

PRI RESPONSE

TARGETED UPDATE OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

10 February 2023

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To inform this briefing, the following investor group has been consulted: PRI Global Policy Reference Group. This consultation is not an endorsement or acknowledgement of the views expressed in this briefing.

ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the

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investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research. The PRI welcomes the opportunity to respond to the European Supervisory Authorities' (ESA) call for evidence on better understanding greenwashing.

ABOUT THIS CONSULTATION

The OECD Responsible Business Conduct (RBC) is conducting a public consultation on targeted updates to the [OECD Guidelines for Multinational Enterprises](#) and the accompanying implementation procedures. The goal of the targeted update is to advance their uptake and promotion, as well as to ensure they remain fit for purpose.

The targeted update is guided by a set of parameters set out by the Working Party on Responsible Business Conduct:

- the update excludes a wholesale revision of the Guidelines or a full redrafting of existing chapters.
- potential updates are based on issues raised in the preceding stocktaking exercise and current understanding and practice by Adherents.
- the update is further guided by the criteria of (i) ensuring coherence with OECD priorities and standards; (ii) enhancing the OECD's leadership on RBC; (iii) building on achievements and strengths; and (iv) ensuring focus and proportionality.

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KEY RECOMMENDATIONS

The PRI welcomes the proposed update to the OECD MNE Guidelines, in particular:

- the expansion of the scope of due diligence from a focus on supply chains to encompass wider business relationships.
- the recognition that “an enterprise’s relationship to adverse impacts is not static”, and the specification that investee companies are part of a company’s business partners.
- The strengthening of the language around risk-based due diligence.
- The expansion of the provisions relating to environmental issues to require risk-based environmental due diligence, including the recognition of the need to adopt a just transition lens in assessing the potential or actual adverse impacts to workers, communities, and consumers.
- The recommendation that enterprises consider the OECD Recommendation of the Council on Principles for Transparency and Integrity in Lobbying when engaging in public advocacy.
- The inclusion of a recommendation for enterprises to promote a culture of whistleblowing.

The PRI’s key recommendations are:

- Include in the text a specific mention of the role of institutional investors in supporting the implementation of responsible business conduct. This should be carried out using the instruments at the investors’ disposal, taking into consideration the leverage available and the fact that, as clarified by John Ruggie, the UN Working Group and the OECD itself, while there are instances where an investor can cause or contribute to an adverse impact, in most cases investors are instead ‘linked’ to such adverse impacts.
- With reference to the provisions relating to the relevance of the information to be disclosed (Paragraphs 2-3 and 30-33 of the Guidance), the Guidelines should further highlight the relevance of sustainability outcomes in maximising returns. Governments around the world have introduced a range of policies in recent years to encourage responsible investment. Investors also increasingly recognise that financial returns depend on the stability of social and environmental systems. Quantitative and qualitative data providing insight into the sustainability pressures facing a business and how they impact on a company’s business model and value drivers, and how management is responding to them, are, and will remain, crucial for investment decisions. At the same time, market developments are shifting to focus on the alignment or contribution, both positive and negative, of corporate and investor activity in meeting sustainability goals.
- Specifically on human rights, investors are considering not only the impacts on people that arise or could arise from their business activities and investee companies, but they are also trying to understand how risks to people can create financial and reputational risk. The PRI’s recent report on “[What data do investors need to manage human rights?](#)” highlights a serious lack of information around companies’ inherent human rights risks, how human rights are embedded in companies’ cultures and practice, the quality of companies’ human rights due diligence, and quantitative information about positive human rights outcomes to which companies have contributed. The Guidelines should include references to the importance of

providing high-quality and comparable data on a company's performance with regards to managing human rights risks.

