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STRENGTHENING RESPONSIBLE BUSINESS CONDUCT THROUGH TRADE AND INVESTMENT

(Note by the Secretary-General)

Meeting of the Council at Ministerial Level, 1-2 June 2016

Background Document

Item 7 - Strengthening the Contribution of Trade and Investment to Productivity and Inclusiveness

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Background

High-level support for the promotion of responsible business conduct

1. At the 2015 Ministerial Council Meeting (MCM), Ministers discussed the multi-faceted role of investment in promoting robust, inclusive, sustainable and resilient economic growth. They focused on the linkages between investment and inclusive growth, innovation, skills and responsible business conduct (RBC), and how investment is supported by a conducive business climate. Ministers encouraged the OECD to continue its work on RBC in its current multi-stakeholder setting, building from the OECD Guidelines for Multinational Enterprises (hereafter "the OECD Guidelines").[1] They called on the OECD to analyse how sustainability and RBC can be promoted through trade and investment, and asked the OECD to deliver a progress update on these issues and report to MCM 2016. They also encouraged the OECD to deepen its analysis on the role of RBC, including in trade and investment agreements in ensuring that the benefits of participating in global value chains are widely shared.[2] This is particularly timely given that 2016 is the 40th anniversary of the OECD Guidelines (Box 1).

Box 1. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines are part of the 1976 OECD Declaration on International Investment and Multinational Enterprises, by which Adherents commit to provide an open and transparent international investment environment and to encourage the positive contribution of multinational enterprises (MNEs) to economic and social progress. There are currently 46 Adherents to the Declaration - 34 OECD and 12 non-OECD Members. The OECD Guidelines have been revised five times, most recently in 2011.

The OECD Guidelines are the most comprehensive set of government-backed recommendations on what constitutes RBC. They cover all major areas of responsible business conduct: disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation. The OECD Guidelines are aligned with, and refer to other international instruments promoting responsible business conduct, including the United Nations Guiding Principles on Business and Human rights, core conventions of the International Labour Organisation, and key international environmental agreements.

2. High-level endorsement of RBC initiatives was also provided by the G7 through their Leaders' Declaration released in June of 2015.[3] The Leaders' Declaration included a section devoted to responsible supply chains, making clear that RBC issues were a top priority on the G7 agenda. It committed G7 governments to strive for better application of internationally recognised labour, social and environmental standards, principles and commitments in global supply chains and to engage with other countries, for example within the G20, to that end. G7 Leaders also committed to strengthen mechanisms for providing access to remedy, explicitly including the National Contact Points (NCPs).

3. In order to achieve sustainable and inclusive growth, there is a need not only for more, but for better investment, including through investment policy frameworks that foster RBC. Business can play an instrumental role in supporting sustainable development. In this regard, RBC supports many of the Sustainable Development Goals (SDGs). For example, it can contribute to promoting sustainable business

1 2015 Ministerial Council Statement "Unlocking Investment for Sustainable Growth and Jobs" [C/MIN(2015)14/FINAL], para 8.

2 MCM 2015, Chair's Summary "Unlocking Investment for Sustainable Growth and Jobs" [C/MIN(2015)15], paras 11 and 25.

3 G7 Leaders' Declaration, https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?__blob=publicationFile&v=3.

practices, managing environmental impacts, increasing resource efficiency, combatting discrimination and violence against women, respecting human rights and labour rights and combatting corruption and illicit financial flows.

4. Observing RBC standards, including by incorporating a thorough due diligence process into management systems, can help enterprises reduce risks, manage their reputation and create value, thereby improving their economic performance, as evidenced by recent research. For example, a cross-sector study tracked the performance of companies over 18 years and found that "high sustainability" companies, those with strong environmental, social and governance systems and practices in place, outperformed "low sustainability" companies as measured by stock performance and in real accounting terms. [4] According to a 2016 study covering 8 500 French enterprises, there was a 13% difference in economic performance on average between enterprises that implemented RBC and those that did not.[5]. A report on the costs of company-community conflict in the extractive sector found that a major mining project with capital expenditures between 3-5 billion USD suffers direct costs of roughly 20 million USD per week in delayed production (in net present value terms), largely due to lost sales based on delays caused by community conflicts and ineffective stakeholder engagement practices.[6]

