% of the national budget, with two thirds of this expenditure occurring at the sub-national levels.<sup>7</sup> In September 2018, a group of countries led by the United Kingdom launched the *Principles To Guide Government Action To Combat Human Trafficking in Global Supply Chains*,<sup>8</sup> calling on responsible government procurement practices. Similarly, the G20 Labour and Employment Ministerial meeting Declaration of 6-7 September 2018, called on countries to: “utilize public procurement to improve compliance with labour standards, in coordination with other government agencies. Government purchases of goods and services represent a significant share of the global economy. We will exchange best practices on public procurement, government contracting and responsible government-backed financing.”<sup>9</sup>

Following on earlier discussions at the OECD on how to further RBC through public procurement, and in addition to a deep-dive session at the Policy Makers Roundtable in 2018, an expert meeting took place in June 2018 bringing together public procurement practitioners, policy makers and other experts. The meeting highlighted again the increasing need for practitioners and policy makers to share learning and best practice, spread tools, exchange information on risks related to certain products and markets and share information on follow-up and monitoring. In response to the expert meeting and to implement the international calls for action, the OECD developed a proposal to launch a work programme on Responsible Business Conduct and Public Procurement setting out objectives, proposed activities and funding priorities for its implementation over 2019-2020. The proposal was discussed, welcomed and approved by both the OECD Working Party on Leading Practitioners of Public Procurement (WPLPP), as well as the WPRBC in 2018. Work is planned for 2019-2020, pending funding .

#### 3.2.2. Integrating RBC in development financing and co-operation efforts

Public resources are also used in the context of development finance and co-operation. Concepts like blended finance, development impact bonds, social impact investing, and other innovative programmes to support public-private partnerships have gained more

<sup>7</sup> OECD (2017), *Government at a Glance 2017*, OECD Publishing, Paris;

<sup>8</sup> <https://www.state.gov/j/tip/rls/other/2018/286125.htm>

<sup>9</sup> Annex 2: G20 Strategy to eradicate child labour, forced labour, human trafficking and modern slavery in the world of work, <http://www.g20.utoronto.ca/2018/2018-09-07-employment.html#annex2>



focus since the Sustainable Development Goals (SDGs) were adopted in 2015.<sup>10</sup> Governments are increasingly looking at best ways to engage the private sector in the context of development policy and at how public financing could be used to mobilise private capital and support private sector activity in achieving the SDGs.

Participants at the 2017 Global Forum on RBC had called on the OECD to make the link between RBC and development finance and co-operation more explicit. Although the OECD Guidelines pre-date the SDGs, their purpose is aligned with the ambition of the SDGs to encourage positive contributions of the private sector to sustainable development. A deep-dive session for policy makers on this topic was held at the 2018 Roundtable. It featured examples of how governments are integrating RBC in their development policies and practices, including in the context of traditional development lending models and in new financing structures. It also specifically looked at the ways that governments could support integration of RBC due diligence in the work and ongoing due diligence efforts of development financing institutions (DFIs), be it in their lending practices but also in provision of technical support on the ground.

The main takeaway from the discussion was that RBC and development policy are complementary in three main ways. First, RBC due diligence can complement and support the ongoing due diligence efforts by public institutions that finance development. Second, integrating RBC expectations in new and innovating financing models for financing the 2030 Agenda, including in blended finance, would be a practical way to connect policy objectives between these two areas. Additionally, it would help maximise the development impact of new types of financing while also addressing the risks of adverse impacts on the people and the planet. Third, development agencies can use RBC to shape their broader efforts as related to private sector development and broader contribution of the private sector to sustainable development and the SDGs.

A number of governments have started making these connections in practice. For example, NORAD, the Norwegian development agency, completed an evaluation exercise in 2018 to understand how human rights are promoted, protected and respected in Norwegian development cooperation that involves business. The evaluation assessed the systems and performance of six Norwegian public entities in Norwegian development cooperation, namely the Ministry of Foreign Affairs (MFA), Norway's embassies, the Norwegian Agency for Development Cooperation (Norad), Norfund, the Norwegian Export Credit Guarantee Agency (GIEK) and Innovation Norway. The evaluation also included two country case studies, Tanzania and Mozambique, and based the findings from five projects in each country. The result found that Norway's aid administration strongly communicates about business and human rights, however, that there are still gaps in practice in how these commitments are implemented.<sup>11</sup>

The findings of a recent stocktaking by the OECD (2018b) on *Promoting RBC through development co-operation efforts* supports a similar conclusion.<sup>12</sup> Many donor agencies and

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<sup>10</sup> The 2030 Agenda for Sustainable Development explicitly calls for mobilising the private sector in achieving the SDGs, which means that public and private financing and objectives are expected to increasingly intersect in the coming years.

<sup>11</sup> UNGP, Human Rights and Norwegian Development Cooperation Involving Business, <https://norad.no/en/toolspublications/publications/2018/ungp-human-rights-and-norwegian-development-cooperationinvolving-business/>

<sup>12</sup> *Promoting and Enabling Responsible Business Conduct Through Development Co-Operation Efforts*, Stocktaking of initiatives by donor agencies and national development financing institutions,

DFIs have taken steps to promote, incentivise and exemplify RBC, but there is significant scope to mainstream RBC within institutions. OECD's ongoing work in this regard was presented at the 2018 UN Forum on Business and Human Rights.

In 2018, the DAC issued the OECD DAC Blended Finance Principles for Unlocking Commercial Finance for the Sustainable Development Goals which recognise that quality in the design and execution of projects financed by development finance are central to the objective of supporting the development of functioning and effective markets and which call on blended finance to “based on high corporate governance, environmental and social standards, as well as internationally recognised responsible business conduct instruments [...]”.<sup>13</sup> Additionally, the importance of RBC was highlighted in the OECD Global Outlook on Financing for Sustainable Development 2019 which explicitly called on governments to promote RBC in order to harness the potential of private sector resources for the SDGs.<sup>14</sup>

### 3.2.3. Sustainable finance and corporate governance

The OECD sets out guidelines for policymakers to evaluate and improve the legal, regulatory, and institutional framework for corporate governance, including also for corporate governance of State-Owned Enterprises (SOEs). The OECD also has a number of standards that shape financial markets and deal with institutions acting in a fiduciary capacity, e.g. pension funds.

In the context of global challenges like climate, inequality, poverty, and need for sustainable development, governments have been assessing at the national level the role of the private sector in addressing them, and notably, whether and how corporate law and corporate models are a barrier for sustainability transition. For example, France elaborated a draft law PACTE in 2018 (The Action Plan for Enterprise Growth and Transformation),<sup>15</sup> which includes proposals on how the legal definitions of companies could be adapted to strengthen their relationship with the general interest and society.

In May 2018, the European Commission adopted a package of measures to implement actions announced in its Action Plan on Sustainable Finance, notably a proposal for a number of regulations (e.g. to unify what can be considered environmentally sustainable economic activity; to set out disclosure obligations on how institutional investors and asset managers integrate environmental, social and governance (ESG) factors in their risk processes; to create a new category of benchmarks on low-carbon and positive carbon impacts to provide investors with better information).

These initiatives all aim to address both the responsibility but also the opportunity for business in face of major global challenges. The OECD is particularly well placed to assist its members with considering these questions. Its various committees that deal with

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<http://mneguidelines.oecd.org/Promoting-and-enabling-RBC-through-development-cooperation.pdf>.

<sup>13</sup> OECD DAC Blended Finance Principles for Unlocking Commercial Finance for the Sustainable Development Goals.

<sup>14</sup> OECD (2018d), *Global Outlook on Financing for Sustainable Development 2019: Time to Face the Challenge*, OECD Publishing, <https://doi.org/10.1787/9789264307995-en>.

<sup>15</sup> Le Projet de Loi PACTE (Plan d'Action pour la Croissance et la Transformation des Entreprises). Discussions are ongoing in the French Senate. For further information, please see: <https://www.economie.gouv.fr/plan-entreprises-pacte>



financial and enterprise affairs are both standard setting bodies but also practitioners with experience in each policy areas that intersect. In December 2018, Principles for Responsible Investment (PRI) issued recommendations to the OECD on how to further promote and align policy advice related to corporate governance, the financial sector and investment in support of the Paris Agreement and the SDGs. The *Aligning Investors with Sustainable Finance: A focus on the OECD* report recognises that more could be done to harness and finance and investment to support sustainable development.<sup>16</sup>

In 2018, the OECD has also addressed the broader question of the contribution of business in face of global challenges in several related areas, all of which build on and reference RBC. For example, OECD Statistics published a working paper in 2018 on *Measuring the impact of businesses on people's well-being and sustainability: Taking stock of existing frameworks and initiatives*.<sup>17</sup> The working paper aims to better understand how businesses can impact people's well-being and sustainability, using OECD's well-being framework and Better Life Initiative as a starting point. The OECD has also launched a platform for Business for Inclusive Growth in order to explore and further incubate ideas for how businesses can help address inclusive growth challenges and a new business model.<sup>18</sup>

SOEs also have a role to play in terms of meeting the SDGs. RBC expectations applicable to SOEs, but so far there has been limited research on how widespread RBC practices are among SOEs. In some countries, governments have taken various steps to address this challenge. For example, Brazil has reported in its annual OECD NCP questionnaire that in November 2018 some of the largest Brazilian SOEs issued a letter confirming their commitment to advance human rights in their operations. The OECD is also promoting RBC in SOEs as part of its ongoing work in Asia, and has featured its various standards in this regard at the 2018 UN Forum on Business and Human Rights. For example, in April 2018, the OECD collaborated with Thailand, UNDP and the National Human Rights Commission of Thailand on a High-level Forum on *Leading by Example: Thai State-owned Enterprises towards the Role Model of Responsible Business*. The 11<sup>th</sup> Meeting of the OECD Asia Network on Corporate Governance of State-owned Enterprises, which took place on 6-7 September in Hyderabad, India, focused on stocktaking of national practices on RBC. The summary report is expected to be published in 2019.

