

For Official Use**English - Or. English****4 May 2022****COUNCIL****Council****REPORT ON THE IMPLEMENTATION OF THE OECD RECOMMENDATION ON
DUE DILIGENCE GUIDANCE FOR MEANINGFUL STAKEHOLDER
ENGAGEMENT IN THE EXTRACTIVE SECTOR****(Note by the Secretary-General)****JT03494743**

1. This note presents, in its Annex, a Report by the Investment Committee (IC) on the implementation, dissemination, and continued relevance of the OECD Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [[OECD/LEGAL/0427](#)] (hereafter, the “Recommendation”). The Report also includes conclusions on whether the Recommendation requires revision or whether further actions to support its dissemination and implementation are necessary.

2. The Report was developed by the Working Party on Responsible Business Conduct (WPRBC) which approved it by written procedure on 30 March 2022 [[DAF/INV/RBC\(2021\)26/REV2](#)]. The IC approved, by written procedure on 15 April 2022, the Report and its transmission to Council to be noted and declassified [[DAF/INV/RBC\(2021\)26/REV3](#)].

Background

3. The Recommendation was adopted by the Council on 13 July 2016 on the proposal of the Investment Committee [[C\(2016\)100](#) and [C/M\(2016\)12, Item 153](#)]. The main purpose of the Recommendation is that Members and non-Members having adhered to it (hereafter, the “Adherents”) and, where relevant, their National Contact Points (hereafter, the “NCPs”) disseminate and promote the observance of the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (hereafter, the “Guidance”).

4. The Recommendation is open to adherence by non-Members. To date, in addition to the 38 OECD Members, 6 non-Members, namely Argentina, Brazil, Croatia, Kazakhstan, Romania, and Uruguay – all Adherents to the Declaration on International Investment and Multinational Enterprises [[OECD/LEGAL/0144](#)] (hereafter the “Investment Declaration”) – have also adhered to the Recommendation.

5. The Recommendation focuses on the efforts that Adherents and, where relevant, their NCPs should make to actively promote the observance of the Guidance by companies operating in or from their territories, as well as to ensure the widest possible dissemination of the Guidance, in order to ensure that those companies observe internationally agreed standards of responsible business conduct with respect to stakeholder engagement in the extractive sector.

6. In the Recommendation, the Council instructs the IC “to monitor the implementation of the Recommendation and to report to Council no later than five years following its adoption and as appropriate thereafter.” This Report, prepared in line with the process set out in document [DAF/INV/RBC\(2021\)5](#), covers the period from the adoption of the Recommendation to 2020.

Methodology

7. A questionnaire was prepared with input from the WPRBC to gather information relevant to activities within Adherents relating to the Recommendation, as well as the four other OECD Recommendations also covering supply chain due diligence [[DAF/INV/RBC\(2020\)6/REV1/FINAL](#)] (hereafter the “Questionnaire”). The Questionnaire was circulated to delegations from Adherents in the WPRBC and the IC in October 2020, with WPRBC delegates selected to act as focal points for their government. In November 2020, the Secretariat hosted a webinar to familiarise Adherents with the questionnaire and share best practice on how to prepare an answer. Answers to the Questionnaire were submitted by WPRBC delegates between February and June 2021. Information for this Report was also gathered through Adherent interactions with the Secretariat over the years and the Secretariat’s own independent research.

Process

8. Following the discussion on the Questionnaire within the WPRBC, Adherents were informed of the timeline for the development of this Report during the March 2021 WPRBC meeting [[DAF/INV/RBC\(2021\)5](#)] and the information was shared with the IC thereafter.

9. The **first draft of the Report** was submitted to the WPRBC on 4 November 2021, for comments by 3 December 2021, and was discussed at the WPRBC meeting on 23 November 2021 [[DAF/INV/RBC/A\(2021\)5](#)]. The draft was also submitted in parallel to the IC for information.

10. Following this first round of comments, feedback was integrated in a **second draft of the Report** which was submitted to the WPRBC for approval by written procedure by 21 March 2022 [[DAF/INV/RBC\(2021\)26/REV](#)].