RBC as a key element of the investment framework

5. RBC is not a matter for business alone – adequate policy frameworks are essential to drive changes in company behaviour. At their meeting in 2015, Ministers welcomed the update of the *Policy Framework for Investment* (PFI) [C/MIN(2015)5] and the adoption by Council of the *Recommendation of the Council on the Policy Framework for Investment* [C(2015)56/REV1]. The PFI is an important tool for designing, implementing and monitoring investment climate reforms, as well as for development co-operation programmes, as it can foster investment at home and abroad. It helps governments put in place policies that can mobilise private investment that supports steady economic growth and sustainable development, thereby contributing to the economic and social well-being of people around the world. It aims to advance the implementation of the SDGs and to help mobilise financing for development in support of the 2030 Agenda.

6. The updated PFI [C/MIN(2015)5] includes a strengthened chapter on RBC with recommendations on how governments can enable RBC through regulation, facilitation, cooperation, promotion and exemplifying RBC. The RBC chapter is being used in Investment Policy Reviews of the Philippines (2016),[7] Viet Nam, Cambodia, and the Lao People's Democratic Republic (forthcoming in 2016). It is also being used to assess the enabling policy framework of countries in the process of adhering to the OECD Declaration on International Investment and Multinational Enterprises (Ukraine and Kazakhstan), and of accession candidate countries. Through this country-specific work, the OECD helps raise awareness and builds capacity on RBC.

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4 G. Eccles, R., Ioannou, I., Serafeim, G. (2012), The Impact of Corporate Sustainability on Organisational Processes and Performance, NBER Working Paper No. 17950, March 2012, http://www.nber.org/papers/w17950.

5 Benhamou, S. and Diaye, M. (2016), Responsabilité sociale des entreprises et compétitivité - Évaluation et approche stratégique, www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/fs_etude_rse_finale.pdf.

6 Davis, R. and D. M. Franks (2014), "Costs of company-community conflict in the extractive sector", *Corporate Social Responsibility Initiative Report* No. 66, Harvard Kennedy School, Cambridge, MA, www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf.

7 Investment Policy Review of the Philippines, OECD (2016), http://dx.doi.org/10.1787/9789264254510-en.

7. The OECD Guidelines figure prominently among the international standards for RBC mentioned in the relevant chapter of the PFI. At the 2015 MCM, Ministers encouraged efforts to widen adherence to the OECD Guidelines, and invited the OECD to study options in that regard.[8] To this end, dialogue around possible options for widening adherence is currently underway in the Investment Committee and its Working Party on RBC.

8. RBC and good corporate governance are closely intertwined. As stated in the G20/OECD Principles for Corporate Governance, corporate governance policies have an important role to play in achieving broader economic objectives with respect to investor confidence, capital formation and allocation.[9] Together, the body of corporate governance rules and practices therefore provides a framework that helps to channel household savings to investment in the real economy. The G20/OECD Principles of Corporate Governance include several references to the OECD Guidelines. They mention the Guidelines as a reference point for corporate disclosure obligations, specifically with regard to corporate codes of conduct for boards to apply high ethical standards and take into account the interests of stakeholders,[10] and generally with regard to respecting the rights of stakeholders. In turn, the OECD Guidelines recommend that enterprises support and uphold good corporate governance principles and call for them to develop and apply good corporate governance practices, including throughout enterprise groups.

9. RBC is also closely intertwined with anti-bribery efforts. In line with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), the OECD Guidelines call for enterprises not to, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage, and to resist the solicitation of bribes and extortion. The OECD Anti-Bribery Convention establishes legally binding standards to criminalise the bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of bribery transactions.

10. The OECD Anti-Bribery Ministerial Meeting, held on 16 March 2016, was a significant event for strengthening responsible business conduct, in particular with respect to stemming the flow of bribes to foreign public officials in international business transactions. Seventy-three delegations attended the event, including delegations from the 34 OECD Members, 21 non-OECD Members, and 18 international government and non-governmental organisations, to show their support for the effective implementation of the OECD Anti-Bribery Convention. The meeting recognised the need for stronger enforcement of Parties' prohibitions against the bribery of foreign public officials, including enhanced international cooperation for sharing evidence in cross-border corruption cases. The meeting also emphasised the need for all the countries that are major exporters and foreign investors to accede to the Convention. The Declaration on *The Fight against Foreign Bribery – Towards a New Era of Enforcement*, adopted by Ministers at the Ministerial Meeting, encourages the business community to implement the OECD 2010 Good Practice Guidance on Internal Controls, Ethics and Compliance, to help them effectively detect and prevent bribery in their international operations.[11]

8 2015 Ministerial Council Statement "Unlocking Investment for Sustainable Growth and Jobs" [C/MIN(2015]14/FINAL], para. 8.

