

COUNCIL**Meeting of the Council at Ministerial Level, 7-8 June 2023****DRAFT REVISED DECISION OF THE COUNCIL ON THE GUIDELINES
FOR MULTINATIONAL ENTERPRISES ON RESPONSIBLE BUSINESS
CONDUCT****JT03519958**

THE COUNCIL,

HAVING REGARD to Article 5 a) of the *Convention on the Organisation for Economic Co-operation and Development* of 14 December 1960;

HAVING REGARD to the *OECD Declaration on International Investment and Multinational Enterprises* (the “*Declaration*”) [[OECD/LEGAL/0144](#)], in which the Members and non-Members having adhered (“*Adherents*”) jointly recommend to multinational enterprises operating in or from their territories the observance of *Guidelines for Multinational Enterprises on Responsible Business Conduct* (the “*Guidelines*”);

RECOGNISING that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the *Declaration* should extend to all countries;

CONSIDERING it desirable to enhance procedures by which consultations may take place on matters covered by these *Guidelines* and to promote the effectiveness of the *Guidelines*;
On the proposal of the Investment Committee:

DECIDES:

I. National Contact Points for Responsible Business Conduct

1. Adherents shall set up National Contact Points for Responsible Business Conduct (NCPs) to further the effectiveness of the *Guidelines*. NCPs shall have the following responsibilities:
 - a) Promote awareness and uptake of the *Guidelines*, including by responding to enquiries;
 - b) Contribute to the resolution of issues that arise in relation to the implementation of the *Guidelines* in specific instances.

In addition, where appropriate and in coordination with relevant government agencies, NCPs may also provide support to efforts by their government to develop, implement, and foster coherence of policies to promote responsible business conduct.

The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of NCPs.

2. NCPs in different Adherents shall co-operate, if such need arises, on any matter related to the *Guidelines* relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other NCPs are undertaken.
3. NCPs shall meet regularly to share experiences and report to the Investment Committee.
4. Adherents shall make available human and financial resources to their NCPs so that they can effectively fulfil their responsibilities in a way that fully meets the effectiveness criteria described in the Procedures attached to this Decision, taking into account internal budget capacity and practices.
5. Adherents shall undertake periodic peer reviews of their NCPs, subject to modalities adopted by the Working Party on Responsible Business Conduct (WPRBC).

II. The Investment Committee and the Working Party for Responsible Business Conduct

1. The Investment Committee (“the Committee”) shall oversee the implementation of the Declaration on International Investment and Multinational Enterprises. The WPRBC shall assist the Committee in implementing Section I of the Declaration with respect to its responsibilities in relation to the *Guidelines*.
2. The Committee shall periodically or at the request of an Adherent hold exchanges of views on matters covered by the *Guidelines* and the experience gained in their application. The Committee shall periodically invite Business at OECD (BIAC), the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), and OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-Adherents on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-Adherents that have a special interest in the *Guidelines* and in promoting their principles and standards.
4. The Committee shall be responsible for clarification of the *Guidelines*. Parties involved in a specific instance that gave rise to a request for clarification shall be given the opportunity to express their views either orally or in writing. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of NCPs with a view to enhancing the effectiveness of the *Guidelines* and fostering functional equivalence of NCPs.
6. The Committee shall periodically report to the Council on matters covered by the *Guidelines*. In its reports, the Committee shall take account of reports by NCPs and the views expressed by the advisory bodies (BIAC and TUAC), OECD Watch, other international partners and non-Adherents as appropriate.
7. The Committee shall, in co-operation with NCPs, proactively promote the effective observance by enterprises of the principles and standards contained in the *Guidelines*. It shall, in particular, seek opportunities to collaborate with the advisory bodies (BIAC and TUAC), OECD Watch, other international partners and other stakeholders in order to encourage positive contributions from multinational enterprises, in the context of the *Guidelines*, to economic, environmental and social progress with a view to achieving sustainable development, and to help identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

III. Implementation and Review of the Decision

1. The Procedures attached to this Decision set out expectations, recommendations and guidance applicable to Adherents, NCPs, the Committee, and the WPRBC in the implementation of this Decision.
2. This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose, and the WPRBC may develop and submit such proposals to the Committee.