11. In light of a request made by one Adherent, a **third draft of the Report** was approved by the WPRBC by written procedure by 30 March 2022 [[DAF/INV/RBC\(2021\)26/REV2](#)]. The IC approved, by written procedure on 15 April 2022, the Report and its transmission to Council, via the Executive Committee, to be noted and declassified [[DAF/INV/RBC\(2021\)26/REV3](#)].

12. The Council is now invited to note and declassify the Report. Thereafter, a link to the approved Report will be included in the public webpage of the Recommendation on the [Compendium of OECD legal instruments](#) as well as on the Secretariat's dedicated [webpage on the MSE Recommendation](#).

Summary and conclusions

Dissemination

13. With respect to dissemination of the Recommendation within and across Adherents' own governments, no activities were reported by Adherents in response to the Questionnaire.

14. Turning to dissemination of the Recommendation amongst non-Adherents, two Adherents reported on outward-facing awareness events, aiming at disseminating the Recommendation across non-Adherents which are key mineral producing, trading and processing countries.

Implementation

15. To promote and disseminate the Guidance among companies, Adherents have translated the Guidance into German, Norwegian, Polish, Sami, Spanish, and Ukrainian. Argentina is the first and only Adherent to report integrating the Guidance in government issued guidance. The Argentine Ministry of Production and Labour referenced the Guidance and other OECD Responsible Business Conduct (RBC) documents in its Good Practice Resource Guide for Mine Closure (Argentina Ministerio de Producción y Trabajo, 2019^[1]).

16. The Recommendation and Guidance continue to be relevant, as is reflected on the prevalence of stakeholder engagement issues in related work on RBC in mineral supply chains as well as recent NCP cases. However, the lack of activities to disseminate the Recommendation across Adherents' own governments and in non-Adherents as well as to promote the observance of the Guidance by companies may indicate a lack of both dissemination and implementation of the Recommendation by Adherents.

Continued relevance

17. The finding in this Report that implementation of the Guidance by companies has been reported as very limited should be carefully considered. On the one hand, this shows that implementation of the Recommendation by Adherents should be increased, by fostering their efforts to disseminate the Guidance and promote its observance by companies operating in or from their territories. On the other hand, noting that given their inherent interconnection, the Recommendation can only be as relevant as the Guidance it calls on governments to disseminate and promote observance of. The lack of observance of the Guidance by companies raises the question of the continued relevance of the Guidance itself in light of ongoing developments on the ground.

18. Accordingly, the IC, through the WPRBC, may wish to review how fit-for-purpose the Guidance is in its current form, given the relevance of the issue of meaningful stakeholder engagement beyond just the extractive sector. Adherents could explore the usefulness of applying the Guidance beyond the

extractive sector to include sectors that involve large-scale impacts on land, thus ensuring the continued relevance of the Recommendation.

19. In addition, in order to foster implementation of the Recommendation, Adherents are strongly encouraged to consider more meaningful efforts to promote the Guidance and its observance by companies, including through:

- Enhancing NCPs' awareness and use of the Guidance in decision making;
- Leveraging the government's role as a market actor by setting rules for public procurement and government-backed funding that require implementation of RBC standards, for example by promoting use of the Guidance by companies in the provision of export credits and other forms of financial support for extractive sector projects and related assets;
- Consider introducing mandatory requirements for companies to implement responsible business conduct instruments, including the Guidance, through national legislation, or their inclusion in existing rules and regulations.

Proposed Action

20. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document [C\(2022\)100](#), in particular the Report set out in its Annex, and agreed to its declassification;
- b) encouraged Adherents to the Recommendation to address the main findings, challenges, and next steps identified in the Report, as set out in the summary and conclusions section of the Report and summarised above, with a view to strengthening the dissemination and implementation of the Recommendation and related Guidance;
- c) invited the Investment Committee, in particular through the Working Party on Responsible Business Conduct, to:
 - i) support Adherents in addressing the main challenges identified in the summary and conclusions section of the Report;
 - ii) review the Guidance to determine whether it remains fit-for-purpose in its current form, with a view to proposing options to address possible gaps and improve its coherence and consistency, including exploring expanding the application of the Guidance beyond the extractive sector;
 - iii) report to Council on the implementation, dissemination, and continued relevance of the Recommendation in five years.