9 G20/OECD Principles of Corporate Governance (2015), www.oecd.org/corporate/principles-corporate-governance.htm. The Principles have been embodied in the Recommendation of the Council on Principles of Corporate Governance [C(2015)84].

10 Id. Chapter VI, The responsibilities of the board. Section C.

11 The Fight against Foreign Bribery – Towards a New Era of Enforcement, https://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf.

Trade, investment and RBC

11. The close relationship between trade and investment stems from their role in global value chains (GVCs). The OECD-WTO Trade in Value Added (or TiVA) data[12] shows that countries are highly integrated into GVCs. In recent years, patterns of investment and trade associated with the global organisation of production around GVCs have been undergoing important changes. Improvements in information and communications technology (ICT) and sharp drops in transport costs, coupled with the development of increasingly complex products, have allowed firms to establish supply chains that are geographically dispersed.

12. These changes are not only reshaping international trade and investment patterns, but also societal expectations. Until recently, regulatory regimes that were weak with regard to protecting the public interest were viewed in some quarters as a competitive advantage. However, expectations that corporations respect human rights and manage environmental and social risks throughout their supply chains, even in countries with weak governance, have increased. The broad recognition of international standards such as the OECD Guidelines, the United Nations Guiding Principles on Business and Human Rights, and the core conventions of the International Labour Organisation (ILO) help meet those expectations.

Promoting RBC in trade and investment

RBC in trade and investment agreements

13. The inclusion of RBC issues in trade and investment agreements is an increasingly prevalent practice. A report developed by the OECD Secretariat in preparation for the 2014 informal ministerial meeting on RBC found that more than three-fourths of recently concluded international investment agreements (IIAs) (i.e. between 2008 and 2013) contain language on sustainable development or RBC.[13] Out of the 54 countries covered by the survey, 47 have included some language on sustainable development or RBC in at least one of their treaties.[14] The investment chapters of free trade agreements often also contain such language.

14. The same study showed that references to RBC and sustainable development have various functions in different treaty texts and hence likely different legal effects. These functions include, among others, references in preambles; language on preserving policy space; obligations to not lower standards to attract investment; obligations to have specific legal rules in place, e.g. against corruption; and commitments to cooperate on RBC matters.

15. The trend towards a generalisation of references to RBC in trade and investment agreements appears set to continue. For example, the European Commission has released last October the 'Trade for All' Communication, the new trade and investment strategy for the European Union (EU) which includes

12 TiVA indicators are available at: http://oe.cd/tiva.

13 Virtually all of the investment treaties concluded in 2012 and 2013 include such language.

14 Gordon, K., J. Pohl and M. Bouchard (2014), "Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey", *OECD Working Papers on International Investment*, 2014/01, OECD Publishing, http://dx.doi.org/10.1787/5jz0xvgx1zlt-en.

references to the OECD Guidelines. The strategy states that the Commission will "encourage the EU's trading partners to comply with […] international principles and in particular the OECD Guidelines."[15]

16. This encouragement is reflected in a number of agreements. A key element in current EU trade policy is the negotiation and implementation of provisions on Trade and Sustainable Development (TSD) in EU bilateral and regional trade and investment agreements. In addition to a commitment by the Parties to respect ILO core labour standards as well as key Multilateral Environmental Agreements, EU trade and investment agreements contain specific text on RBC. For instance Article 231 of the EU-Georgia Association Agreement, signed in 2014, states: "The Parties agree to promote corporate social responsibility, including through exchange of information and best practices." In this regard, the Parties refer to the relevant internationally recognised principles and guidelines, in particular the OECD Guidelines.[16] The EU-Ukraine Association Agreement signed in June 2014 provides that Ukraine and EU will "promote corporate social responsibility and accountability and encourage responsible business practices." Other examples include the EU-Singapore Free Trade Agreement signed in 2015, the EU-Viet Nam Free Trade Agreement, and the EU-Canada Comprehensive Economic and Trade Agreement. In order to effectively implement TSD provisions, the EU regularly meets those partner countries with which it has concluded agreements. Civil society advisory groups, including environment, labour, and business organisations, have also been set up to facilitate the involvement of civil society.