#### ***3.2.4. Deepening evidence on the benefits of integrating RBC in investment policy***

The inclusion of RBC as a core element of OECD Investment Policy Reviews continued in 2018. Since the update of the OECD Policy Framework for Investment in 2015 [C/MIN(2015)6/FINAL] and the decision by the OECD Investment Committee in 2016 to place a particular emphasis on RBC issues in reviews of candidate countries for adherence to the OECD Declaration on International Investment and Multinational Enterprises, more

<sup>16</sup> PRI (2018), *Aligning Investors with Sustainable Finance: A focus on the OECD* [https://www.unpri.org/Uploads/q/b/f/aligninginvestorswithsustainablefinance\\_738858.pdf](https://www.unpri.org/Uploads/q/b/f/aligninginvestorswithsustainablefinance_738858.pdf)

<sup>17</sup> Shinwell, M. and E. Shamir (2018), "Measuring the impact of businesses on people's well-being and sustainability: Taking stock of existing frameworks and initiatives", OECD Statistics Working Papers, No. 2018/08, OECD Publishing, Paris, <https://doi.org/10.1787/51837366-en>.

<sup>18</sup> For more information on OECD's Business for Inclusive Growth initiative, see: [www.oecd.org/inclusive-growth/Business\\_for\\_IG.pdf](http://www.oecd.org/inclusive-growth/Business_for_IG.pdf) and [www.oecd.org/inclusivegrowth/business.htm](http://www.oecd.org/inclusivegrowth/business.htm)

than ten reviews now include a detailed chapter on Promoting and Enabling RBC.<sup>19</sup> These reviews collectively represent a new body of work on how a focus on RBC can help governments maximise the benefits of investment in their economies.

The reviews generally involve several missions to the country, multiple meetings with relevant parts of the government and stakeholders, an inclusive and iterative report writing process (which includes wide stakeholder consultations), and visits from government officials to the OECD. Three consultation workshops on RBC and/or NCPs were organised in the countries under review in 2018, in direct co-operation with authorities and relevant stakeholders (Zagreb, Croatia on 18 January 2018; Nay Pyi Taw, Myanmar on 7 July 2018; Bangkok, Thailand on 17-18 September 2018). These events were an opportunity to discuss RBC with a wide range of government officials and raise awareness about RBC with other groups, such as businesses, workers organisations and civil society. The OECD also participated in two conferences on investment policy in Cairo, Egypt (organised in the framework of the *EU-OECD Programme on Promoting Investment in the Mediterranean* as well as the *MENA Transition Fund* project on “Enhancing the Investment Climate in Egypt”), where RBC was presented.

The OECD hosted at the 2018 GFRBC the first meeting of the *Policy Network on FDI qualities*, which supports the new policy work on measuring FDI qualities, launched in March 2018 under the auspices of the Investment Committee. The objective of this project is to develop a toolbox to equip policymakers with a set of actionable tools guiding countries to mobilise FDI that maximises inclusive and sustainable growth and supports progress towards the SDGs. RBC was also discussed at the third workshop of the OECD Investment Promotion Agencies Network on 22 October 2018 on *Maximising the benefits of FDI through investment promotion and facilitation*.<sup>17</sup> Adherents to the OECD Guidelines reported that they communicated about NCP specific instances received in 2018 to officials responsible for foreign trade and investment incentives.

On the occasion of the 2018 GFRBC, the Columbia Center on Sustainable Investment organised an exploratory seminar at the OECD on the connection between investment treaties and RBC. This follows the call by stakeholders for additional work in this area. The OECD will work further on this issue in 2019 in the framework of its various projects on inclusive and sustainable development and investment.

The trends to include RBC criteria in trade and investment agreements has continued throughout 2018. For example, in October 2018, the Netherlands adopted a new Model Bilateral Investment Treaty, which not only incorporates expectations on RBC, but also links observance of the OECD Guidelines and the UN Guiding Principles to dispute settlement. Another example is the EU-Japan Economic Partnership Agreement (which entered into force on 1 February 2019) which specifically refers to the Guidelines in the chapter on trade and sustainable development. The 2018 EU-Mexico agreement on trade (“agreement in principle” announced on 21 April 2018 as part of the envisaged update of the broader EU-Mexico Global Agreement) also integrates a dedicated provision on RBC with a reference to the Guidelines in the chapter on trade and sustainable development, introduces a new dialogue with civil society in all areas of the agreement, as well as represents the first time the EU included provisions to fight corruption in a trade agreement, with measures to act against bribery and money laundering. Chile has also announced that

<sup>19</sup> (Myanmar (2014); Philippines (2016); Ukraine (2016); Kazakhstan (2017); Lao PDR (2017); Southeast Asia (2017); Mediterranean (2018); Viet Nam (2018); Cambodia (2018); Myanmar (forthcoming); Thailand (forthcoming); Egypt (forthcoming); Croatia (forthcoming))

it is modernising its agreements with the EU, Brazil and in the context of the Pacific Alliance and that the NCP is a part of these discussions. Peru equally reported the inclusion of RBC and Guidelines references in the Pacific Alliance agreement on investment.

Beyond trade and investment agreements, governments are taking various practical steps to promote RBC abroad. Canada announced in January 2018 that it will build out its international RBC strategy by creating an Ombudsperson on responsible business (which will have investigative powers) and a multi-stakeholder advisory body to provide advice. The government considers these initiatives to be complementary with the NCP mandate (e.g. the Ombudsperson may refer cases to the NCP for formal mediation).<sup>20</sup>

Another example is Austria's 2018 National Strategy on Foreign Trade, which includes a dedicated chapter on RBC and references in other chapters. The Austrian NCP has also reported that it regularly informs officials responsible for trade missions, the Austrian Export Credit Agency and the Austrian Development Bank, about NCP activities and specific instances. In the same vein, Germany adopted a new procedure in July 2018 for organising trade missions. All businesses that want to join trade missions are now required to sign a statement on RBC (which refers to the OECD Guidelines and the NCP). 12 Adherents to the OECD Guidelines reported that communicated about NCP specific instances received in 2018 to officials responsible for trade missions.

### **3.2.5. Infrastructure**

Another area in 2018 which benefitted from more focus was infrastructure. Development of infrastructure is both an explicit SDG as well as a critical factor for achieving other SDGs. The UN estimates that 2.3 billion people still do not have access to simple sanitation and almost 800 million lack access to water. In many parts of the world, digital infrastructure does not exist at all. 1.2 billion people do not have reliable phone service and just under 1 billion people lack access to electricity.<sup>21</sup> Even where infrastructure does exist, economic losses from aging assets and challenges related to financing and adapting them to be climate-compatible are significant challenges for governments.

The OECD (2017) estimates that USD 6.3 trillion is required annually on average until 2030 to meet infrastructure development needs globally. An additional USD 0.6 trillion/year will make these investments climate-compatible.<sup>22</sup> Financing infrastructure, however, is only one aspect of ensuring that socio-economic and sustainable development needs are met. Without a broad and balanced consideration of environmental, social, and governance, along with economic criteria, infrastructure projects and the communities where they are being developed are under significant risk. Infrastructure projects are complex, with long supply chains and many stakeholders, and are highly vulnerable to

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<sup>20</sup> For more information, see <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse.aspx?lang=eng>.

<sup>21</sup> <https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-9.pdf>; <https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-7.pdf>.

<sup>22</sup> OECD (2017) estimates that the additional investment cost is likely to be offset over time by fuel savings resulting from low emission technologies and infrastructure. OECD (2017), Investing in Climate, Investing in Growth, OECD Publishing, Paris, <https://doi.org/10.1787/9789264273528-en>. For technical notes, see <https://www.oecd.org/env/cc/g20-climate/Technical-note-estimates-of-infrastructure-investment-needs.pdf>.

corruption and negative social and environmental impacts. The 2016 OECD Foreign Bribery Report shows that almost 60% of foreign bribery cases occurred in four sectors related to infrastructure, with executives of SOEs and other associated parties the most common bribe recipients.

Getting and keeping the social license to operate is also an underestimated and under-priced risk.<sup>23</sup> The costs for communities are often even higher and more serious. Land-consuming industries (such as mining, agribusiness, oil, gas and coal and dam construction) remained deadliest for human rights defenders in 2018 according to the UN Special Rapporteur on the Situation of Human Rights Defenders.<sup>24</sup> The UN Office of the High Commissioner for Human Rights (2018) has cautioned that without explicitly and systematically acknowledging and addressing the sustainability and human rights gap in infrastructure policy frameworks and practices, at best - the enormous potential of infrastructure as a facilitator for SDGs will not be realised, and at worst - infrastructure development will actually undermine the SDGs.

Integrating RBC in the infrastructure project life-cycle can be a practical way for governments to balance economic, social and environmental objectives during preparation, financing and delivery of infrastructure and for private sector participants to know and show they are addressing their most significant impacts on communities and the environment.

The OECD Business and Finance Outlook 2018 emphasised that in the context of a new phase of globalisation (with Asia/Eurasia and China's Belt and Road Initiative as a case study) RBC is critical to ensuring that infrastructure investment contributes to sustainable development, and used evidence from NCP cases to show that ensuring an adequate framework for investment and promoting and enabling RBC is important for developed and developing economies alike.<sup>25</sup> The experience from the NCP specific instances also shows this to be case. 14% of NCP specific instances since 2001 concern infrastructure, with a notable rise in recent specific instances on issues related to renewable energy, e.g. in particular human rights, land acquisitions and indigenous peoples customary land rights. Most cases concerned the mining and quarrying sector, with remainder related to construction, financing and insurance; transportation and storage; and electricity, gas, stream and air conditions supply. More than half of these cases were raised in non-Adherent countries.

The OECD has cooperated with its Members and other international organisations to promote quality infrastructure investment. Notably, in September 2018, the OECD co-organised a *Seminar on Quality Infrastructure Investment* with the Japanese Ministry of Finance and the World Bank, in cooperation with the World Bank's Tokyo Development

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<sup>23</sup> Inter-American Development Bank (2017) analysed 200 projects across six sectors in Latin America and the Caribbean that were strongly opposed by local communities and found that a lack of a multi-dimensional approach in project planning, design, and delivery was seriously detrimental for companies, investors, and national governments - 36 out of the 200 projects were cancelled; 162 faced delays; and 116 faced cost overruns. IADB (2017), *Lessons from Four Decades of Infrastructure Project-Related Conflicts in Latin America and the Caribbean*, <https://publications.iadb.org/handle/11319/8502#sthash.M7vhXdeL.dpuf>.