Procedures

I. National Contact Points for Responsible Business Conduct

The role of National Contact Points for Responsible Business Conduct (NCPs) is to further the effectiveness of the *Guidelines*. NCPs will operate in a manner that is:

1. visible,
2. accessible,
3. transparent,
4. accountable,
5. impartial and equitable,
6. predictable, and
7. compatible with the *Guidelines*.

These principles together comprise the core effectiveness criteria of NCPs. NCPs, considering their particular circumstances, will pursue functional equivalence, meaning that all NCPs function with an equivalent degree of effectiveness, through achieving the core effectiveness criteria.

A. Institutional Arrangements

Consistent with the objectives of functional equivalence of NCPs and furthering the effectiveness of the *Guidelines*, Adherents have flexibility in organising their NCPs to meet the core effectiveness criteria. In determining the institutional arrangements of their NCP, governments will seek the active support of social partners where applicable, and other stakeholders as well as other relevant government agencies.

Accordingly, the NCPs:

1. Will be composed, organised, and sufficiently resourced to provide an effective basis for dealing with the broad range of issues covered by the *Guidelines*, have access to expertise on all relevant aspects of the NCP mandate, operate in an impartial manner and maintain an adequate level of accountability to the adhering government.
2. Can use different forms of organisation to meet the core effectiveness criteria and pursue functional equivalence, keeping in mind the importance of maintaining stakeholder confidence. For example, an NCP can consist of a senior government official or a government office headed by a senior official; an interagency or inter-ministerial body composed of, or led by, senior officials; a body composed of representatives from the government, the business community, worker organisations and other non-governmental organisations (multi-stakeholder), and/or independent experts. Governments are encouraged to include representatives of the business community, worker organisations and other non-governmental organisations in advisory or oversight bodies where useful to assist the NCP in its tasks.
3. Will develop and maintain meaningful relations and engage with social partners where applicable, as well as representatives of the business community, worker organisations, non-governmental organisations, and/or other interested parties that are able to contribute to the effectiveness of the *Guidelines*.

B. Information and Promotion

The NCP will:

1. Make the *Guidelines* known and available by appropriate means, including through on-line information, and in national languages. NCPs should also promote related OECD due diligence guidance on responsible business conduct, taking into account the specific nature of the guidance as mentioned in the *Guidelines* Chapter II, Commentary paragraph 15. Relevant stakeholders, including prospective investors (inward and outward), should be informed about the *Guidelines*, as appropriate.
2. Raise awareness of the *Guidelines*, their implementation procedures, and the NCP itself, including through co-operation, as appropriate, with relevant government agencies, the business community, worker organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the *Guidelines* and OECD due diligence guidance, as well as the NCP itself, including from:
 - a) other NCPs;
 - b) the business community, worker organisations, other non-governmental organisations and the public; and
 - c) governments of non-Adherents.

C. Specific Instances

The NCP will, serving as a non-judicial grievance mechanism, contribute to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances in a manner that is consistent with the core effectiveness criteria listed in Section I.A. above. NCPs will publish their case-handling procedures, i.e. procedures they follow in handling specific instances, which will be consistent with these Procedures. NCPs are encouraged to consult their stakeholders in developing their case-handling procedures. The NCP will offer a forum for discussion and its expertise on the *Guidelines* to assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to resolve the issues raised in an efficient and timely manner and in accordance with applicable law and the *Guidelines*. Depending on the characteristics of each case, this assistance may include supporting constructive dialogue, facilitating agreements between the parties and/or issuing recommendations. The aims of such assistance may include furthering the implementation of the *Guidelines* in the future and/or addressing adverse impacts in a way consistent with the *Guidelines*.