17. The Pacific Alliance,[17] another important economic block, has also formally promoted RBC. In November 2015, the governments of Colombia, Chile, Mexico and Peru signed the Additional Protocol to the Pacific Alliance Framework Agreement which includes an article on Social Responsibility Policy, and a direct reference to the OECD Guidelines, within the Agreement. The text provides that parties to the agreement should undertake to identify and share best practices to implement the commitments of the OECD Guidelines, thereby promoting the contribution of multinational enterprises to sustainable development.[18]

18. The Trans-Pacific Partnership (TPP),[19] signed on 4 February 2016, also incorporates RBC elements. It requires parties, through strong, enforceable provisions, to: protect the freedom to form unions and bargain collectively; prohibit and eliminate exploitative child labour and forced labour; protect against employment discrimination; set acceptable conditions of work concerning minimum wages, hours of work, and workplace health and safety; prevent degradation of labour protections in export processing zones - designated areas that often have lax labour rules in other countries, allowing them to compete unfairly; and combat trade in goods made by forced labour, including forced child labour, in countries both inside and outside TPP. It also includes provisions on environment and on bribery. In addition, the investment chapter states that the Parties reaffirm the importance of encouraging enterprises operating within their territory or subject to their jurisdiction to voluntarily incorporate into their internal policies those internationally

[15] European Commission, *Trade for all: Towards a more responsible trade and investment policy* (2015), p. 25, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

[16] (OECD, 2014), Responsible Business Conduct in Georgia, www.oecd.org/countries/georgia/RBC-in-Georgia-2014.pdf.

[17] The Pacific Alliance comprises Chile, Colombia, Mexico and Peru.

[18] Protocolo Adicional al Acuerdo Marco de la Alianza del Pacifico, http://investmentpolicyhub.unctad.org/Download/TreatyFile/2940.

[19] The TPP covers the following countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam.

recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or supported by these Parties.

19. The developments in trade and investment agreements are too recent to show measurable results. On the other hand, as the next section describes, an increasing number of instruments providing guidance to companies on how to implement RBC throughout supply chains have been developed. Moreover, some governments have embedded supply chain responsibility into domestic legislation, thereby providing further incentives for companies to apply RBC standards.

Guidance for sustainable supply chains

20. To effectively implement international and domestic expectations for responsible supply chains, companies require clear guidance on how to translate these expectations into practice. The OECD has developed sector-specific guidance in various sectors through multi-stakeholder processes involving governments, business and civil society.

21. The 2011 *Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* [C/MIN(2011)12/FINAL] (hereafter, “Guidance”) provides guidance on how companies can identify and better manage risks throughout the entire mineral supply chain, from miners, local exporters and mineral processors to the manufacturing and brand-name companies that use these minerals in their products.[20] The Guidance has now become the leading industry standard for companies looking to live up to the expectations of the international community and customers on mineral supply chain transparency and integrity.

22. In 2015, the *OECD-FAO Guidance for Responsible Agricultural Supply Chains* [COM/DAF/TAD(2015)1/FINAL], was approved by the Investment Committee and the Committee for Agriculture, and the *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* [DAF/INV(2015)18], was approved by the Investment Committee. The promotion of the use of these guidances has been embodied in draft Recommendations of the Council to be proposed for adoption in the near future. The OECD is also developing due diligence guidance for the garment and footwear sector and the financial sector, as well as a general due diligence guidance, applicable to all sectors.

23. Some of these guidances are already being implemented at national levels in close collaboration with Members and non-Members. For instance, in 2015, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC) developed the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, which are aligned with the OECD’s recommendations on this topic. In March 2016, a broad coalition of industry organisations, trade unions, civil-society organisations and the Dutch government presented an agreement on international responsible business conduct in the garment and textile sector, aimed at achieving practical improvements in, and ensure the sustainability of the international garment and textile supply chain.[21]

[20] For further information, see the report on the implementation of the Recommendation on the Due Diligence guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-risk areas [C(2015)182].