Annex. Report on the implementation of the OECD Recommendation on Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector

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1 Background

History and context

1. Enterprises involved in the exploration and extraction of oil, gas and minerals have the potential to generate income, sustain livelihoods, foster local development and generate significant revenues in the areas in which they operate. However, extractive operations can have a significant social and environmental footprint and thus are often at risk of causing or contributing to adverse impacts, such as human rights infringements, economic setbacks and environmental degradation. Meaningful stakeholder engagement and due diligence are critical to avoiding some of the potential adverse impacts of extractive operations, as well as optimising their potential positive contributions. They are also central components to responsible business conduct as set out in the OECD Guidelines for Multinational Enterprises (hereafter the “Guidelines”) adopted as part of the Declaration on International Investment and Multinational Enterprises [[OECD/LEGAL/0144](#)].

2. The 2011 update of the Guidelines [[C/MIN\(2011\)11/FINAL](#) and [C/M\(2011\)11/PROV](#), Item 106] included a new provision that enterprises should “engage with stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”¹ This update reflects a growing international consensus that stakeholder engagement enables companies to more meaningfully identify, address and account for the impacts of their activities, and contribute to positive social and economic development in the areas in which they operate. This is particularly true in the extractive sector, which is associated with large, resource-seeking financial and infrastructure investments, immobile production, a long project lifecycle and extensive social, economic and environmental impacts.

3. The Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (hereafter the “Guidance”) was developed through an in-depth multi-stakeholder process with an Advisory Group co-chaired by representatives from Canada and Norway and comprised of over 40 experts from OECD Members and non-Members, the oil, gas, mining and metals sectors, civil society organisations, trade union bodies, international organisations and indigenous peoples’ representatives. Over a period of two years, three in-person meetings and multiple conference calls with the Advisory Group were organised, and a public, on-line consultation on the Guidance was held from 25 April to 5 June 2015, during which 35 sets of comments from governments, the private sector and civil society organisations were collected and used in finalising the Guidance.

4. After its endorsement by the Advisory Group on 31 August 2015, the Guidance was approved by the WPRBC at its meeting on 12 October 2015 [[DAF/INV/RBC/M\(2015\)2](#)] and by the Investment Committee on 4 December 2015 [[DAF/INV\(2015\)18](#)].

¹ See OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A14.

Purpose and scope of the MSE Recommendation

5. Shortly after the approval of the Guidance, the IC proposed to Council the adoption of a draft Recommendation based on the Guidance in recognition of the need for governments to take appropriate measures to ensure that companies are aware of this Guidance and observe it accordingly. The draft Recommendation was also intended to promote the visibility and global reach of OECD work in the area of responsible business conduct and to make a distinct contribution to achieving the OECD and G20's inclusive growth objectives.

6. The Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [[OECD/LEGAL/0427](#)] (hereafter the "MSE Recommendation") was adopted by the OECD Council on 13 July 2016 on the proposal of the Investment Committee [[C\(2016\)100](#) and [C/M\(2016\)12, item 153](#)].

7. The MSE Recommendation calls upon Members and non-Members having adhered to it (hereafter the "Adherents") and, where relevant, their National Contact Points² (hereafter "NCPs") to:

- "actively promote the use of the Guidance by enterprises operating in or from their territories with the aim of ensuring that they observe internationally agreed standards of responsible business conduct with respect to stakeholder engagement in the extractive sector in order to prevent adverse impacts, such as human rights infringements and environmental degradation and promote economic growth and sustainable development;"
- "take measures to actively support the adoption of the due diligence framework for meaningful stakeholder engagement set out in the Guidance";
- "ensure the widest possible dissemination of the Guidance and its active use by enterprises conducting exploration, development, extraction, processing, transport, and/or storage of oil, gas and minerals as well as promote the use of the Guidance as a resource for stakeholders such as affected communities and civil society organisations, and regularly report to the Investment Committee on any dissemination and implementation activities".