<sup>24</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/75/PDF/N1722075.pdf?OpenElement>

<sup>25</sup> OECD (2018e), *OECD Business and Finance Outlook 2018*, OECD Publishing,

Learning Center Program and the Asian Development Bank Institute. OECD RBC standards were discussed and presented.<sup>26</sup> Additionally, a presentation on RBC was included in OECD hosted workshop in November 2018 on Innovation, Standardization and Data Collection for Long-Term Investment, supporting the G20/OECD Task Force on Institutional Investors and Long-term Financing, as well as the meeting of the Steering Committee of the Infrastructure Data Initiative.<sup>27</sup>

Finally, in October 2018, the OECD Secretariat hosted a seminar with the OHCHR and the Heinrich Böll Foundation to present a forthcoming publication *Other Infrastructure Gap: Sustainability – Human Rights and Environmental Dimensions*.<sup>28</sup> The publication analyses the potential gains from integrating RBC in plans and projects, as well as the cost of failing to do so, drawing from mega-infrastructure project experience in the energy, transportation and water sectors. It examines two key aspects of infrastructure development in relative detail: the legal framework governing international investment, and the shifting landscape of infrastructure finance.

### 3.3. RBC in thematic areas

The OECD Guidelines cover a broad range of topics, including environment, human rights, labour issues, etc. Within those, specific issues have been given particular attention in 2018, including forced labour and human trafficking, and gender. The 70th anniversary of the Declaration on Human Rights was celebrated all over the world with hundreds of events (see Box 3.2.).

#### **Box 3.2. Commemorating the 70th Anniversary of the Universal Declaration on Human Rights**

To commemorate the 70th anniversary of the signing of the Universal Declaration of Human Rights (Paris, 10 December 1948) and to join the hundreds of events held worldwide on this occasion, the OECD undertook a multilayer, multichannel communications campaign aimed at different stakeholders to highlight the mainstreaming of human rights across work on RBC.

An internal OECD seminar event was organised on the 6 December 2018 to raise awareness on the role of RBC in helping ensure that businesses respect human rights in their practices and across supply chains. The event included a key note speech by Christine Kaufmann and internal discussion from different parts of OECD on how human rights cuts across their work streams (e.g. environment, export credits, development, statistics, etc.)

A website dedicated to human rights as part of RBC was created to house key documents on the theme including a concept note, short impact videos, as well as a blog written by the newly elected Chair and the outgoing Chair of the WPRBC, Christine Kaufmann and Roel Nieuwenkamp.

<sup>26</sup> For more information, see: <http://www.oecd.org/finance/private-pensions/2018-seminar-on-quality-infrastructure-investment.htm>.

<sup>27</sup> For more information, see: <http://www.oecd.org/daf/fin/private-pensions/2018-lti-workshop-agenda.pdf>.

<sup>28</sup> <https://www.ohchr.org/Documents/Publications/InfrastructureGapSummary.pdf>

### *1.1.1. Eradicating forced labour, modern slavery, human trafficking and child labour*

ILO estimates that 89 million people experienced some form of modern slavery over the past five years. In 2016 alone - on any given day - 40.3 million people were victims, with 24.9 million forced to work under threat or coercion. In November 2018, the OECD joined Alliance 8.7, a global network of more than 200 partners that have come together to work toward accelerated action to end forced labour, modern slavery, human trafficking and child labour. The OECD will contribute its expertise on due diligence and data measurement and will support the platform with exchanging of data, information, innovation and good practice. Concretely, the OECD has already engaged in discussions with the Alliance 8.7 research consortium and will provide a substantive contribution to the report on Child Labour and Forced Labour in Supply Chains to be presented to the G20 in September 2019.<sup>29</sup>

Policy developments in Member countries on this topic are also notable. On 29 November 2018, Australia passed a Modern Slavery Act, which will require businesses based or operating in Australia to report annually on the risks of modern slavery in their operations and supply chains, as well as the actions they have taken to address those risks. The Act applies to businesses with \$100+ million revenue, but it invites other entities to report voluntarily. The statements will be published in a public repository. The government itself is expected to report on its own activities (Australia, 2018)<sup>30</sup>. This landmark law follows earlier legislative developments in the UK, France, US and the EU related to modern slavery, transparency in global supply chains, and disclosure. Notably, in July 2018, the UK Home Secretary, at the request of the Prime Minister, announced an independent review of the 2015 Modern Slavery Act (UK, 2018).<sup>31</sup> The recommendations of the reviewers are expected in March 2019.

### *3.3.1. Gender*

The OECD continued its work on mainstreaming gender in its supply chain due diligence work throughout 2018. In the garment and footwear supply chain for example, women account for the majority of the labour force and the Garment Due Diligence Guidance recognises that risks of harm may be different for women than for men. This is also reflected in agriculture where women are a crucial resource in all regions of the world through their role as farmers, labourers and entrepreneurs. According to the FAO (2011 data), women account for 43% of the labour force, with over 80% in certain parts of the

<sup>29</sup> Tackling Modern Slavery in Supply Chains was also a dedicated session in the 2018 GFRBC. Panellists highlighted that forced labour and trafficking are fundamentally about criminal profit, corruption, money laundering and even tax evasion. The “follow the money” approach can disrupt criminal profits significantly; in this respect the role of financial sector due diligence and government action on public procurement were highlighted as opportunities. In some countries, structural issues associated with legal immigration processes can also contribute to abuse (e.g. visa restrictions).

<sup>30</sup> Australia (2018), Modern Slavery Bill 2018, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6148](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6148)

<sup>31</sup> UK (2018), Independent Review of the Modern Slavery Act, Second interim report: Transparency in supply chains, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/773372/FINAL\\_Independent\\_MSA\\_Review\\_Interim\\_Report\\_2\\_-\\_TISC.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773372/FINAL_Independent_MSA_Review_Interim_Report_2_-_TISC.PDF)



value chain such as post-harvesting activities in the seafood sector. Women are more likely to be paid lower wages than men, to be in precarious or informal employment, and more vulnerable to harassment in the workplace and other vulnerabilities, which may in fact be accumulated and overlapping.

Almost everywhere, women face more severe constraints than men in accessing productive resources and decision making. The need for companies to recognise and take into account the particular vulnerability of women workers when carrying out due diligence was also included in the *OECD Due Diligence Guidance for Responsible Business Conduct*. Specifically, companies should help eliminate discrimination against women; enhance their meaningful participation in decision-making and leadership roles, and facilitate equal access and control over natural resources, financial services, markets and information. This topic was explored in various panel events throughout the year, including the OECD Global Forum on RBC and the OECD DAF March on Gender. A dedicated session on *Addressing harassment complaints in the workplace* was organised in March 2018 during the OECD DAF March on Gender. The session asked what happens next – considering sexual misconduct and harassment have made headlines many times in 2018 – and how international standards on RBC can help promote a safe, respectful and equal environment, in the context of access to remedy and due process for victims.

Furthermore, widespread sexual violence is specifically addressed as one of the serious human rights violations included in the *OECD Due Diligence Guidance on Responsible Mineral Supply Chains*. Implementation of on-the-ground due diligence systems and multi-stakeholder monitoring aims to ensure that such abuses are identified and addressed over time, including in conflict-affected and high-risk areas, such as the Democratic Republic of the Congo.

The voice of women is also incorporated into the multi-stakeholder implementation programmes of the supply chain due diligence sector projects. While for example the extractives sector can be considered male-dominated, the track record of gender balance at OECD-ICGLR-UN Forum meetings is generally positive with an estimated 40% female participation. The OECD again in 2018 sponsored the attendance of female civil society representatives across sectors. Women are also well represented at the governance level of the OECD sector implementation programmes, holding key leadership roles in various multi-stakeholder steering groups.



## Chapter 4.

### Stakeholder engagement

Stakeholder engagement is a defining characteristic of Responsible Business Conduct (RBC) as set out in the Guidelines. The OECD sector-specific and general due diligence instruments also underline the importance of meaningful stakeholder engagement throughout the due diligence process. As such, systematic involvement of stakeholders is ingrained in the OECD's approach to promote RBC. Since 1976, stakeholders have played a critical role in drawing attention to areas in RBC in need of improvement, bringing specific instances to the NCP system and promoting the Guidelines in their own activities.

The Decision on the Guidelines recognises the Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and OECD Watch, as international partners in the effective implementation of the MNE Guidelines. These three institutional stakeholders are the primary interlocutors on stakeholder engagement and the first set of stakeholders the OECD turns to when it comes to stakeholder engagement.

#### Box 4.1. Institutional stakeholders on RBC

**Business at OECD (BIAC)** represents the major national business and employers' organizations from OECD member countries, and through them over 7 million companies. BIAC also has observer organizations in a number of non-member countries, as well as over 40 international sector organizations.

**The Trade Union Advisory Committee (TUAC)** is the interface for trade unions with the OECD and its members. TUAC has 59 affiliated trade union centres in OECD countries, representing more than 58 million workers in 2018.

**OECD Watch** is a global network of civil society organisations with more than 130 members in over 50 countries. OECD Watch's key aim is to inform and advise the global NGO community on how to use the OECD Guidelines for Multinational Enterprises and its associated grievance mechanism to achieve corporate accountability and access to remedy for individuals harmed by corporate misconduct.

The world of RBC stakeholders is large, diverse and growing. This ecosystem includes groups engaged in promoting and implementing RBC standards (such as industry associations, certification programmes, auditors, as well as technology providers), to those monitoring non-compliance with the Guidelines (such as NGOs, trade unions, investigative reporters, and lawyers), to those responsible for implementing responsible business conduct standards in their operations and global supply chains (such as business both large and small, and investors). These groups are all part of the growing and diverse universe of stakeholders with whom the OECD engages with on a regular basis.

Through engagement with each of these stakeholder groups, the OECD brings relevant and cutting-edge perspectives, rooted in real-world experience, to advising governments on RBC issues and in developing standards and tools to promote RBC globally. Stakeholders' perspectives feed into OECD research and analysis on RBC to inform future work and raise potential discussion topics at OECD committee level. Stakeholders have a deep knowledge on the variety of RBC issues and themes both at the process level (experience in supply chain management and due diligence, conducting audits and corrective action plans) as well as at the issues level (on for specific risks such as child labour, land tenure, or gender). The OECD in engaging with stakeholders, leverages the extended networks of stakeholders both locally and internationally, to ensure that OECD standards, approaches and tools once developed are widely disseminated and implemented.