- In addition to being made publicly available, companies' policies on responsible business conduct, and the results of their due diligence processes, should be updated at regular intervals, ideally annually.
- A clear definition of what constitutes "business relationship" for the purposes of due diligence should be provided. While certainly useful, the examples currently provided (Chapter II commentary - Paragraph 20) are not exhaustive enough, while at the same time appearing prescriptive and therefore potentially causing confusion.
- While we recognise the importance of the 2017 OECD [paper](#) aimed at institutional investors, more detailed guidance is needed that accounts for the different strategies employed by investors. As an example, quantitative and smart beta strategies are generally seen as more difficult to run due diligence on, due to the number of holdings in their portfolios and the speed at which they trade. In line with the proposed update of the MNE Guidelines, the emphasis of this strengthened guidance should be on risk-based due diligence processes. This would also support investors in complying in upcoming regulations on due diligence that might include them in their scope. The PRI is working on these issues, for example running workshops for firms operating in [private markets](#), and has published reports on "[Why and how investors should act on human rights](#)" and "[Human rights in sovereign debt](#)".
- Strengthening the guidelines on ensuring transparency and integrity in lobbying activities by encouraging enterprises to report further details on their practices.
- Strengthening recommendations on whistleblowing by encouraging companies to implement whistleblowing mechanisms.
- Additional comments should be provided with regards to stakeholder involvement in the development of companies' tax strategies. This is particularly true in the case of how concerns from stakeholders are addressed.
- The guidelines should be more made more consistent with the OECD's BEPS project and the two-pillar reforms and acknowledge the systemic issue of tax avoidance and profit-shifting and the proactive role that multinationals should play in tackling this.
- As highlighted in the PRI's 2018 report "[Aligning investors with sustainable finance](#)" Responsible Business Conduct should be embedded into OECD's mainstream financial reporting work. In particular, OECD committees, working parties and task forces (OECD bodies) dealing with financial markets, insurance, pensions and investment topics, which fall under the responsibility of the Directorate for Financial and Enterprise Affairs (DAF), should further integrate sustainable finance and investment as a core component of their work programmes and research agendas.

DETAILED RESPONSE

CHAPTER I: CONCEPTS AND PRINCIPLES

- Paragraph 4: Recommend including a reference to the need to ensure regulatory alignment, to provide an environment for companies and investors that supports investment across borders.

CHAPTER II: GENERAL POLICIES

- Paragraph 5: We recommend strengthening the guideline on ensuring transparency and integrity in lobbying activities by encouraging enterprises to disclose information on:
 - board oversight of political engagement activities, such as lobbying and political contributions.
 - the governance processes in place to monitor and identify inconsistencies between companies' policies and practices, and political engagement activity of trade associations the undertaking is a member of.
 - whether misalignments were identified and how these are addressed.
 - a list of memberships to industry associations and other third-party groups involved in policy-related advocacy, and the methodology for compiling this list.
 - leadership positions (e.g. positions on the board or key committees) held by staff members in industry associations and other third-party groups involved in policy-related advocacy.
- Paragraph 6: We welcome the reference to the OECD Recommendation of the Council on Principles for Transparency and Integrity in Lobbying and highlight the PRI report on [Regulating Corporate Political Engagement](#).
- Paragraph 10: A reference should be made to Strategic Lawsuits Against Public Participation (SLAPP) as well.
- Paragraph 14: A reference should be included to the situation in which a company or investor is "linked to" impacts, and what its position should be with regards to remediation requirements.
- Commentary Paragraph 15: In the list of activities, a clarification of what "when appropriate" means is necessary.
- Commentary Paragraph 16: there is still a focus on supply chains at this level, which should be changed into one on value chains, such as expanded upon in subsequent paragraphs (e.g. 18, 20).
- Commentary Paragraph 20: lacking a specific definition of "business relationship", add the words "among others" to the list of the entities with which a business can have a relationship.

CHAPTER III: DISCLOSURE

- Paragraph 1: A reference should be made to the specific disclosure rules for the sectors of operation, in addition those of the countries of operation.
- Paragraph 3: Disclosures regarding board members should also include a reference to the experience of executive and non-executive directors in matters related to responsible business conduct, and the existence of committees focused on these issues.

- Commentary Paragraph 36: While we recognise the importance of singling out climate change, a reference to biodiversity/nature should be included as well, in light of the recent Kunming/Montreal Global Biodiversity Framework.
- Commentary Paragraph 37: Recommend aligning the importance attributed to climate, human rights, human capital management and DEI.
- Commentary Paragraph 38: In addition to being easily accessible, the information provided by companies should be regularly updated, at least annually.