8. The MSE Recommendation invites "Adherents and the Secretary-General to disseminate this Recommendation". The MSE Recommendation also invites "non-Adherents to take due account of and adhere to the present Recommendation".

9. To date, the 38 OECD Members and 6 non-Members, namely Argentina, Brazil, Croatia, Kazakhstan, Romania, and Uruguay have adhered to the MSE Recommendation. All 44 Adherents to the MSE Recommendation are also Adherents to the Declaration on International Investment and Multinational Enterprises and the package of legal instruments related to it.³

² National Contact Points for Responsible Business Conduct are agencies established by governments whose mandate is (1) to promote the MNE Guidelines and related due diligence guidance, and (2) to handle cases of companies accused of violating the principles of the MNE Guidelines (referred to as "specific instances") as a non-judicial grievance mechanism. To date, 50 governments have established a National Contact Point. For more information see, <http://mneguidelines.oecd.org/ncps/>.

³ In addition to the Declaration itself, Adherents are also invited to adhere to the following related OECD legal instruments, namely the: Decision on International Investment Incentives and Disincentives [[OECD/LEGAL/0213](#)]; Recommendation on Member Country Measures Concerning National Treatment of Foreign Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order and Essential Security Interest [[OECD/LEGAL/0226](#)]; Recommendation concerning Member Country Exceptions to National Treatment and National Treatment related Measures concerning Investment by Established Foreign-Controlled Enterprises [[OECD/LEGAL/0233](#)]; Recommendation on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector [[OECD/LEGAL/0247](#)]; Recommendation on Member

Key developments since adoption of the MSE Recommendation

10. Since its adoption in 2016, the issue of meaningful stakeholder engagement in the extractive sector has become more pressing than ever with several developments highlighting the increasing relevance of the MSE Recommendation. The growing prominence of global value chain resilience and mineral criticality among policymakers' priorities has led to a more expansive view of commodities and, in some cases, risks, as part of the responsible sourcing of minerals. This is reflected, for example, in the European Commission's proposed Battery Regulation, as well as industry responsible sourcing programmes like the Copper Mark⁴ or the Initiative for Responsible Mining Assurance Standard,⁵ all three of which include components related to community life or stakeholder engagement, with the latter two drawing on the principles of the Guidance. International stakeholder dialogues and research endeavours have also put community-level issues front and centre. Together, these developments position the Guidance as a highly complementary instrument to the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas set out in the related OECD Recommendation [OECD/LEGAL/0386], acting as a bridge to address a more varied set of community social and economic impacts from the extractives industry.

Purpose of the Report

11. In the MSE Recommendation, the Council instructs the IC "to monitor the implementation of the Recommendation and to report to Council no later than five years following its adoption and as appropriate thereafter." This Report covers the period from the adoption of the MSE Recommendation to 2020.

12. Reports to Council on implementation, dissemination and continued relevance of OECD Recommendations generally seek to assess the state-of-play regarding the implementation of the policy recommendations contained in the MSE Recommendation, as well as analyse the continued relevance of the MSE Recommendation and whether further work to improve its implementation or dissemination is required, or whether the MSE Recommendation - and in this case, the Guidance - may require revision.

Country Exceptions to National Treatment and National Treatment related Measures in the Category of Official Aids and Subsidies [OECD/LEGAL/0250]; Recommendation on Member Country Exceptions to National Treatment and Related Measures concerning Access to Local Bank Credit and the Capital Market [OECD/LEGAL/0255]; Decision on Conflicting Requirements being imposed on Multinational Enterprises [OECD/LEGAL/0261]; Decision on the Third Revised Decision concerning National Treatment [OECD/LEGAL/0263], subject to the notification of exceptions to the National Treatment instrument set in Annex B to the present document; Decision on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307]; Recommendation on Guidelines for Recipient Country Investment Policies relating to National Security [OECD/LEGAL/0372]; Recommendation on the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [OECD/LEGAL/0386]; Recommendation on the OECD-FAO Guidance For Responsible Agricultural Supply Chains [OECD/LEGAL/0428]; Recommendation on the Due Diligence Guidance For Meaningful Stakeholder Engagement in the Extractive Sector [OECD/LEGAL/0427]; Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [OECD/LEGAL/0437]; Recommendation on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443].