#### 4.1. Types of engagement with stakeholders

*Standards development:* One of the most significant and direct forms of stakeholder engagement at the OECD is in the development of standards on RBC. In addition to the Guidelines, since 2010, the OECD has developed five due diligence guidance instruments on RBC, which have included significant and extensive consultation with stakeholders from business, trade unions, civil society, international organisations and other experts.<sup>1</sup> Their involvement is foreseen in the Principles for the Proactive Agenda, which highlight that the WPRBC “may create Multi-stakeholder Advisory / Consultative Groups to facilitate collaboration with advisory bodies (BIAC, TUAC), OECD Watch, international partners, business, and other affected stakeholders on specific projects, especially projects on responsible supply chain management under the proactive agenda”.<sup>2</sup> As a result, the OECD due diligence guidance instruments are developed through a multi-stakeholder process that typically takes up to two years to complete. The process of engaging with stakeholders in the development of RBC standards benefits from numerous iterations and revisions, and takes into consideration feedback from business, trade unions, civil society, governments and other experts received during public consultations, as well as dedicated multi-stakeholder advisory groups. Stakeholders insights on supply chain characteristics and complexities, the risks and negative impacts prevalent in specific sectors and business models, and obstacles to addressing these risks, have helped shape the discussion for what is do-able and achievable in developing high quality RBC standards. This engagement with a diverse and atypical group of collaborators gives OECD recommendations on RBC an unsurpassed level of credibility and buy-in to promote effective uptake and implementation by business. A list of non-government stakeholders who are part of the various Advisory Groups is provided in Annex IV.

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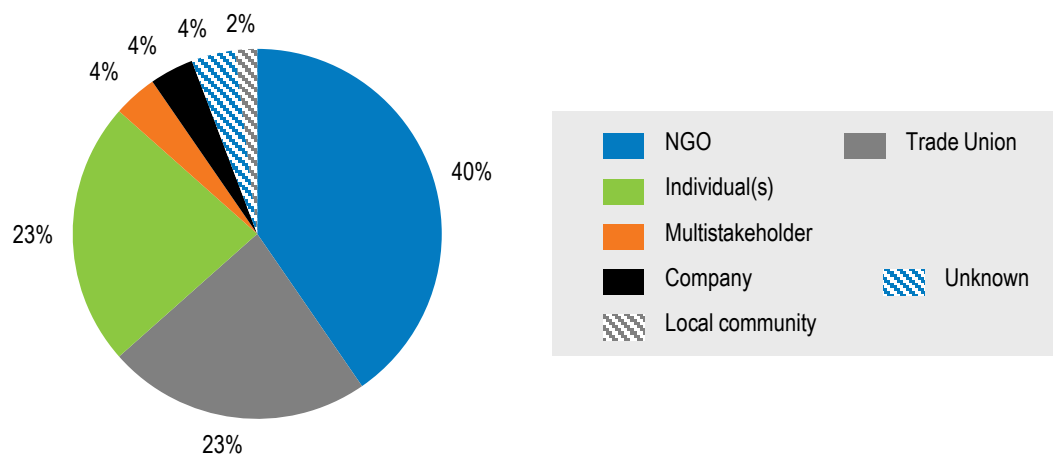
<sup>1</sup> These standards have been supported through the adoption by the Council of Recommendations relating to all the five Due Diligence Guidance instruments that have been transposed into OECD Council Recommendations: The Recommendation of the Council on OECD Due Diligence Guidance for Responsible Business Conduct, the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains and the Recommendation of the Council on OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [C(2017)63].

<sup>2</sup> Principles for the Proactive Agenda

*Promotion and implementation:* Stakeholders continue to play an active role in the implementation of OECD instruments once they are adopted. The OECD supports continued stakeholder engagement through the sector related implementation programmes. A good example of this is the OECD's Responsible Minerals Programme which has been on-going since 2011. This programme today counts over 400 stakeholders from business, civil society, unions, and governments, who are active participants in all aspects of the programme, from outreach, to promotion of the minerals guidance to the annual Responsible Minerals Forum. Stakeholders are also engaged in the governance of the OECD implementation programmes as members of implementation programme Advisory Groups. In this role, stakeholders continue to shape the areas of work of the programme including for example geographic areas to focus on, recruitment of key actors in the supply chain, new analysis and tool development. For example, the OECD with the support of stakeholders, conducted an assessment of minerals related industry certification schemes to the OECD Minerals Guidance. In 2018, the OECD launched a similar alignment assessment in the garment and footwear sector.

*Involvement in the National Contact Points system:* Stakeholder confidence in the NCP system is a key to its success and stakeholders play an important role in many, if not all, aspects of the NCP system. Historically, trade unions and non-governmental organisations have been the largest submitters of NCP cases (see graph). Stakeholders may also be formally integrated into the institutional arrangements of the NCP, for example as members of the NCP or present on advisory or oversight bodies. Business, trade unions and civil society have also been recipients of NCP's promotional activities. At the same time, BIAC, TUAC and OECD Watch have also joined efforts to improve the functioning of NCPs.<sup>3</sup> Please refer to Chapter 1 for more on the National Contact Point activities in 2018.

**Figure 4.1. Submitters of specific instances 2000-2018**



<sup>3</sup> E.g. TUAC-BIAC-OECD Watch Joint Statement (2015), which was a unique joint statement in October 2015 calling on the OECD to establish an effective peer review programme and on governments to sufficiently resource their NCPs, [www.tuac.org/fr/public/edocs/00/00/11/1C/document\\_news.phtml](http://www.tuac.org/fr/public/edocs/00/00/11/1C/document_news.phtml).

*Staying connected on RBC issues:* Stakeholders are an integral part of the OECD's ability to keep abreast of and keep track of the emerging issues in RBC. This real-time access to information from stakeholders through daily engagement and outreach is vital to the OECD's ability to understanding contexts, new and emerging issues which in turn help shape policy which can address these issues in a balanced and thoughtful way. The OECD also engages with stakeholders on emerging and new challenges via the annual Global Forum on RBC, now in its sixth year. In addition, through the sector related implementation programmes additional conferences and roundtables such as the Responsible Minerals Forum, the Responsible Garment & Footwear Forum, and the Roundtable on Responsible Agriculture Supply Chains bring together relevant stakeholders active in each of those sectors. In addition, the WPRBC, as well as the Investment Committee, hold regular consultation sessions with the three institutional stakeholders (BIAC, TUAC and OECD Watch) to hear their views on matters covered by the Guidelines. Institutional stakeholders are systematically invited to express their views on the WPRBC documents and have in addition to the regular consultation session this year been invited to participate in selected sessions of the WPRBC facilitating further engagement and interaction with Adherents on the implementation of the Guidelines. At the country level, stakeholders are also systematically consulted in the context of the RBC Chapters of the Investment Policy Reviews, Adherence and Accession reviews, as well as part of the programme activities in Asia and Latin America.

## 4.2. OECD stakeholders – a wide and diverse group

### 4.2.1. Working with business

Part of the OECD's mandate on RBC is to help businesses meet the evolving expectations of RBC. Since the launch of the "pro-active" agenda in 2011, the OECD, together with BIAC, has taken significant steps to engage with leading businesses and multinational enterprises to promote understanding and uptake of RBC recommendations globally. This approach has been particularly notable in the sector guidance implementation programmes (see Chapter 2 on Sector Activities for further detail), where the OECD works with a wide network of business practitioners and implementers of supply chain due diligence. The network of businesses directly engaged with the OECD pilots and projects includes hundreds of brands and companies, including MNEs and SMEs, in the retail, garment and footwear, agri-business, food and beverage, electronics, jewellery and financial sector. Engagement with business from different geographic markets – including business domiciled in non-Adherent countries such as China and India – is both an opportunity to promote OECD standards globally, but also provides feedback to the OECD on the challenges of implementing RBC globally. Working and engaging directly with business also provides policy makers with the opportunity to hear directly from business on what works and what remains a challenge in meeting international expectations on RBC. For example, the OECD organised together with the Thai Ministry of Justice and Joint Standing Committee on Commerce Industry and Banking (JSCCIB), the main Thai business association, a conference for business on "Strengthening responsible business conduct through international standards" which was the first instance where the 2018 OECD Due Diligence Guidance for Responsible Business Conduct was presented outside of Paris.

Investors are important allies in promoting RBC standards. In recent years, investors, who are transversal actors across all business sectors, have become more vocal in demanding credible data on steps investees are taking to address negative environmental impacts, human rights risks, modern slavery and climate change. This demand comes from socially

responsible investors as well as more traditionally minded investors, such as pension funds, who are committed to addressing the most serious RBC challenges in the world today. The OECD has capitalized on this development, by directly engaging with key players and including their perspectives in informal Advisory Groups and OECD-led promotional activities on RBC in all the OECD sector work.

Industry associations and industry-led certification schemes are another stakeholder group which can have a significant and multiplier effect on promoting RBC standards globally. Industry associations bring together the large and small business who collectively can have a powerful voice to influence businesses at a sector level in specific geographies or globally. Industry association engagement with the OECD helps signal that OECD standards matter, and that the OECD is one of the leading international organisations in the field of RBC. The OECD through its sector implementation programmes in minerals, agricultural, garment and footwear, and finance, works with many of the most well-known industry initiatives and certification programmes globally. These groups include sector or commodity specific groups such as the RoundTable on Responsible Soy (RTRS) and the Better Cotton Initiative, with members from critical parts of the supply chain, such as traders.

Auditors and evaluators are an additional influential group in assessing how companies are implementing the OECD standards, and as such are an important group with which the OECD engages. Similarly, lawyers who advise their clients on risk management strategies and expectations on Responsible Business Conduct from both a regulatory and voluntary perspective are a group with whom the OECD is beginning to work closely with. While the OECD has started to develop relationships with these groups, this remains an area of stakeholder engagement which needs to be further nurtured to gain traction.

#### ***4.2.2. Working with trade unions***

OECD engagement with workers' organisations on RBC is primarily channelled through TUAC, working with its 58 affiliates and trade union partners, representing more than 58 million workers in 2018. In addition, through the sector implementation programmes the OECD has built relationships with the global unions most active in that sector. Global unions have played an important role in promoting global framework agreements to address problems on union engagement across global supply chains. In this context, OECD work in the garment and footwear sector for example has engaged with IndustriALL Global Union and its national affiliates promoting the role of trade unions in the due diligence process, including in identification of harm, prevention and mitigation, monitoring, and providing access to remedy. OECD work has also engaged with smaller less well-known worker groups, in developing countries, for example with artisanal mining cooperatives in the Democratic Republic of the Congo.