In providing this assistance, the NCP will:

1. Where other NCPs are concerned due to the characteristics of the Specific Instance, coordinate in good faith with them to choose the lead and supporting NCPs.
2. Consult the parties on the issues raised and make an initial assessment of whether these issues warrant further examination and respond to the parties involved.
3. Where, based on an initial assessment, the NCP decides that the issues raised warrant further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:

- a) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;
 - b) consult the NCP or NCPs in any other Adherent or Adherents concerned;
 - c) seek information on similar specific instances from the Secretariat or guidance from the WPRBC if it has doubt about the interpretation of the *Guidelines*. Such information and guidance is advisory, confidential and case-specific and does not amount to clarifications of the interpretation of the *Guidelines*, which remain the responsibility of the Committee as per Section II.2.c) below. Subject to available resources, it should be provided expeditiously to avoid delays in the handling of the case;
 - d) offer and, with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as mediation or conciliation, to assist the parties in resolving the issues.
4. At the conclusion of the proceedings and after consultation with the parties involved, make the results of the proceedings publicly available, taking into account the need to protect sensitive business and other stakeholder information, by publicly issuing a final statement:
- a) when the NCP decides that the issues raised do not warrant further examination. The statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the steps taken by the NCP in considering the submission and parties' engagement in the proceedings, and the reasons for the NCP's decision;
 - b) when the parties have reached agreement on the issues raised. The statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the steps taken by the NCP in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto. The NCP may also include recommendations on the implementation of the *Guidelines* in its statements when an agreement has been reached, as appropriate;
 - c) when no agreement is reached or when a party is unwilling to participate in the proceedings. This statement should at a minimum describe the issues raised, the parties' respective positions as appropriate, the reasons why the NCP decided that the issues raised warranted further examination and the steps taken by the NCP in assisting the parties, including information on parties' engagement in the proceedings. The NCP should also include recommendations on the implementation of the *Guidelines* where relevant. Where appropriate, the statement could also include the reasons why an agreement could not be reached. If allowed by applicable law and the NCP's case-handling procedures, the NCP may, at its own discretion, set out its views in its final statement on whether the enterprise observed the *Guidelines*.

The NCP will notify the results of its specific instances to the Committee and the WPRBC in a timely manner.

5. Engage in follow-up where relevant once the specific instance has closed, on the implementation of recommendations or, if any, the agreement reached by the parties. The NCP should publish a follow up statement. Any follow up that the

NCP intends to undertake should also be referred to in the final statement, including deadlines to do so.

6. Act with transparency and make parties to a specific instance aware of all relevant facts and arguments brought to the NCP by other parties, in particular during the good offices phase. However, upon a reasonable request by a party, for example to protect sensitive information and/or the interests of stakeholders involved in the specific instance the NCP may keep certain information confidential from the other parties.
7. Inform the parties that they may not disclose publicly or to a third party, during or after the proceedings, facts and arguments shared by the other parties or the NCP (including where relevant by an external mediator or conciliator) during the proceedings described in paragraphs 1-5 above, unless the sharing party agrees to their disclosure, such facts and arguments are already in the public domain, or not disclosing would be contrary to the provisions of national law.
8. If issues arise in non-Adherents, take steps to develop an understanding of the issues involved, and follow these Procedures.
9. Throughout the process, NCPs should take all appropriate steps within their capacities to address risks of reprisals against parties to a specific instance. If they become aware of an actual or potential instance of reprisal, NCPs should, to the extent possible, support the party concerned in avoiding and mitigating any harm and contact relevant authorities, in consultation with the person(s) at risk where possible. Governments should also take relevant steps to protect the NCP and its members from reprisals.

D. Support for government efforts to promote responsible business conduct

In furthering the effectiveness of the *Guidelines*, NCPs may, where appropriate and in coordination with relevant government agencies, support efforts by their government to develop, implement, and foster coherence of policies aimed at promoting responsible business conduct. Providing or requesting such support should take into account the NCP's resources and capacity to fulfil their responsibilities described in paragraph I.1. of the *Decision*.