[21] Agreement on Sustainable Garment and Textile, www.oecdguidelines.nl/documents/publication/2016/3/09/agreement-on-sustainable-garment-and-textile.

Legislation mandating RBC through supply chains

24. International RBC standards, including the OECD Guidelines and the United Nations Guiding Principles for Business and Human Rights, expect companies to act responsibly and avoid adverse impacts throughout their business relations, including their supply chains. Among existing standards, the OECD Guidelines have the broadest scope, as they provide recommendations on responsible business conduct in all areas of business responsibility, including, among others, human rights, environment, labour and employment issues. With the development of global value chains making international investment increasingly complex, clear signals should be provided to companies investing internationally about these expectations. Integrating references to international RBC standards into national legislation can be an effective way of promoting change in business conduct.

25. In July 2010, the United States Congress included a provision (Section 1502) in the Dodd–Frank Wall Street Reform and Consumer Protection Act pertaining to trade involving so-called 'conflict minerals' – tin, tantalum, tungsten and gold (3TG) - produced in the Democratic Republic of the Congo (DRC) and adjoining countries. Section 1502 mandates the US Securities and Exchange Commission to develop rules that oblige the covered companies to undertake efforts to ascertain the origin of 3TG in their supply chains. If the minerals are considered to come from the DRC or adjoining countries, or if the mineral provenance is unknown, the issuers are required to undertake due diligence and file additional disclosures about the minerals.

26. In addition to national initiatives, the EU has taken important steps in regulating responsible supply chains. It is finalising a Regulation based on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. If adopted, as of 2016, EU consumer markets could be covered by legal provisions to promote supply chain due diligence for tin, tantalum, tungsten, their ores and gold. In December 2015, the Council of EU adopted a mandate for trilateral negotiations, with a final text for an EU Regulation to be agreed between the European Parliament, the Council of the EU and the EU Commission.

27. In March 2015, the United Kingdom enacted the Modern Slavery Act.[22] The act, *inter alia*, mandates that commercial organisations prepare an annual statement on slavery and human trafficking and report on their due diligence processes to manage risks of slavery and human trafficking within their operations and supply chains. The OECD Guidelines are referenced in the statutory guidance to section 54 of the Act, noting that "whilst not specifically focused on modern slavery, they provide principles and standards for RBC in areas such as employment and industrial relations and human rights which may help organisations when seeking to respond to or prevent modern slavery."[23] Legislative proposals aiming to mandate supply chain due diligence have also been introduced in France[24] and Switzerland.[25]

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22 UK Modern Slavery Act (2015), www.legislation.gov.uk/ukpga/2015/30/contents/enacted.

23 Statutory guidance, https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide.

24 Proposition de Loi 1897 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, www.assemblee-nationale.fr/14/propositions/pion1897.asp.

25 Parliament Motion 14.3671 Umsetzung des rechtsvergleichenden Berichtes des Bundesrates über die Verantwortung von Unternehmen bezüglich Menschenrechten und Umwelt, www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20143671.

28. The recent Recommendation of the Council of Europe on human rights and business recommends that member states review their national legislation and practice to ensure that they comply with the recommendations, principles and further guidance set out in international RBC instruments.[26]

29. Many legislative initiatives on supply chain responsibility use reporting or disclosure obligations among the regulatory tools to promote supply chain due diligence. Significant progress in regulation of non-financial reporting will be achieved through implementation of the Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups. Once implemented into domestic legislation, companies concerned will be required to disclose information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, due diligence measures and diversity on boards of directors, among others.[27]

Providing access to remedy

30. A key aspect of RBC is to assist victims of adverse impacts from business operations in accessing remedy. This is a key pillar of the UN Guiding Principles on Business and Human Rights: implementing the United Nations ‘Protect, Respect and Remedy’ Framework". The OECD Guidelines are the only corporate responsibility instrument with a built-in grievance mechanism, the NCPs. It is the NCP system, and the “specific instance facility” that distinguishes the OECD Guidelines from other international RBC instruments

31. Since 2000, NCPs have addressed numerous issues covered by the OECD Guidelines, and also other international instruments to which the OECD Guidelines refer, including the UN Guiding Principles on Business and human Rights, core conventions of the International Labour Organisation, and key international environmental agreements. Between 2000 and 2015, more than 360 specific instances have been submitted by NGOs, trade unions, individuals and others, relating to impacts from operations by multinationals and their business relations in 100 countries. Specific instances have covered all chapters of the OECD Guidelines, with the majority focusing on the employment and industrial relations, general policies, human rights (since 2011) and environment chapters. Around 33% of specific instances arose from operations in the manufacturing sector, 17% from the mining and quarrying sector, and 12% from the financial sector.