#### ***4.2.3. Working with civil society***

In addition to a close working relationship with OECD Watch, the OECD also cultivates direct relationships with a wide range of international and local civil society immersed in RBC issues. These includes CSOs engaged on supply chain transparency issues, land rights, human rights violations, child labour and the environment to name a few. The sector implementation programmes in the OECD are a unique means to engage meaningfully with civil society. CSOs are an integral part of the overall governance structure of the implementation programme. Most Advisory Groups are led by a chair from one of the Adherent countries, and have co-chairs drawn from each of the stakeholder groups,

including civil society. CSOs as members of the AG are thus able to shape the topics of discussion and set the agenda. Through OECD engagement with CSOs working on the ground, often in high-risk environments, the OECD is able to gather candid feedback on RBC recommendations, approaches and the impact of these recommendations on in practice. This helps increase the effectiveness and credibility of OECD recommendations and work in RBC.

#### ***4.2.4. Working with researchers, academics and experts***

The themes and issues pertaining to RBC are multiple and deep. Recognising this, the OECD engages with many technical experts outside the OECD working in the specifics of RBC to ensure that OECD standards and approaches are integrated into cutting-edge research and approaches to promote responsible business. By engaging with academia and researchers, the OECD is informed on the latest trends and research, and is able to further support business and policy makers through analysis and expertise. Many leading research institutions and universities participate in the OECD informal Advisory Groups.

In conclusion, meaningful stakeholder engagement is a key feature of the implementation of the Guidelines and applies to all pillars of the OECD's work on RBC: the functioning of NCPs, supply chain due diligence and government policies for RBC. In light of economic changes and the advancement of the responsibility of business towards society, the concept of RBC has evolved to include a larger and increasingly broad scope of stakeholders in its practical implementation. Recent examples include increased engagement by investors, but also evaluators and auditors. At the same time, the OECD is continuously expanding its base of stakeholder engagement as the RBC work touches on new sectors and countries as part of the programmes in Asia and Latin America.

#### **Box 4.2. Statement by BIAC**

Today, many companies have integrated responsible business conduct considerations into their overall business strategy to manage their activities in a responsible way. We consider responsible business conduct as promoted by the OECD Guidelines for Multinational Enterprises (MNE Guidelines) to be an essential part of an open investment climate and in the best interest of business. To that end, we are working in partnership with the OECD, national governments and our members to support an effective implementation of the MNE Guidelines, ensure a shared understanding of the NCP process and promote them in adhering countries and beyond to support a global level playing field.

We are working closely with our member and observer organizations and multinational enterprises, both large and small, to raise the visibility of the MNE Guidelines by participating in events and raising awareness in regular online communications. Our business brochure on the MNE Guidelines has been widely distributed to provide our members with a user-friendly communication tool that helps multinational enterprises understand what they need to know about the Guidelines and why this unique government-backed responsible business conduct instrument is of major importance for business.

A key focus in 2018 was our contribution to the development of the OECD general due diligence guidance for responsible business conduct to ensure that the guidance reflects both business opportunities and challenges in this context. The Guidance should provide businesses looking for information about the Guidelines with an accessible text and present



to them practical proposals about how they could set up their due diligence, while recognizing that due diligence needs to be adapted to specific situations. We contributed to several outreach events regarding the OECD Guidelines and related activities in 2018, including meetings on the Due Diligence Guidance in Switzerland and France among others and a meeting hosted by our Japanese member on responsible supply chains in Asia. Our national member organizations were in active contact with their respective NCPs throughout the year.

We also maintained a strong presence at the annual OECD Global Forum on Responsible Business Conduct and have remained an active partner in the proactive agenda project to ensure that the concrete experience of different sectors, including finance, textiles, as well as food and agriculture, is duly reflected. A great number of our members participated in the OECD forum on responsible mineral supply chains and the forum on due diligence in the garment and footwear sector.

#### **Box 4.3. Statement by TUAC**

In 2018, the Trade Union Advisory Committee to the OECD (TUAC), working together with its affiliates and trade union partners, undertook activities aimed at building trade union capacity on the OECD Guidelines and strengthening the NCPs. TUAC called for the OECD to publish a list of non-functioning NCPs as a response to the failure of some governments to meet their binding obligations to create effective NCPs. TUAC was also involved in developing the general due diligence guidance and efforts to promote its implementation.

TUAC participated in the peer reviews of Canada and the UK, together with the Canadian Labor Congress (CLC) and Trades Union Congress (TUC). Both NCPs have experienced a significant decline in stakeholder confidence, which is particularly striking for the UK, previously a high-performing NCP. It is essential that the peer review process drive the change necessary to re-build the trust of stakeholders. TUAC provided input on Croatia's proposed NCP, as part of the adherence review of the Investment Committee (IC). Further to Kazakhstan's adherence to the Investment Declaration and the IC's commitment to monitor its progress on human rights, including labour rights, TUAC and the International Trade Union Confederation (ITUC) continued to highlight ongoing repression of trade union rights.

TUAC, the ITUC, UNI Global Union, the AFL-CIO and the Korean Metal Workers' Union were members of the Advisory Group for the development of the general due diligence guidance. TUAC submitted a 'Five-point Plan' to the 2018 MCM that, inter alia, called for governments to introduce legislation making due diligence mandatory and to provide capacity building on due diligence for trade unionists<sup>4</sup>. Trade unions were strongly represented at the 2018 Garment and Footwear Sector Forum, including in a panel on worker engagement and due diligence, and the OECD worked with the Global Union IndustriALL on activities to implement the due diligence guidance for the garment and footwear sector.

<sup>4</sup> <https://tuac.org/news/tuac-calls-on-governments-to-implement-oecd-due-diligence-guidance/>



TUAC provided training on the OECD Guidelines and due diligence guidance to trade unionists around the world. Together with Friedrich Ebert Stiftung (FES), it organised two workshops in Jordan and Tunisia for trade unionists from the Mashrek and Maghreb. The Jordanian NCP failed to attend the workshop in Amman. Three representatives of the Tunisian Government, including the new NCP, and a representative of the Moroccan NCP attended the event in Tunis. A key objective was to “train trainers” so as to build capacity within the regions. Other training events were held in: Ottawa, Canada, Canadian trade unions (CLC); Sol, Indonesia, Indonesian trade unions from garments and footwear (IndustriALL-TUAC); Riga, Latvia, meeting of Baltic and Nordic trade unions (NFS); Paris, Trade Union Strategy Meeting on Due Diligence (TUAC); Geneva, UN Global Forum on Business and Human Rights, Panel on Due Diligence and Freedom of Association (ITUC); Copenhagen, Briefing on the OECD due diligence guidance (ITUC Congress).

Throughout 2018, TUAC supported trade unions in filing cases under the OECD Guidelines. It undertook a fact-finding mission to Brazil and Panama in support of a BWI-IndustriALL case concerning the involvement of Vale and BHP Billiton in the collapse of the Fundão Dam, and a potential case in Panama concerning violations of the rights of migrant workers. TUAC maintained its database on trade unions cases\*, and continued to disseminate its Trade Union Guide to the Guidelines, which is currently available in 14 languages.\*\*

\* <http://www.tuacoecdmguidelines.org/Home.asp>

\*\* Arabic, Bengali, Chinese, English, French, German, Hindi, Italian, Japanese, Korean, Portuguese, Russian, Spanish, Swedish.

#### Box 4.4. Statement by OECD Watch

In 2018, civil society confidence in NCPs and the Guidelines is declining. Now when multilateralism is under threat globally, OECD member states must ensure the Guidelines and NCP grievance mechanism stand as effective tools to promote responsible business conduct and facilitate access to remedy. Yet in the experience of civil society, remedy via specific instances remains rare. Further, many NCPs continue to operate with structures and procedures that are not transparent or predictable and that do not ensure impartiality between parties and accountability for harms. OECD Watch’s June briefing on the State of Remedy under the OECD Guidelines found that just a quarter of specific instances concluded in 2017 achieved some meaningful remedy for complainants, with just one resulting in compensation of victims. Meanwhile, other cases have been mishandled in ways that actively discourage stakeholder confidence. A particular low point in 2018 was the Canadian NCP’s unpredictable, unilateral re-issuance of a one-sided final statement in the case *BMF v. Sakto Group*. The Canadian NCP’s actions cast doubt on the NCP’s impartiality and jeopardize faith in the integrity of the whole NCP system.

During 2018, OECD Watch engaged closely in the Investment Committee’s review of our first-ever substantiated submission over the Australian NCP’s mishandling of a case. We appreciate the timeliness and rigor of the review, but remain deeply concerned with the Committee’s response, which missed critical opportunities to clarify how NCPs should interpret the admissibility criteria, handle information shared with only one party,

distinguish the state duty from the corporate responsibility to protect human rights, and manage cases subject to parallel proceedings. The review process also did not allow OECD Watch equitable access to information. We welcome the WPRBC's proposal to revise the process in 2019, and we seek for more of our recommendations to be incorporated into a new model.

In 2018 OECD Watch also repeatedly raised concerns over serious shortcomings in the NCP peer review process. For a decade, OECD Watch members have engaged in the peer reviews, and by 2018 we feel our efforts have not paid off. NCPs remain far from achieving functional equivalence, yet the peer reviewers still do not offer meaningful criticism of poor NCP structures and practices, nor prompt NCPs to implement tangible reforms to facilitate remedy. Civil society feels its input, if made public at all, is largely not reflected in peers' analyses, and that the handling of cases does not improve at reviewed NCPs. This reality discourages civil society from engaging in future reviews. Nevertheless, we appreciate the WPRBC's commitment to revising the process and template, and we look forward to working together toward reform in 2019. We also seek more impactful peer reviews of NCPs starting in 2019.