CHAPTER IV: HUMAN RIGHTS

Our general comments on this chapter focus on the need for the Guidelines to highlight the importance of information on human rights impacts. Increasingly, investors are considering not only the impacts on people that arise or could arise from their business activities and investee companies, but they are also trying to understand how risks to people can create financial and reputational risk. The PRI's recent report on "[What data do investors need to manage human rights?](#)" highlights a serious lack of information around companies' inherent human rights risks, how human rights are embedded in companies' cultures and practice, the quality of companies' human rights due diligence, and quantitative information about positive human rights outcomes to which companies have contributed. The Guidelines should include references to the importance of providing high-quality and comparable data on a company's performance with regards to managing human rights risks.

CHAPTER V: EMPLOYMENT AND INDUSTRIAL RELATIONS

- Paragraph 1 b): reference to "agreements on terms and conditions of employment" is too specific. We recommend framing in aspect of social dialogue/broader negotiations
- Commentary Paragraph 49: reference to "digital transformation" is not specific enough; define what this means in the context of work. Recommend also reframing short-term working arrangements into contingent working arrangements, as this covers contractual status as well.
- Commentary Paragraph 52: example in last sentence is too specific. Should be inclusive of other affected stakeholders/representative organisations.
- Commentary Paragraph 53: Debt bondage is one aspect; another is repayment of wages that were withheld in situations where remedy is being provided.
- Commentary Paragraph 58: include "shifting demographics" among examples of future changes.

CHAPTER VI: ENVIRONMENT

The PRI supports the expansion of the requirement to run risk-based due diligence with reference to environmental impacts, in addition to human rights ones. This is especially true in light of the widely recognised need to ensure that the climate and sustainability transition is "just" and leads to positive outcomes for people and the planet.

CHAPTER VII: COMBATTING BRIBERY, BRIBE SOLICITATION AND EXTORTION

- Commentary Paragraph 76: PRI welcomes the statement on the importance of whistleblowing culture. The [PRI investor guidance](#) on whistleblowing and the [PRI investor guidance on anti-bribery and corruption](#) emphasized the importance of whistleblowing mechanisms in addressing systemic issues, particularly bribery and corruption. Therefore, we recommend strengthening this disposition by recommending companies to:
 - Establish and disclose information on whistleblowing frameworks that allow employees to report misconduct and concerns without fear of retaliation.
 - Adopt and disclose a whistleblowing policy.
 - Disclose board oversight and responsibilities for the whistleblowing framework.
 - Report on the number and types of reports made.

CHAPTER VIII: CONSUMER INTERESTS

- Commentary Paragraph 85 - The PRI welcomes the inclusion of social considerations in the section about (potentially) misleading claims from enterprises.

CHAPTER XI: TAXATION

Further changes should be made to the taxation chapter. Taxation is a fundamental pillar of responsible business conduct and strongly supports increased corporate tax transparency and the public disclosure of country-by-country reporting (CBCR) information.

The guidelines should:

- encourage multinationals to be more proactive in providing public information on their tax practices (tax strategy, tax principles, tax governance and tax payments).
- more specifically, encourage multinationals to make their CBCR data public. It is now more than 5 years since large multinationals have been disclosing privately their CBCR data. Public country-by-country will allow multinationals to demonstrate to their stakeholders including investors that they are committed to paying taxes in the countries where they create value (e.g., applying the arm's length principle correctly as specified in the OECD guidelines).

Many responsible multinationals are voluntarily disclosing information on their tax practices notably through the GRI207 standard, which includes their CBCR data. The guidelines should be more made more consistent with the OECD's BEPS project and the two-pillar reforms and acknowledge the systemic issue of tax avoidance and profit-shifting and the proactive role that multinationals should play in tackling this.

While the guidelines place emphasis on compliance with both the letter and the spirit of the law, they should move further away from "tax compliance" defined as timely payments and sharing of accurate information and include the need for multinationals to respond to the increasing expectations around corporate citizenship in the area of taxation from governments, tax authorities, investors, among others. For instance, the guidelines should be more explicit on the need for multinationals, and their boards, to give greater considerations to the implications of their tax policy on other responsible business conduct and sustainability issues, and stakeholders.

The PRI has experience of contributing to public policy on sustainable finance and responsible investment across multiple markets and stands ready to support the work of the OECD further to ensure the advancement of Responsible Business Conduct across the world.

Please send any questions or comments to policy@unpri.org.

More information on www.unpri.org