

Hearing on Corporate Social Responsibility/Responsible Business Conduct organised by the Committee on Legal Affairs of the European Parliament, Tuesday 21 November 2017

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The Business Perspective on the OECD Guidelines for Multinational Enterprises

I am happy to discuss with you BIACs view on the OECD MNE Guidelines. Thank you for inviting BIAC.

What is BIAC, or Business at OECD?

- Business and Industry Advisory Committee to the OECD
- BIAC was created at the start of the OECD
- It is the formal representative of OECD wide business as a stakeholder in OECD processes
- Counterparts from the trade unions and the NGO community are TUAC and OECD Watch.

BIACs basic approach to CSR/RBC and the OECD MNE Guidelines

BIAC considers responsible business conduct or corporate social responsibility as promoted by the OECD MNE Guidelines to be an essential part of an open international investment climate and in the best interest of business as well as of society at large. There is a logical balance between an open international investment climate and RBC.

BIAC was in 2010 – 2011 intensely involved in the review and formulation of the GL MNE.

My key messages today are:

- The OECD MNE GL are a very valuable instrument and should be a central instrument in further developing RBC
- A special challenge today is the realization of the untapped potential of the OECD MNE GL and the NCP system.

The OECD MNE Guidelines are the most comprehensive, widely internationally recognized instrument for promoting responsible business conduct.

They provide voluntary principles and standards, covering all major areas of business ethics: human rights, information disclosure, employment and labour, environment, anti-corruption, consumer interests, science and technology, competition and taxation.

The Guidelines were developed in close co-ordination with the UN Guiding Principles on Business and Human Rights. Both instruments, although different in nature, are completely aligned. They form a tandem.

For business, these two instruments have two essential elements

- The material norm: avoid adverse impact of business activities in the areas covered by the Guidelines
- The instrument to facilitate realising the material norm: due diligence: introducing a process to identify, prevent, reduce and account for how businesses address actual and potential adverse impacts

The Guidelines have two important characteristics:

- They are deliberately not legally enforceable. They are intended to stimulate RBC, not to trigger legal disputes. RBC is a learning process. The essentially voluntary nature promotes a constructive attitude in processes. The Guidelines are not designed to become hard law. Business is therefore against transposing the Guidelines into hard law.
- They are flexible: the nature and extent of due diligence depends on the precise circumstances; especially for SMEs (see also EP resolution 12 September 2017)

However, MNEs are expected to fulfill the recommendations set out in the GL and to have a policy in place that is consistent with these recommendations.

BIAC actively promotes the Guidelines among business. Information on BIAC's activities in this field and the BIAC brochure on the Guidelines are available on the BIAC website www.biac.org.

The Guidelines represent not only a demand on business: they also promote a level playing field, and protect business from unrealistic expectations from stakeholders.

Importance for business to have one instrument

- It is very important for business that there is one central globally recognized instrument on RBC.
- Business is worried about a possible proliferation of RBC instruments from various national and international sources, with different requirements; especially for globally active companies this involves large administrative burdens and uncertainty; special concerns exist when the instruments show contradictory requirements; it is better to have one central instrument and make it work; we therefore want to build on the OECD Guidelines and the UN Guiding Principles.

The way forward therefore would be practical co-operation and concrete steps forward on the basis of GL and GP

This is also the approach favored by the UN SDG: the central challenge is how to mobilise energy to solve global problems.

In this framework and to implement due diligence, the concept of CSR Covenants developed by the Dutch trade unions and business community in the framework of the Social Economic Council in the Netherlands is worth mentioning.

The philosophy of the covenants is that most CSR problems in third countries are caused by multiple failures in the system where the authorities, business and other societal actors should closely co-operate to achieve improvements; covenants where all parties agree to solve part of the problem can provide a way to move forward.

It might be interesting for the EP to organize a hearing on this specific initiative. We are willing to work with you to make that possible.

The National Contact Points in the OECD MNE Guidelines

The MNE Guidelines are supported by a unique implementation mechanism of National Contact Points (NCPs) established by the adhering governments.

The NCPs have two functions: they promote the GL and they provide a non judicial grieving mechanism that can contribute to the resolution of issues that arise in relation to the implementation of the GL.

The NCP can offer its good offices to help the parties involved to resolve the issue by facilitating access to mediation and conciliation. It can also issue a statement and make recommendations

It is a carefully calibrated system.

There is a fundamental difference between a CSR instrument and a legal instrument with a very different process culture and procedural guarantees.

In the fall of 2015, BIAC, TUAC and OECD Watch, produced a Joint Declaration, unique in the history of the OECD, in which they asked for the further strengthening of the NCPs performance, in particular of those that have to catch up, and called on governments to provide the necessary resources.

The beneficial effect of the NCP system are to a large extent realized not so much by the NCP procedures themselves, but by the discussions they unlock within companies and in broader society.

To promote the functioning of the NCP system, it is of importance that there is consensus on the voluntary, RBC nature of the NCP procedures.

Last June BIAC organized a high level meeting with representatives from 30 global MNEs plus the leadership of the OECD to discuss ways of strengthening the NCP system. We are willing to consider organizing such a meeting also with the EP, as the aforementioned EP resolution also asks for a reinforcement of the NCP system

Thank you.