Despite the serious concerns raised above, 2018 has seen several bright spots. The May release of the Due Diligence Guidance was a high point. The OECD's process to develop the Guidance reflected meaningful involvement of all three stakeholder groups, and OECD Watch looks to see more of this in future policy initiatives. Another high point in stakeholder engagement was a workshop OECD Watch held in May for global NGOs and NCPs from eight countries. The two-day workshop was carried out through a Dutch government-funded project focused on capacity building and engagement with Central Eastern European NGOs and NCPs, and was co-financed by the Norwegian and Danish NCPs. The workshop enabled in-depth, frank discussion between NGOs and NCPs about the specific instance process. In 2019, OECD Watch urges member states to pursue more workshops in other regions based upon this model, which can increase mutual understanding and learning between NCPs and complainants. Finally, OECD Watch enjoyed collaboration with global NGOs and unions in advancing the first-ever specific instance on tax avoidance in the case of FNV v. Chevron's Dutch subsidiaries, filed at the Netherlands NCP. We look forward in 2019 to further engagement with the OECD and other stakeholders through this case as well as the sectoral due diligence projects, to set new global standards for corporate responsibility.

## Annex A. Overview of National Contact Points

No.	Country	Full time staff	Part time staff	Staff joined NCP	Staff left NCP	NGOs	Business	Trade unions	Advisory body	Advisory body with some oversight	Other ministries	Dedicated budget	Report to Government	Report to Parliament	Website	Rules of procedure	Online	Revised in 2018	Promotional plan	Organised / co-organised events	Number of events	Participated in events	Number participated in	June 2018 attended NCP meeting	Dec 2018 attended NCP meeting
1	Argentina	YES	YES	YES	YES	YES	YES	YES	YES		YES	NO	YES	NO	YES	YES	YES	YES	NO	YES	1	YES	1	YES	YES
2	Australia	YES	YES	YES	YES	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	5	YES	3	YES	YES
3	Austria	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	3	YES	3	YES	YES
4	Belgium	YES	YES	NO	NO	NO	YES	YES	YES		YES	NO	YES	YES	YES	YES	YES	NO	YES	YES	5	YES	5	YES	YES
5	Brazil	YES	NO	NO	NO	NO	NO	NO	YES		YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	1	YES	1	YES	YES
6	Canada	YES	NO	NO	YES	NO	NO	NO	NO		YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	5	YES	52	YES	YES
7	Chile	YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	YES	YES	3	YES	4	YES	YES
8	Colombia	YES	YES	NO	NO	YES	YES	YES	YES		NO	NO	YES	YES	YES	YES	YES	NO	YES	NO	0	YES	14	YES	YES
9	Costa Rica	NO	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	7	YES	3	YES	YES
10	Czech Republic	NO	YES	YES	NO	YES	YES	YES	NO		YES	NO	NO	NO	YES	YES	YES	NO	YES	YES	2	YES	2	YES	YES
11	Denmark	YES	NO	YES	YES	YES	YES	YES	NO		NO	YES	NO	NO	YES	YES	YES	YES	YES	YES	3	YES	3	YES	YES
12	Egypt	NO	YES	NO	NO	NO	NO	NO	NO		YES	YES	YES	NO	YES	NO	NO	NO	YES	NO	0	NO	0	NO	NO
13	Estonia	NO	NO	NO	NO	YES	YES	N/A	NO		NO	NO	NO	NO	YES	YES	NO	YES	NO	NO	0	NO	0	YES	YES
14	Finland	YES	YES	YES	NO	YES	YES	YES	NO		YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	2	YES	5	YES	YES

No.	Country	Full time staff	Part time staff	Staff joined NCP	Staff left NCP	NGOs	Business	Trade unions	Advisory body	Advisory body with some oversight	Other ministries	Dedicated budget	Report to Government	Report to Parliament	Website	Rules of procedure	Online	Revised in 2018	Promotional plan	Organised / co-organised events	Number of events	Participated in events	Number participated in	June 2018 attended NCP meeting	Dec 2018 attended NCP meeting
15	France	YES	YES	YES	YES	NO	YES	YES	NO		YES	NO	NO	NO	YES	YES	YES	NO	YES	YES	44	YES	40	YES	YES
16	Germany	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	3	YES	13	YES	YES
17	Greece	NO	YES	NO	NO	NO	NO	NO	NO		NO	NO	YES	NO	YES	YES	YES	N/A	YES	NO	0	YES	2	YES	YES
18	Hungary	YES	YES	YES	YES	NO	NO	NO	NO		YES	YES	YES	NO	YES	YES	YES	NO	YES	NO	0	YES	1	YES	YES
19	Iceland	NO	YES	NO	NO	NO	NO	NO	NO		NO	NO	NO	NO	YES	NO	NO	NO	NO	NO	0	NO	0	YES	YES
20	Ireland	NO	YES	YES	YES	NO	NO	NO	NO		NO	NO	NO	NO	YES	YES	YES	YES	YES	NO	0	NO	0	YES	YES
21	Israel	NO	YES	YES	YES	YES	YES	YES	YES		YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	5	YES	3	YES	YES
22	Italy	YES	YES	NO	NO	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	3	YES	17	YES	YES
23	Japan	NO	YES	YES	YES	NO	YES	YES	YES		YES	YES	NO	NO	YES	YES	YES	NO	NO	NO	0	YES	2	YES	YES
24	Jordan	NO REPORT																							
25	Kazakhstan	NO	YES	NO	NO	YES	YES	YES	YES		YES	NO	YES	NO	YES	YES	NO	NO	YES	NO	0	YES	3	YES	YES
26	Korea	YES	YES	NO	NO	NO	NO	NO	NO		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	7	YES	11	YES	YES
27	Latvia	NO	YES	YES	NO	NO	YES	YES	NO		YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	1	YES	1	YES	YES
28	Lithuania	YES	NO	NO	NO	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	12	YES	5	YES	YES
29	Luxembourg	NO	NO	NO	NO	NO	NO	NO	YES		YES	NO	YES	NO	YES	YES	YES	NO	NO	YES	6	NO	0	YES	YES
30	Mexico	YES	YES	YES	YES	NO	NO	NO	NO		NO	NO	YES	NO	YES	YES	YES	NO	YES	YES	1	NO	0	YES	YES
31	Morocco	NO	YES	NO	NO	NO	NO	NO	NO		YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	10	YES	6	YES	YES
32	Netherlands	YES	NO	NO	NO	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	3	YES	6	YES	YES
33	New Zealand	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES	NO	NO	NO	0	NO	0	NO	YES
34	Norway	YES	NO	YES	YES	NO	NO	NO	NO		NO	YES	YES	NO	YES	YES	YES	NO	YES	YES	6	YES	19	YES	YES
35	Peru	NO	YES	YES	YES	NO	NO	NO	NO		NO	YES	YES	NO	YES	YES	YES	NO	YES	YES	3	NO	0	NO	YES
36	Poland	NO	YES	YES	YES	NO	NO	NO	YES		NO	NO	NO	NO	YES	YES	YES	NO	YES	YES	3	YES	9	YES	YES

No.	Country	Full time staff	Part time staff	Staff joined NCP	Staff left NCP	NGOs	Business	Trade unions	Advisory body	Advisory body with some oversight	Other ministries	Dedicated budget	Report to Government	Report to Parliament	Website	Rules of procedure	Online	Revised in 2018	Promotional plan	Organised / co-organised events	Number of events	Participated in events	Number participated in	June 2018 attended NCP meeting	Dec 2018 attended NCP meeting
37	Portugal	NO	YES	NO	NO	NO	NO	NO	NO		NO	NO	YES	NO	YES	NO	N/A	N/A	NO	YES	1	NO	0	YES	YES
38	Romania	NO	YES	YES	YES	NO	YES	NO	NO		YES	NO	YES	NO	YES	NO	N/A	N/A	YES	YES	6	YES	3	YES	NO
39	Slovak Republic	NO	YES	YES	YES	YES	YES	YES	NO		YES	NO	NO	NO	YES	YES	YES	YES	NO	NO	0	NO	0	YES	YES
40	Slovenia	YES	NO	YES	YES	NO	NO	NO	NO		NO	YES	YES	NO	YES	YES	NO	NO	YES	YES	1	YES	2	YES	NO
41	Spain	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	6	YES	1	YES	YES
42	Sweden	NO	YES	NO	NO	NO	YES	YES	NO		YES	NO	YES	NO	YES	YES	YES	NO	NO	YES	1	YES	3	YES	YES
43	Switzerland	YES	YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	2	YES	7	YES	YES
44	Tunisia	NO	YES	NO	NO	NO	YES	YES	NO		YES	NO	YES	NO	NO	NO	NO	N/A	YES	NO	0	YES	1	NO	NO
45	Turkey	YES	NO	NO	NO	NO	NO	NO	NO		NO	YES	YES	NO	YES	YES	YES	NO	YES	NO	0	YES	1	YES	YES
46	Ukraine	NO	YES	NO	NO	YES	YES	YES	YES		YES	YES	NO	NO	YES	YES	YES	NO	YES	YES	7	YES	3	YES	YES
47	United Kingdom	YES	NO	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	14	YES	5	YES	YES
48	United States	YES	YES	YES	YES	YES	YES	YES	YES		YES	NO	YES	NO	YES	YES	YES	NO	YES	YES	2	YES	7	YES	YES

## Annex B. NCP peer review reports: Key findings and recommendations

### Peer review of the National Contact Point of Germany<sup>1</sup>

#### *Institutional Arrangements*

	Findings	Recommendations
1.1	The German NAP states that “the NCP will become the central complaints mechanism for foreign trade and investment promotion projects. (...) The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German NCP.” The NCP and the Interministerial Steering Group have not yet clarified the scope and functioning of this new measure.	The NCP should, together with the Inter-Ministerial Steering Group and potentially the Working Group and its wider stakeholders, clarify the scope and functioning of this measure with respect to foreign trade and investment promotion projects and communicate it in order to ensure clarity.
1.2	There has been frequent staff turnover in the NCP and it is anticipated that there will continue to be regular staff rotations in the future due to the structure of the ministry itself.	The NCP should create a handover process and record institutional memory to preserve good practices. This could include internal written procedures to guide the work of the NCP, in order to maintain the recent progress made in the functioning of the NCP
1.3	Some representatives of the Working Group and some external stakeholders noted a lack of clarity about the roles and responsibilities of the Interministerial Steering Group and the Working Group	The NCP should discuss with the Inter-Ministerial Steering Group and Working Group the respective roles and responsibilities and then clearly define and communicate those roles and responsibilities, internally and externally, in order to ensure that stakeholders understand both, especially in relation to the handling of specific instances

<sup>1</sup> <https://mneguidelines.oecd.org/Germany-NCP-Peer-Review-2018.pdf>

*Promotional activities*

	Findings	Recommendations
2.1	The NCP focuses on engaging with industry and trade union associations and NGO coalitions, particularly those that are part of its Working Group, because most of these groups have existing relationships with key stakeholder groups and are the most actively engaged with the NCP.	As the NCP expands its promotional strategy and strengthens its existing relationships with groups, it should also give increased focus to diversifying and building relationships directly with companies and trade unions, particularly to highlight the recent changes to the NCP.
2.2	Stakeholders including business, noted that awareness of the Guidelines and the NCP is generally low in non-adhering countries where German companies operate.	As the NCP expands its promotional strategy and continues its engagement with embassy officers, it should give particular consideration to providing trainings on RBC for officers in non-adhering countries where German companies operate.

