

## Achievements and looking forward

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### Innovations in NCPs institutional arrangements

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Overall, a quarter of NCPs reported changes in their governance structures and procedures to make them more inclusive, accountable and transparent. Denmark created an independent body with five members from different stakeholder backgrounds and a new mediation and complaint mechanism with an allocated budget of over 400 000 EUR per year. In Brazil, the election of a representative by each of the 11 governmental institutions that compose the NCP was made legally binding, to increase the sense of ownership and awareness about the *Guidelines* within the government. Switzerland set up a multi-stakeholder advisory board composed of 14 representatives from various stakeholder groups, and new internal procedures for handling specific instances. Australia established an Oversight Committee that includes government agencies. The Chilean NCP is now assisted by an advisory group of government experts and a civil society oversight committee composed of different stakeholders and RBC experts. The new procedures of the French NCP entered into force and Spain is well advanced in reforming its NCP. Finally, Tunisia created the 44th NCP on the *Guidelines*, which comprises representatives from government, trade union and business.

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### Communication and promotion of the Guidelines

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NCPs have also continued to prioritise communication and promotion by developing promotional plans and new materials on the updated *Guidelines*, organising or participating in awareness raising events and engaging with government agencies and leading RBC initiatives to promote policy coherence. The *Guidelines* are now available in 25 languages, including this year: Arabic,<sup>1</sup> Chinese, Danish, Estonian, Latvian, and Russian. A commonly agreed Spanish version of the *Guidelines* was prepared with the support of the OECD Secretariat.

It is estimated that the *Guidelines* were promoted in over 160 events, an increasing number of them in co-operation with other NCPs and stakeholders.

Several workshops and peer learning meetings were held in Latin America at the initiative of local NCPs (Brazil, Chile and Colombia), and with the support of more experienced NCPs (Netherlands, Norway, UK). The EU sponsored a regional conference in Santiago, Chile. Norway hosted the 2013 Nordic Roundtable on RBC; Canada, with the UN Working Group on Business and Human Rights, the first workshop on global experiences on non-judicial grievance mechanisms; and the London-based Institute for Human Rights and Business, the second workshop on the role of NCPs with regard to the extractive sectors. The OECD Secretariat chaired the annual MENA meeting on RBC and actively engaged in capacity building for MENA NCPs.

In addition, an increased number of NCPs (Argentina, Austria, Denmark, Norway, Italy, Poland) conducted surveys to assess knowledge and use of the *Guidelines* by their enterprises and stakeholders. In Argentina the NCP is developing a compliance assessment tool, in co-operation with a local NGO. NCP Norway has also initiated work on a self-assessment tool and a due diligence guidance, in co-operation with a research institute and a CSR consultant.

Accredited stakeholders reported their contribution to raising awareness and promoting the *Guidelines*. They have disseminated the *Guidelines* among their constituencies, organised special events and training sessions, as well as provided advice for the use of the specific instance facility. They have played a particular valuable role in non-adhering countries.

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### **Specific instances: An increasingly challenging task for NCPs**

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The revision of the *Guidelines* has resulted in a record high activity under the specific instance facility. Some 36 new complaints were brought to NCPs (as compared to 28 during the last reporting period), and the number of concluded specific instances almost doubled (from 24 to 40). For the first time, NGOs submitted twice as many cases (14) than trade unions (7) as compared to half and half in the past; requests by individuals also grew (from 4 to 7). Overall, 14 NCPs were involved in the handling of these cases, often in co-operation with each other.

A majority of the new complaints related to human rights, due diligence, supply chains and stakeholder engagement. There was as well a greater diversity in the business sectors and countries covered, adding to the complexity of the cases considered. The financial and manufacturing sectors witnessed the highest number of specific instances even if the concentration in the extractive sectors remained significant. There was also a 20% increase in the number of cases occurring in non-adhering countries (namely Bahrain,

Bangladesh, Cambodia, El Salvador, India, Indonesia, Lao People's Democratic Republic, Nicaragua, Philippines, Russia, South Africa, Thailand and United Arab Emirates).

In 30% of the concluded specific instances, NCPs provided assistance to the parties in the form of facilitated dialogue or mediation. In three of those cases, the parties reached an agreement (2) or agreed on a timetable for negotiations (1). In 5 specific instances, the parties reached an agreement (4), or agreed to restart negotiations (1) through parallel proceedings or other processes. Regardless of the outcomes, several NCPs made recommendations to further the observance of the *Guidelines*.

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### **Proactive agenda**

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The proactive agenda was conceived in the 2011 Update of the *Guidelines* as a complement to the specific instance procedure. In co-operation with NCPs, the WPRBC encourages multi-stakeholder dialogue on emerging issues to more clearly identify areas in which enterprises can make a positive contribution to economic, environmental and social progress, as well as activities and relationships of enterprises which pose common risks and could result in serious adverse impacts. Outcomes of the proactive agenda seek to identify emerging challenges and then leverage an inclusive multi-stakeholder process that would develop broadly-supported solutions.