⁴ The Copper Mark is an assurance framework to promote responsible production practices in copper mining and trade. For more information see, <https://coppermark.org/about/>.

⁵ IRMA's Standard for Responsible Mining defines good practices for what responsible mining should look like at the industrial-scale. It provides the list of expectations that independent auditors will use as the benchmark for responsible mines. For more information see, <https://responsiblemining.net/>.

2 Methodology

13. Information on activities within Adherents to disseminate and implement the MSE Recommendation has been collected through multiple channels. This includes through the participation by Adherents at awareness raising events, in advisory groups for specific projects and discussions at the WPRBC. These meetings have provided an opportunity for Adherents to engage in the process and update stakeholders and the Secretariat on their actions to promote the observance of the Guidance by companies. It is important to note, however, that participation in these activities is generally limited to a small group of Adherents who are the most actively engaged, with little to no information coming from the remaining Adherents. In some instances, the Secretariat's independent research has been used to fill knowledge gaps.

14. In 2019, the WPRBC accepted a proposal to prepare a questionnaire circulated to all Adherents to gather information on their implementation activities of the Five Recommendations of the Council on Supply Chain Due Diligence Guidance, including the MSE Recommendation⁶ [[DAF/INV/RBC\(2019\)15](#)] (hereafter the "Questionnaire"). This Questionnaire was prepared with input from and approved by the WPRBC to gather information relevant to activities within Adherent relating to the MSE Recommendation, as well as the other Recommendations [[DAF/INV/RBC\(2020\)6/REV1/FINAL](#)].

15. This Questionnaire contains 14 questions, divided into three broad categories in line with the MSE Recommendation: (1) Engagement, promotion, dissemination and monitoring; (2) Regulatory and policy coherence; and (3) Approaches to support, enable or incentivise implementation of due diligence by enterprises.

16. The Questionnaire was circulated to delegations from Adherents in the WPRBC and the IC in October 2020, with the WPRBC delegate selected to act as a focal point for their government. In November 2020, the Secretariat hosted a webinar to familiarise Adherents with the questionnaire and share best practice on how to prepare an answer.

17. Answers to the Questionnaire were submitted by 39 out of 47 Adherents (hereafter the "Respondents"), between February and June 2021. Three Respondents (Chile, Germany, and Poland) reported on activities regarding the MSE Recommendation, mostly related to awareness raising events and translation into national or local languages.

18. The Secretariat used several methods to collect information and review progress on implementation by Adherents. The Secretariat used spreadsheets to compute the number of substantive responses to specific parts of the Questionnaire. Qualitative analysis of the Questionnaire as well as Adherent activities of which the Secretariat was otherwise aware helped structure the Report into a narrative that organises activities by Adherents into distinct categories. The Secretariat also conducted a review of broader developments to present the context for implementation and examine the continued

⁶ The five OECD Recommendations on Supply Chain Due Diligence are the: Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) [[OECD/LEGAL/0386](#)]; Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2016) [[OECD/LEGAL/0427](#)]; Recommendation on the OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) [[OECD/LEGAL/0428](#)]; Recommendation on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)]; and Recommendation on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].

relevance of the MSE Recommendation as part of the OECD legal instruments on responsible business conduct.

3 Dissemination

19. The MSE Recommendation is addressed to Adherents, i.e. governments, and, where relevant, their NCPs, and sets out recommendations as to what they should do to disseminate and promote the use and implementation of the Guidance, which is addressed to companies. With this in mind, this Report will look at two forms of dissemination: (i) dissemination of the MSE Recommendation itself, i.e. what Adherents have done to raise awareness in non-Adherent governments as well as across their own governments of the government commitments under the MSE Recommendation, such that all relevant parts and levels of their governments (e.g. law enforcement, taxation, customs enforcement, environmental protection, foreign aid, public procurement, etc.) are aware of their role in promoting and disseminating the Guidance among companies; and (ii) dissemination of the Guidance among companies. In other words, the Report will address both (i) raising governments' awareness of their role vis-à-vis the Guidance, and (ii) raising business's awareness of the Guidance itself. Generally, (i) will be addressed in this section, while (ii) will be addressed in the section on Implementation, though some activities may straddle the two.