*Specific instances*

	Findings	Recommendations
3.1	The Procedural Notes contain several provisions on confidentiality which use different terminology. Several civil society stakeholders noted that the provisions on confidentiality and campaigning were seen as a deterrent to some potential submitters	The NCP should consider updating its Procedural Notes to make certain provisions clearer. In particular, the NCP should clarify and consolidate the provisions on confidentiality. Recognising that the provisions on campaigning and confidentiality may be acting as a deterrent to submitting specific instances, the NCP should consider discussing these provisions with stakeholders, ensuring that the provisions are equitable and ensure transparency wherever possible
3.2	Some of the older final statements do not clearly describe the reasoning for the NCP's decision or outcomes achieved through the process. This contrasts to the most recent statements which are more comprehensive.	The NCP should continue to publish clear and meaningful final statements and may consider developing a clear template for final statements to ensure quality and consistency



## Peer review of the National Contact Point of Chile <sup>2</sup>

### *Institutional Arrangements*

	Findings	Recommendations
1.1	Currently there are no staff members which devote the entirety or majority of their time to NCP activities. Several stakeholders and members of the government noted that having the same official responsible for NCP activities as well promotion of international trade and investment can create confusion amongst stakeholders.	The NCP should be made into a distinct unit which is devoted to NCP activities and should be provided with sufficient resources. Specifically, it should have at least one full-time staff member engaged in NCP activities.
1.2	There has been frequent turnover of staff at the NCP which has adversely impacted the effective functioning of the NCP.	The NCP should develop systems to facilitate staff transitions such as: a formal system of information management; clarifying and institutionalising processes such as specific instance handling; formal training and handover processes for staff new to the role. In addition, the NCP should consider possible strategies to retain staff in the NCP for longer periods than has been the case in recent years.
1.3	The Government Advisory Committee has not been active since its initial creation in 2012.	The NCP should consider the most effective and strategic way to engage across government in carrying out its mandate. Should the NCP change its initial structure, it may wish to rethink the role of the Government Advisory Committee.
1.4	There is no clear mandate for the Civil Society Committee	The NCP should consider strategically how best to engage effectively with external stakeholders. As part of this work, it might consult the Civil Society Committee to define its mandate, taking into account the needs of the NCP as well as the capacity and interest of members to contribute.

### *Promotional activities*

	Findings	Recommendations
2.1	The NCP is lacking in visibility within the government and externally.	In order to improve promotional activities, the NCP is encouraged to develop a strategic promotional plan to target particular sectors or stakeholder groups. The NCP should also consider allocating more resources, including staff time, to promotional activities, but equally, the plan should consider promotional activities which can be carried out without significant resources and in cooperation with civils society, academia, labour unions and business associations.

<sup>2</sup> <https://mneguidelines.oecd.org/Chile-NCP-Peer-Review-2018.pdf>

*Specific instances*

	Findings	Recommendations
3.1	The rules of procedure are relatively short and do not provide detailed information on important aspects of the proceedings.	In order to improve predictability in the handling of specific instances the NCP should develop complete and consistent rules of procedure as set out in the Procedural Guidance of the OECD Guidelines. In particular, the rules of procedure should provide guidance on initial assessment, confidentiality and transparency issues, how information is shared amongst the parties and publically and indicative timelines.
3.2	In situations where mediation has been refused the NCP has promptly closed the proceeding without undertaking further analysis of the issues.	In order to make best use of the specific instance process, where a company chooses not to engage in mediation, the NCP should make efforts to develop final statements which are as meaningful as possible. This could involve an independent analysis of the issues raised in the submission and relevant recommendations.

## Peer review of the National Contact Point of the United States

### *Institutional arrangements<sup>3</sup>*

	Findings	Recommendations
1.1	For many years prior to the 2011 update to the Guidelines, the NCP was not active or visible but that there have been significant improvements in its functioning in recent years, particularly since assigning a senior full-time official to the role.	In order to maintain the positive gains made by the NCP, the U.S. should ensure that the NCP continues to be staffed by at least one full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the U.S. and the global economic presence of U.S. MNEs, an even larger team would be appropriate and should be considered.
1.2	Some members of the IWG noted that they could be more proactive in promotion with respect to the NCP throughout their own networks.	The IWG members should take more ownership with respect to promotion of the Guidelines and raising awareness of the NCP mechanism and IWG members should act as “ambassadors” for the Guidelines within their own departments and beyond.
1.3	Several civil society and labour members of the SAB expressed the perception that the new structure of the SAB changed its role and the nature of dialogue at SAB meetings	With a view to retaining the confidence of its civil society and labour stakeholders the NCP should ensure members increased input and ownership in the direction and meetings of the SAB.

### *Promotional activities*

	Findings	Recommendations
2.1	Many stakeholders noted that increased outreach to potential users of the specific instance mechanism (such as NGOs, local communities) is important.	The NCP should focus more attention on awareness raising of the Guidelines and the NCP mechanism with civil society. In this respect, specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The SAB and IWG could be instrumental in these outreach efforts.

<sup>3</sup> <https://mneguidelines.oecd.org/Chile-NCP-Peer-Review-2018.pdf>

*Specific instances*

	Findings	Recommendations
3.1	Some parties to specific instances noted that mediators did not have a strong grasp of the recommendations of the Guidelines, particularly international labour and human rights standards.	In order to promote strong outcomes from mediation the NCP should ensure that the Guidelines are the standard used as a reference in mediation discussions and that mediators are knowledgeable about the Guidelines.
3.2	In practice, encouraging companies to participate in the mediation process has been a challenge. The NCP has made efforts respond to this challenge through engaging in outreach to the business community to demystify the process, as well as more robust engagement procedures during the Initial Assessment and pre-mediation phases.	The NCP should consider additional efforts to encourage companies to participate in mediation and set up a process to better understand why companies are hesitate to engage and how they can be encouraged to.
3.3	Provisions on confidentiality and campaigning were seen by some stakeholders as a deterrent to some potential submitters of specific instances.	The NCP should ensure that its position around confidentiality and campaigning is equitable, meaning the preferences and needs of both parties should be taken into account, and promotes transparency to the greatest extent possible.

## Peer review of the National Contact Point of Austria <sup>4</sup>

### *Institutional arrangements*

	Findings	Recommendations
1.1	The NCP has one dedicated full-time midcareer staff member. Many stakeholders participating in the peer review noted that having only one person responsible for all the activities and decisions of the NCP was not sufficient with respect to human resources.	Necessary human and financial resources should be made available to the NCP.
1.2	Some stakeholders noted that they did not always perceive the NCP to be impartial.	The NCP should take steps to correct this perception and organise and structure itself with the aim of gaining the confidence of a broader group of stakeholders.
1.3	The current voting procedures of the Steering Committee do not lend to an ideally balanced representation of stakeholders.	The NCP should create the conditions for the perspectives of all stakeholders to be appropriately and equitably reflected with respect to the Steering Committee.
1.4	The majority of members of the Steering Committee saw their role as primarily advisory, especially with respect to specific instances.	The NCP should ensure the Steering Committee is characterized mainly as a consultative body vis-à-vis activities of the NCP.

### *Promotional activities*

	Findings	Recommendations
2.1	Traditionally promotional activities of the NCP targeted primarily the business community. However, increasingly the NCP is engaging with a broader range of stakeholders.	The NCP should continue and strengthen the dialogue with civil society to discuss collaboration on promotion and targeting promotional activities towards NGOs, in addition to worker organisations to improve the perception of the mechanism and promote engagement in the specific instance process.
2.2	At present the Steering Committee is the only interagency or multi-stakeholder body in Austria that exists to discuss RBC. As a consequence, at meetings of the Steering Committee different issues relating to RBC which sometimes go beyond the remit of the body, are raised.	The NCP may explore the possibility of organising or participating in the organisation of a forum where stakeholders and relevant members of government can exchange on RBC.

<sup>4</sup> <https://mneguidelines.oecd.org/Chile-NCP-Peer-Review-2018.pdf>

*Specific instances*

	Findings	Recommendations
3.1	The specific instance procedure is described in the NCP Terms of Reference as well as in a Guidance document developed for promotional purposes. The NCP has noted it plans to update this Guidance subsequent to the peer review. Additionally some specific provisions of the Terms of Reference are not fully clear.	When undertaking the update of the Guidance the NCP should clarify its relationship to the NCP Terms of Reference and ensure that both documents are in line with each other. It should also revise a few specific provisions in their Terms of Reference to provide clarity on appointment of external mediators, costs related to specific instance proceedings, the NCP's position on confidentiality and campaigning, and the fact that the NCP is able to consider issues raised with respect to the conduct of companies operating in or from Austria.
3.2	The specific instance process could be supported by more technical expertise and by involving independent mediators.	The NCP should engage technical experts in the specific instance process as needed and by following up on their intention to engage external mediators more systematically.