In December 2012, the WPRBC approved the “Principles for the proactive agenda”<sup>2</sup> to effectively utilise a multi-stakeholder process, while ensuring that all projects under the proactive agenda operate within a common framework. In addition to the first, flagship proactive agenda project on due diligence and conflict minerals, by June 2013 three additional projects are progressing well: on stakeholder engagement in the extractive sector, on due diligence in the financial sector and on RBC along agricultural supply chains.

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### **Outreach and supporting activities**

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The OECD Secretary-General Angel Gurría and Deputy Secretary-General Richard Boucher and OECD officials continued to promote the *Guidelines* at high level events in OECD and non-OECD countries. In particular, the Secretary-General and the Chair of the WPRBC spoke at a working dinner on “Business and Society” organised in Davos in January 2013. Deputy-Secretary General Boucher spoke at a high-level OECD-ESCAP conference part of the 2012 Asia-Pacific Business Forum. An MOU with the ICC to promote human rights was signed in Amman in November 2012. A panel was organised on the

first two years of the updated *Guidelines* at the 2013 World Bank/IMF Civil Society Forum held in Washington in April 2013.

Other supporting activities include the establishment of the new WPRBC and the first edition of the new Global Forum on RBC, the launch of a dedicated website on the *Guidelines* at the 2013 OECD Ministerial Meeting, the creation of an official database on specific instances, the development of an interactive reporting framework, and a brochure providing clear and synthetic basic information on the *Guidelines*.

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## **Priorities for the next implementation cycle**

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The priorities for the next implementation cycle were discussed at the 14th meeting of NCPs held on 24 and 25 June 2013 and at the meeting of the WPRBC on 28 June 2013. While good progress was acknowledged, the general sense prevailed that a lot of hard work still lies ahead.

NCPs agreed to concentrate their efforts during 2013-14 on two core activities, namely *a)* better communicating the expectations of the *Guidelines* to their enterprises and stakeholders and *b)* peer learning and capacity building. They also considered it particularly important to try to meet more than once per year, as provided by the 2011 OECD Council Decision.

Further work was also agreed by WPRBC delegates *c)* on the proactive agenda projects and *d)* outreach, particularly to China, India, South Africa and Southeast Asia, to be conducted in close collaboration with the OECD.

### ***a)* Better communicating expectations on the Guidelines**

The persistent lack of knowledge about the *Guidelines* and the role of NCPs, particularly among small and medium-sized enterprises (SMEs), continue to call for renewed efforts to better communicate to business and other stakeholders on the expectations on the *Guidelines*. It was felt that NCPs need to spend more time to demonstrate the benefits of acting responsibly, and explain the value added of their services, such as mediation or conciliation.

NCPs also underlined the key role of communication in preventing problems resulting from insufficient knowledge of the *Guidelines*. As foreseen by the proactive agenda, better informed investors are in a better position to make a positive contribution to economic, social and environmental progress and mitigate risks of adverse impacts resulting from their operations and business relationships. This is especially important in high risk geographies, sectors or activities. NCPs commended Australia, Germany and Italy for proactively engaging with SMEs and Italy for organising an event on Myanmar

in October 2013 for the benefit of Italian investors in this country. The statement<sup>3</sup> released on 25 June 2013 on the Rana Plaza tragedy also encourages NCPs to pay particular attention to consultations at the national level on the challenges of the textiles and garment industries.

### **b) Enhancing functional equivalence**

The past year was generally viewed as particularly challenging for the functioning of the NCP specific instance facility. The number of complaints has not only continued to rise but also covered a greater diversity of business sectors, investment contexts, countries and issues. For example, one major case concerned three NCPs, enterprises and NGOs originating from four different countries and different degrees of responsibility. In addition, NCPs have been confronted with the challenge of interpreting the new provisions of the *Guidelines* on human rights, due diligence, supply chains and stakeholder engagement which have become a common denominator in an increased number of cases.

The reviewed period saw as well the emergence of new issues on the interpretation of the Procedural Guidance. They concern, in particular, the criteria for initial assessments, NCP co-operation, the role of NCPs as mediators and problem solvers, and the balance between transparency and confidentiality. Unless there is clearer understanding about these issues, it would remain difficult for NCPs to produce comparable outcomes under comparable situations, as required by the principle of functional equivalence. Lack of functional equivalence has also been raised as a source of major concern by stakeholders.

Addressing these challenges will, in fact, call for more focused peer learning and capacity building activities than those undertaken in the past, as well as a greater involvement by the OECD Secretariat and the WPRBC. These activities could take the form of horizontal thematic reviews, based on discussion papers to be prepared by the Secretariat and the NCPs as appropriate. Their purpose should be to collect examples of good practices, as well as to identify the areas that might require further clarification by the Investment Committee. The OECD Secretariat was accordingly invited to organise, in the upcoming period, horizontal peer reviews on the subjects of NCP co-operation and initial assessments of specific instances, which were the issues raised by NCPs at their 14th NCP meeting.