20. With respect to dissemination of the MSE Recommendation within and across Adherents' own governments, no activities were reported by Respondents. Turning to dissemination of the MSE Recommendation in non-Adherents, two Respondents reported on outward-facing awareness raising events, aiming at disseminating the MSE Recommendation across non-Adherents which are key mineral producing, trading and processing countries.

4 Implementation

21. This section focuses on implementation of the MSE Recommendation by assessing Adherents' progress in actively promoting the widest possible dissemination of the Guidance and its observance by companies, taking measures to actively support the adoption of the due diligence framework for meaningful stakeholder engagement set out in the Guidance.

22. Thereafter, it addresses information on implementation of the MSE Recommendation provision by provision obtained primarily through the Questionnaire, and by looking at how NCPs reflect this MSE Guidance in their decisions when dealing with specific instances. For consistency, this section of the Report will follow the same structure as the Questionnaire with three broad sub-sections on: (1) Engagement, promotion, dissemination and monitoring; (2) Regulatory and policy coherence; and (3) Approaches to support, enable or incentivise observance of due diligence by enterprises.

Key developments in implementation of the MSE Recommendation and Guidance

23. The Stocktaking exercise being carried out by the WPRBC on the OECD Guidelines has highlighted that Chapter II, which covers due diligence and stakeholder engagement, has been raised in 53% of cases submitted to NCPs, making it the second most referenced chapter after Human Rights. This can be partly attributed to the fact that the Chapter describes general policies that cut across various adverse environmental and social issues (OECD, 2021^[2]). Similarly, notable Specific Instances concerning the extractive industry have also related to Chapter V, Employment and Industrial Relations, such as [Teck-Quebrada Blanca Mining Company and Mineworkers Union](#) (Chilean NCP, 2017^[3]) and [Banro Corporation and group of former employees](#) (Canadian NCP, 2016^[4]), which the Guidance also covers extensively.

24. Most Specific Instances brought to NCPs involving the extractive industry are related to meaningful stakeholder engagement. In addition, particularly in specific regions, meaningful stakeholder engagement is raised in connexion with the expectation of Free, Prior and Informed Consent of Indigenous Peoples (FPIC):

- [Credit Suisse and Society for Threatened Peoples](#) (Swiss NCP, 2018^[5]);
- [Imperial Metals Corporation and the Southeast Alaskan Conservation Council](#) (Canadian NCP, 2016^[6]).
- [Statkraft AS and the Sami reindeer herding collective in Jijnjevaerie Sami Village](#) (Swedish and Norwegian NCPs, 2012^[7]);

Other specific Instances brought to NCPs in other sectors – notably energy infrastructure and agroindustry - are also related to meaningful stakeholder engagement in relation with surrounding communities or with indigenous people rights and FPIC:

- [PERENCO in Tunisia](#) (French NCP, 2018^[8])
- [EDF & EDF Renewable in Mexico](#) (French NCP, 2018^[9])
- [BOLLORE and SOCFIN Groups, and SOCAPALM in Cameroun](#) (French NCP, 2010^[10])

- Centre d'Actions pour la Vie et la Terre” and “les Comités Riverains de Veille” & COPAGEF, SOMDIAA and SOSUCAM (French NCP, 2020^[11])

25. The importance of meaningful stakeholder engagement is confirmed by the continued threat posed to human rights and environment defenders, and the nexus between the two. Three groups in particular, labour rights defenders, local community’s defenders and land and environmental defenders, appear to be increasingly under attack or under threat of attack, as reported by independent watchdogs. Since 2015, the Business & Human Rights Resource Centre has been collecting data on attacks on human rights defenders (not exclusively in the context of the extractive sector). In 2020, it recorded 604 attacks on defenders working on business-related human rights issues, up from 572 attacks in 2019. It is noticeable that at least one out of three of all attacks stemmed from lack of meaningful participation, access to information and consultation, or the failure to secure free, prior and informed consent of local and indigenous communities. (Business and Human Rights Resource Centre, 2021^[12]).