## Peer review of the National Contact Point of Canada<sup>5</sup>

### *Institutional arrangements*

	Findings	Recommendations
1.1	Stakeholders did not seem sufficiently aware of the active role of NCP members drawn from other departments (outside of the Trade Commissioner Service) in the activities and decision making of the NCP.	The NCP should explore additional ways to ensure that the role of NCP members is understood by parties to specific instances and the broader public. For example, mentioning the involvement of relevant NCP members in final statements of specific instances or publicising the structure of the NCP and the role of its members within the NCP Procedures Guide for specific instances may be ways of achieving this.
1.2	A lack of formal involvement of social partners and external stakeholders in the NCP's governance arrangements contributes to the perception of lack impartiality with respect to the NCP.	The NCP should consult with its social partners and other stakeholders in connection to creating a new Advisory Body for the NCP to ensure that it is representative and effective in mitigating perceptions of a lack of impartiality. If the advisory members are drawn from another body, the NCP should ensure that they have a clear and appropriate mandate with respect to their role vis-à-vis the NCP.
1.3	A challenge noted by the NCP is to balance the number and unpredictable nature of specific instances with the need for planned resource commitments for the promotion of the NCP and the Guidelines, and other activities.	Considering the global economic presence of Canadian MNEs and in order to respond to an increasing case load, a larger NCP team would be appropriate and should be considered.
1.4	There are no formal reporting requirements within the government on the activities of the NCP.	The NCP should use its annual report to promote its work and activities across the federal and provincial governments and the parliament. This would help to demonstrate accountability and support requests for additional budget or staff.
1.5	The mandate of the Ombudsperson overlaps somewhat with that of the NCP, as a result the Ombudsperson may represent a competing venue for grievances on business and human rights.	In establishing the Ombudsperson office, steps should be taken to ensure potential synergies with the NCP are identified and potential duplication with the NCP mandate is mitigated. Institutional arrangements for the two bodies should be coordinated.

<sup>5</sup> <https://mneguidelines.oecd.org/Canada-NCP-Peer-Review-2019.pdf>



*Promotional activities*

	Findings	Recommendations
2.1	Many stakeholders noted support for the mechanism by which trade advocacy and financial support can be withheld if companies do not engage in good faith and constructively with the NCP (i.e. the 'sanction') but demonstrated a lack understanding of it and called for more transparency with respect to its applicability.	The NCP should promote the mechanism and clearly communicate on its scope and application with stakeholders and parties to specific instances.
2.2	Civil society organisations, and NGOs in particular, do not seem very aware of the potential benefits of using the NCP's procedure for specific instances.	The NCP is encouraged to continue its work with NGOs with a view to establishing a regular dialogue so as to improve their confidence in the

*Specific instances*

	Findings	Recommendations
3.1	Some stakeholders participating in the peer review noted that the requirements for substantiation were unclear and that the NCP's application of the initial assessment criteria was onerous.	The NCP should offer assistance and work with submitters to further substantiate their claims or reformulate submissions where necessary to allow for them to be accepted for further examination. Additionally, substantiation requirements and evidentiary thresholds should be clearly explained to submitters in the NCP's rules of procedure and ensure accessibility.
3.2	Several civil society and trade union stakeholders raised concerns about the NCP's campaigning policy and noted that revising it would be necessary to build trust and encourage certain stakeholders to utilise the specific instance mechanism.	The NCP should ensure that its policy on campaigning is predictable, equitable (meaning the preferences and needs of both parties should be taken into account), and promotes transparency to the greatest extent possible.
3.3	Some submitters of specific instances noted that language in some initial assessment by the NCP undermined the position of the submitter by implying there was no breach of the Guidelines by the company or that the claims raised in a submission were without merit.	The NCP should be clear that a decision not to accept a specific instance for further examination during initial assessment should not in principle be equated with a determination on the merits of the issues raised in the submission.
3.4	Some stakeholders see the specific instance process as lacking in transparency, predictability and impartiality.	In order to further improve the mechanism and build trust amongst potential submitters, the NCP should enhance transparency with respect to the specific instance process. This may involve publishing initial assessments, communicating and providing explanations to parties when timelines cannot be respected, sharing the information used to make a decision amongst both parties where possible and clearly explaining the rationale for deciding whether to accept (or not accept) specific instances for further examination in statements.

## Annex C. Substantiated submission by OECD Watch: Key findings and recommendations

In November 2017, OECD Watch made the first substantiated submission under the Procedural Guidance of the Guidelines. This process notes that the Investment Committee will consider a substantiated submission on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances. The below summary of key findings and recommendations is taken from the final response by the Investment Committee to the substantiated submission.

*The Investment Committee finds that in the handling of the specific instance:*

- 1. In certain respects, the Australian NCP (ANCP) did not act transparently or predictably with respect to indicative timelines and in not following its review process procedures; and*
- 2. Certain actions of the ANCP contributed towards a perception of a lack of impartiality and accessibility.*

*To promote transparency and predictability the Investment Committee recommends that:*

- a) The ANCP communicate and explain reasons for delays to parties to a specific instance, when they occur.*
- b) The ANCP, if choosing to have a review procedure, respect its own published rules of procedures for such a process. Where the ANCP departs from its rules of procedure, the ANCP should communicate with parties and explain the reason for the departure.*

*To build trust with parties and avoid perceptions of lack of impartiality and accessibility Investment Committee recommends that:*

- a) when information is withheld from one party and/or when withheld information is used as the basis of a decision of the ANCP, the ANCP should notify the relevant party and explain why the information was withheld (i.e. why it is sensitive). It also recommends sharing information between the parties to the extent possible, for example through redacting, summarising, or anonymising sensitive information as necessary.*
- b) where relevant, the ANCP should strive to clearly articulate how it distinguishes issues of corporate responsibility from issues of state duty in its public statement(s).*
- c) whenever the ANCP decides that accepting a specific instance would not further the Guidelines and/or could cause serious prejudice to ongoing proceedings, the ANCP should strive to clearly articulate the reasons for such a position in its public statement(s).*
- d) the ANCP should ensure that if conclusions of fact are made in a specific instance statement, they should be based (and appear to be based) on more than the assertions of one party.*

<sup>1</sup> The Guidance was approved by the OECD Working Party on Responsible Business Conduct on 6 March 2018 and the Investment Committee on 3 April 2018.

## Annex D. Advisory Groups for RBC sector projects - non governmental stakeholders

	Agriculture	Garment & Footwear	Minerals	Financial Sector
Business and Industry Associations	Arla Foods	Adidas Group	Aerospace Industry	ABN Amro
	Auchan	BIAC (OECD)	Association (AIA)	APG
	Barry Callebaut	China National	Automotive Industry	Bank of Tokyo
	BIAC (OECD)	Textile and Apparel	Association Group (AIAG)	Barclays
	Continental Bakeries	Council (CNTAC)	BMW Group	BIAC (OECD)
	FoodDrinkEurope	Confederation of the	China Chamber of	BlackRock
	Haribo	German Textile and	Commerce of Metals	BNP Paribas
	Japan Tobacco	Fashion Industry	Minerals & Chemicals	Crédit Agricole
	International (JTI)	Decathlon	Importers & Exporters	Credit Suisse
	Mondelez	European Apparel	(CCCMC)	Daiwa Securities Co. Ltd
	Monsanto	and Textile	Cronimet	Export Credit Norway
	Saudi Agricultural and	Confederation	Dubai Multi Commodities	ING
	Livestock Investment	(EURATEX)	Centre (DMCC)	Japanese Bankers
	Company (SALIC)	Gap	Fédération des Entreprises	Association
	Sidley Austin LLP	H&M	du Congo (FEC)	JP Morgan
	Société d'Organisation	International Apparel	Global Advanced Metals	Mitsubishi UFJ Financial
	de Management et de	Federation	Intel	Group
	Développement des	Initiative for	International Council on	Norwegian Export Credit
	Industries Alimentaires	Compliance and	Mining and Metals	Guarantee Agency
	et Agricoles	Sustainability (ICS)	(ICMM)	SACE S.p.A
	(SOMDIAA)	Kering	International Tin	Scotiabank
	Syngenta	Li & Fung	Association	UBS
	TMP Systems	Modint	IPC- Association	Union Bank
	UN Global Compact	Primark	Connecting Electronics	Universities Superannuation
	Yara International	Sustainable Apparel	Industries	Scheme (USS)
		Coalition (SAC)	London Bullion Market	
		The Walt Disney Co.	Association (LBMA)	
			London Metals Exchange	
			(LME)	
			PAMP	
			Responsible Business	
			Alliance (RBA)	
			Responsible Jewellery	
			Council (RJC)	
			Signet Jewelers Ltd.	
			Siemens	
			Specialty Metals Resources	
			(SMR)	
			Tantalum-Niobium	
			International Study Center	
			(TIC)	
			Trafigura	
			United States Council for	
			International Business	
			(USCIB)	
			World Gold Council	
			(WGC)	

	Agriculture	Garment & Footwear	Minerals	Financial Sector
Investors	Aquila Capital BNP Paribas Asset Management Duxton Asset Management EBG Capital Meeschaert Milltrust International RaboBank Ripplewood Advisors Sustainable Insight Capital Management		ABN Amro	
Civil Society Organizations	ASEAN CSR Network CCFD-Terre Solidaire Forest Peoples Programme Friends of the Earth Europe General Confederation of Liberal Trade Unions of Belgium (CGSLB) Global Witness Groupe de recherche et d'échanges technologiques (GRET) OECD Watch/SOMO Oxfam World Animal Protection World Wildlife Fund (WWF)	Clean Clothes Campaign (CCC) Ethical Trade Initiative (ETI) OECD Watch	Alliance for Responsible Mining (ARM) Amnesty International Artisanal Gold Council (AGC) Centro Regional de Empresas y Emprendimientos Responsables (CREER) Enough Project Foro Nacional por Colombia Global Witness Groupe de Recherche et de Plaidoyer sur les Industries Extractives (GRPIE) IMPACT Observatoire Gouvernance et Paix (OGP) Save Act Mine (SAM) Solidaridad	Banktrack Berne Declaration Centre for Research on Multinational Corporations /SOMO International Corporate Accountability Roundtable (ICAR) Oxfam SHIFT World Wildlife Fund (WWF)
Trade Unions	TUAC (OECD)	IndustriALL TUAC (OECD)		AFL-CIO UILCA TUAC (OECD)
Academia/ other	Columbia Center on Sustainable Investment at Columbia University Fondation pour l'agriculture et la ruralité dans le monde (FARM) International Institute for Sustainable Development (IISD) LEGEND NpM Platform for Inclusive Finance World Farmers' Organisation			University of Zurich University of Pretoria
International Organizations	Committee on World Food Security (CFS) European Commission UN Food and Agricultural Organization (FAO) International Labour Organization (ILO)	International Labour Organization (ILO) Office of the High Commissioner on Human Rights (OHCHR)		Office of the High Commissioner on Human Rights (OHCHR) United Nations Environment Programme-Finance Initiative (UNEP-FI) Institute for Human Rights and Business (IHRB) UN Working Group on Business and Human Rights

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