E. Reporting

1. Each NCP will report annually to the Committee and the WPRBC.
2. Reports should contain information on the nature and results of the activities of the NCP, including in specific instances.

F. Peer reviews

Adherents will undertake periodic peer reviews of their NCP organised by the Secretariat, as a means to increase effective implementation of the *Guidelines*, share best practices, and foster NCP effectiveness and functional equivalence. Modalities for periodic peer reviews, including procedures for conducting peer reviews, the duration of the peer review cycle and funding arrangements, will be approved by the WPRBC and reviewed at the end of every cycle. The first cycle of periodic peer reviews will only be launched after such modalities have been approved.

II. Investment Committee, WPRBC and the Secretariat

1. The Committee, the WPRBC and the Secretariat will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about

the interpretation of the *Guidelines* in particular circumstances, each in accordance with their respective responsibilities.

2. The Committee, with the assistance of the WPRBC, will, with a view to enhance the effectiveness of the *Guidelines* and to foster the functional equivalence of NCPs:
 - a) consider the annual reports of NCPs described in Section I.E. above. Based on such reports, the WPRBC will annually issue a public report analysing the activities of NCPs;
 - b) consider a substantiated submission by an Adherent, an advisory body (BIAC or TUAC) or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances. The Committee will approve the response by consensus. The Adherent whose NCP is the subject of a substantiated submission will participate in the process in good faith, and is expected to join the consensus except in exceptional circumstances;
 - c) consider issuing a clarification of the interpretation of the *Guidelines* at the request of an Adherent, an advisory body (BIAC or TUAC) or OECD Watch. Such request may concern whether an NCP has correctly interpreted the *Guidelines* in specific instances, but in such cases, the Committee will not reach conclusions on the conduct of individual enterprises;
 - d) make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the *Guidelines*. When, based on the last two annual reporting cycles and upon proposal by the WPRBC, the Committee determines that an NCP has, for an extended period of time and without legitimate reason, manifestly not been operating in a way consistent with these Procedures, it may make appropriate recommendations to the Adherent and invite it to report back within a set timeframe, and the Committee may do so repeatedly until it is satisfied that the issues have been addressed. The Committee and the WPRBC will reach decisions on these matters by consensus. The Adherent whose NCP is concerned will participate in the process in good faith, and is expected to join the consensus except in exceptional circumstances;
 - e) co-operate with international partners;
 - f) engage with interested non-Adherents on matters covered by the *Guidelines* and their implementation.
3. The Committee and the WPRBC may seek and consider advice from experts on any matters covered by the *Guidelines*. For this purpose, the Committee will decide on suitable procedures.
4. The Committee and the WPRBC will discharge their responsibilities in an efficient and timely manner.
5. In discharging their responsibilities, the Committee and the WPRBC will be assisted by the Secretariat, which, under the overall guidance of the Committee and the WPRBC, and subject to the Organisation's Programme of Work and Budget, will:
 - a) serve as a central point of information for NCPs that have questions on the promotion, interpretation, and implementation of the *Guidelines*. Information on the interpretation of the *Guidelines* will be provided in accordance with I.C.2.c) above;
 - b) collect and make publicly available – including by supporting the WPRBC with

the publication of the annual report analysing NCP activities under II. 2. a) above – relevant information on recent trends and emerging practices with regard to NCPs’ institutional arrangements, promotional activities and the implementation of the *Guidelines* in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances;

- c) facilitate peer learning activities, as well as capacity building and training, in particular for NCPs of new Adherents and new NCP personnel, on the *Guidelines* and their Implementation Procedures such as promotion and the facilitation of conciliation and mediation;
- d) organise periodic peer reviews of NCPs as indicated under Section I.F. above;
- e) facilitate co-operation between NCPs where appropriate; and
- f) promote the *Guidelines* in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the *Guidelines* among non-Adherents.

III. Miscellaneous

These Procedures do not give rise to additional rights or obligations under international law.