32. A number of recent submissions to NCPs have dealt with issues related to impacts caused by business relations. For example, in 2014, the Dutch NCP received a complaint from an NGO regarding the due diligence process by a large financial institution, regarding investment in an Indonesian palm oil company. Following the mediation process concluded in January 2016, the bank agreed to maintain a dialogue with external stakeholders on the basis of concrete evidence of non-observance by its clients and to modify its approach to handling complaints. Another example is the complaints submitted to the French, Belgium and Luxembourg NCPs in 2010, regarding the environmental and social impacts linked to operations of a palm oil enterprise in Cameroon, with which multinationals based in these countries had a business relationship. Following mediation by the French NCP in 2014, an action plan was adopted and published; its implementation is being monitored by the three NCPs.

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26 Recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe to member States on human rights and business, adopted on 2 March 2016, www.coe.int/cm.

27 European Commission, Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups (2014), available at http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm. The Directive entered into force on 6 December 2014.

33. In addition to the "specific instance facility", a key role of NCPs is to promote the OECD Guidelines, as well as the various due diligence guidances developed to help companies implement the OECD Guidelines. This creates new opportunities for NCPs to engage with stakeholders and assist in implementing RBC standards. At the 2015 MCM, Ministers called on the OECD to continue its efforts to further strengthen the performance of the NCPs, including through voluntary peer reviews and the exchange of best practices.[28] In addition, the G7 Leaders' Declaration in June 2015 committed G7 governments to strengthen mechanisms for providing access to remedies, including the NCPs. The governments agreed to do so by encouraging the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. They also agreed to ensure that their own NCPs are effective and *lead by example*.

34. In response to the call by Ministers, the OECD Secretariat is implementing an Action Plan to strengthen NCPs.[29] Under this Action Plan, NCPs are benefiting from peer reviews, capacity building and training, as well as specific tools to enable them, inter alia, to promote sustainable supply chains among companies operating in or from their territories. The OECD is also promoting the NCP mechanism among non-Adherents to the Declaration on International Investment and Multinational Enterprises. For example, a workshop involving NCPs from twelve countries was co-organised with the research branch of the Chinese Ministry of Commence in Beijing in May 2015.[30]

Addressing challenges linked to RBC

35. Governments that are able to create a business environment underpinned by RBC principles and standards are more likely to keep and attract quality investment, minimise the risks of adverse impacts from those investments and ensure sustainable development.[31] However, governments, especially in developing and emerging economies, often lack understanding of the benefits of implementing and enforcing RBC standards, and lack the capacity to put in place an enabling framework for RBC. Another challenge is ensuring that increased RBC standards do not result in further marginalising informal workers, such as home workers in textiles supply chains and artisanal miners. Finally there is a risk of displacing production from countries upholding RBC standards to countries which maintain suboptimal standards, e.g. in terms of living wages or health and safety protection of workers.

36. As described in the OECD Policy Framework for Investment, governments can enable RBC in several ways. These include establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, monitoring business performance and compliance with regulatory frameworks", clearly communicating expectations on what constitutes RBC, working with stakeholders to create synergies and establish coherence with regard to RBC, demonstrating support for best practices in RBC, and acting responsibility in the government's role as an economic actor.

37. The OECD is supporting governments from both OECD Members and non-Members in improving their investment policy framework to enable RBC and supply chain due diligence. For example, the OECD is currently working with a range of countries in the context of Investment Policy Reviews to assess their RBC policies and provide recommendations on how to better promote RBC. One such country

28 2015 Ministerial Council Statement "Unlocking Investment for Sustainable Growth and Jobs" [C/MIN(2015]14/FINAL], para. 8.