The Norwegian NCP<sup>4</sup> has signed up for a voluntary peer review in the second half of 2013 with the dual objectives of a) strengthening Norway's performance; and b) improving the NCP system as a whole, by sharing lessons learned, good practices and challenges with the NCP community and stakeholders. NCPs also welcomed the composition of the review team (Canada as Chair, Colombia and the Netherlands as co-Chairs; Belgium and

the United Kingdom as additional members, Hungary and Mexico as observers) and the participation of the Secretariat. The review team's visit to Oslo took place on 21-23 October 2013.

Austria tentatively plans to hold a "Guidelines Week" in Vienna in 2014 which could feature a second OECD Workshop on Problem Solving and Mediation, a possible regular meeting of NCPs and a special meeting with the Austrian business community on the findings of the OECD study on RBC challenges in Kazakhstan that has been commissioned to the OECD.

### **c) Proactive agenda**

Delegates of the WPRBC agreed on the terms of reference for the multi-stakeholder advisory group on RBC along agricultural supply chains and noted the preparation of the 2014 Council Report on the *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas* (the *Due Diligence Guidance*).

The WPRBC also welcomed further work with regard to the following proactive agenda projects:

- Stakeholder engagement and due diligence in the extractive sector: delegates noted the tentative plan of the Advisory Group to consider a substantive draft of a user's guide in early December, and the desire to deliver an advanced version of the user's guide at the 2014 Global Forum in order to enhance its visibility and intake by practitioners.
- Due diligence in the financial sector: delegates tasked the OECD Secretariat to prepare three papers on a) the coverage of business relationships; b) how the *Guidelines* apply to Sovereign Wealth Funds; and c) a follow-up work plan on the recommendations of the Advisory Group; agreed with the continuation of the Advisory Group and on engaging with the UN Working Group on Business and Human Rights in this work.

Following the NCPs' statement on the Rana Plaza tragedy and related discussions held both at the Global Forum and among WPRBC delegates, the OECD is also exploring possible co-operation with ILO in the garment sector.

The G8 have called for consideration of expanding work on responsible sourcing of minerals from weak governance zones and conflict-affected areas to possibly include diamonds and other precious stones. Some delegations are considering whether to recommend work related to responsible investment in Myanmar. These are questions which will likely receive greater consideration for possible additional work under the proactive agenda.

### **d) Intensifying outreach**

The WPRBC considers outreach to be a top priority for the next implementation cycle. NCPs will need to make use of any available

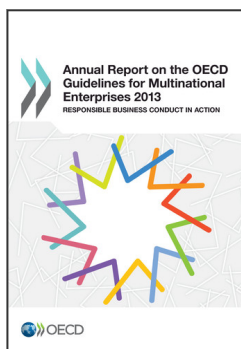
opportunity – embassies, foreign chambers of commerce, foreign officials, events, RBC networks – to proactively promote the *Guidelines* in emerging economies and other developing countries. This is essential for the level playing field between enterprises but also for the future functioning of the specific instances facility. Now that the number of complaints from non-adhering countries is increasing, NCPs need a counterpart of some sort in the countries in which the complaints arise. More efforts are definitively needed in this area.

Two *Guidelines* events will be organised in 2013, as part of the prestigious Third Asia-Pacific Trade and Investment Week and the 2013 Asia-Pacific Business Forum and an MOU with ESCAP will be signed on that occasion. The OECD will chair this year's OECD- ILO-UNCTAD Interagency Roundtable, which is scheduled to take place in Geneva on 14 November 2013. Finally, the UN Office of the High Commissioner for Human Rights is interested in possibly concluding an MOU with the OECD to enhance co-operation in the field of business and human rights, which could be signed at the Second United Nations Forum on Business and Human Rights on 2-4 December 2013, and the progress made, at the technical level, on a draft MOU with the Indian Institute of Corporate Affairs.

The WPRBC requested the Chair and the OECD Secretariat develop a full-fledged outreach strategy, prioritising, in particular, China, India, South Africa and South East Asia. The outline of this strategy was presented at the October 2013 meeting of the WPRBC.

## Notes

1. The Arabic version was prepared by the Morocco NCP and the OECD is coordinating the release of a commonly agreed version by all Arabic speaking NCPs.
2. See Chapter 2, Annex 2.A1 – Principles for the proactive agenda.
3. See Annex 1.A1 – Statement on the Rana Plaza tragedy.
4. Belgium, Chile, Denmark, Morocco, Poland and Switzerland have also indicated their interest to host a peer review of their National Contact Point in 2014. Canada, Czech Republic, France, Germany, and United States are available to undertake this exercise beyond 2014.



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