29 Action Plan to strengthen National Contact Points [DAF/INV/RBC(2015)11/FINAL].

30 Workshop in the People's Republic of China on Responsible Business Conduct, http://mneguidelines.oecd.org/china-rbc-workshop-2015.htm.

31 OECD Policy Framework for Investment (2015), http://www.oecd.org/investment/pfi.htm.

is Viet Nam, which through this support will notably increase its capacity to both meet the RBC requirements of the TPP and the EU-Viet Nam FTA, and improve local companies' capacity to integrate responsible supply chains. Other international organisations, such as the International Labour Organisation, are also providing assistance to governments in developing capacity to enforce core labour standards, ensure decent working conditions and combat force labour, human trafficking and slavery.[32]

38. Companies, mainly small and medium sized enterprises, also struggle with meeting increasingly stricter supplier policies from buyers, and may perceive RBC standards as a cost factor, rather than an opportunity. Carrying out supply chain due diligence, e.g. to identify, prevent and avoid human rights impacts, is still new for many companies, and many are faced with lack of resources and capacity to carry out such due diligence, or meaningfully engage with stakeholders. Therefore, the increased attention to and uptake of RBC standards needs to accompanied by measures to strengthen governments', companies' and other stakeholders' capacity to meet these new expectations. The OECD continues developing guidance to companies to help them implement RBC requirements throughout supply chains. In addition, it provides opportunities for learning and exchange of experience among companies and stakeholders, through, inter alia, implementation platforms for responsible supply chains in various sectors. For example, the OECD's implementation platform for responsible minerals supply chains comprises over 500 stakeholders from governments, international organisations, the private sector, local and international civil society and experts.[33]

Conclusion

39. Promoting RBC is a key objective of major international processes, as demonstrated by the commitments taken at the MCM in 2015, the G7 Leaders Declaration of June 2015 and the SDGs adopted in September 2015. RBC is an important component of an enabling framework for trade and investment and has been incorporated into investment treaties and free trade agreements. While these developments are too recent to show measurable results, guidance to companies on how to implement RBC throughout supply chains, and legislative frameworks on mandating supply chain responsibility are promoting a greater uptake of RBC standards by companies.

40. While there has been progress in the implementation of RBC standards, challenges remain. Further efforts should be made to promote responsible supply chains through enabling policy frameworks, and by increasing public and private sector capacity to meet increasing expectations of RBC. There is also a need to strengthen business accountability and access to remedy where companies do not observe international RBC standards. In addition, more analysis is needed to measure the results and impacts of RBC policies on the ground, in order to assess their contribution to achieving inclusive growth and sustainability.

Next steps

- As from June 2016, the OECD is holding a High-level Roundtable for policy makers as part of the Global Forum on Responsible Business Conduct, which will allow for dialogue and exchange of experience among governments in addressing the challenges of designing and implementing effective RBC policies.

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32 International Labour Organisation, Decent Work, www.ilo.org/global/topics/decent-work/lang--en/index.htm; Force Labour, www.ilo.org/global/topics/forced-labour/lang--en/index.htm.

33 Implementing the OECD Due Diligence Guidance, www.oecd.org/daf/inv/mne/implementingtheguidance.htm.

- The OECD will deepen its analytical work on the link between trade, investment and RBC standards, for example, by exploring the costs and benefits and identifying the results of implementing RBC standards (e.g. in minerals supply chains).

- The OECD will continue reinforcing its outreach activities on RBC with Key Partners, building on the co-operation agreement signed in 2015 with China and on its networks in South East Asia, and thereby supporting the G7 leaders' pledge to engage within the G20 to strive for better application of internationally recognised RBC standards in global supply chains.

- The OECD will continue its efforts to support the implementation of existing due diligence guidances in the minerals, extractives and agricultural sectors, finalise guidances for the garment and footwear and financial sectors, and develop a general guidance on risk-based due diligence that is applicable to all sectors, to enable responsible supply chains and assist in the implementation of the OECD Guidelines.

- Together with non-Member Adherents to the OECD Declaration on International Investment and Multinational Enterprises, the OECD will continue improving the system of NCPs by implementing the Action Plan to strengthen NCPs in 2016-18 through peer reviews, training and learning events and the development of tools to help adhering governments effectively implement the OECD Guidelines.