Implementation of the MSE Recommendation provision by provision

26. The following sections address each provision of the Recommendation in turn reflecting the structure of the Questionnaire.

Engagement, promotion, dissemination and monitoring

27. The MSE Recommendation states that Adherents should “actively promote the use of the Guidance by enterprises operating in or from their territories with the aim of ensuring that they observe internationally agreed standards of responsible business conduct with respect to stakeholder engagement in the extractive sector” and “ensure the widest possible dissemination of the Guidance and its active use by other stakeholders.” In relation to this, Section 1 of the Questionnaire focuses on activities by Adherents to disseminate the Guidance among companies, engage with stakeholders, raise awareness, and monitor dissemination efforts.

28. To promote and disseminate the MSE Guidance among companies, Respondents have reported that the Guidance has been translated by NCPs into German, Norwegian, Polish, Sami, Spanish, and Ukrainian.

29. The Polish NCP organised an event in October 2016 on the Guidance with representatives from NGOs, the OECD Secretariat and the Polish oil and gas industry association as part of an international conference on responsible business conduct on the 40th anniversary of the Guidelines.

30. In 2016, the OECD Secretariat was invited by Proinversion, the investment promotion agency of Peru, to deliver a training on the Guidance as part of an event on responsible business conduct in the extractive sector.

31. Global Affairs Canada, the Canadian department for foreign affairs, international trade and development cooperation, organised a webinar on the Guidance in conjunction with Global Compact Network Canada and the Mining Association of Canada in 2017.

32. The Chilean NCP organised one external promotional activity on the Guidance in 2019.

33. In at least four cases raised with the NCP, referred to as ‘Specific Instances’, NCPs invited the companies involved to draw upon, publicly commit to and implement the Guidance or its Annex on “Engaging with indigenous people” in their Final Statements (Swedish and Norwegian NCPs, 2012^[7]) (Canadian NCP, 2016^[4]) (Canadian NCP, 2016^[6]) (French NCP, 2018^[9]).

Regulatory and policy coherence

34. The MSE Recommendation states that Adherents should “take measures to actively support the adoption of the due diligence framework for meaningful stakeholder engagement set out in the Guidance”. Section 2 of the Questionnaire focuses on policymaking, specifically efforts by Adherents to integrate the Guidance into legislation, regulations, or rules, plans to do so in the future, and any internal measures/mechanisms to enable intra-governmental policy coherence on the topic.

35. The Argentina Ministry of Production and Labour referenced the Guidance and other OECD RBC documents in its Good Practice Resource Guide for Mine Closure (Argentina Ministerio de Producción y Trabajo, 2019^[1])

36. No other activities were reported by Respondents under regulatory and policy coherence.

Approaches to support, enable or incentivise implementation of due diligence by enterprises

37. Section 3 of the Questionnaire focuses on activities by Adherents to support or incentivise uptake of the Guidance.

38. No activities were reported by Respondents under approaches to support, enable or incentivise observance of the Guidance by companies.

5 Summary and conclusions

Implementation summary

39. Despite the issue of meaningful stakeholder engagement continuing to be critical in supporting sustainable development in extractive communities and combatting negative impacts in the extractive sector, only a small handful of Adherents have reported any actions to support dissemination of the MSE Recommendation and observance of the Guidance, and such actions have generally been limited to translations of the Guidance and one-off promotional events. In this regard, the lack of activities to disseminate the MSE Recommendation across Adherents' own governments and in non-Adherents as well as to promote the observance of the MSE Guidance by companies may indicate a lack of both dissemination and implementation of the MSE Recommendation.

40. The OECD Secretariat, in the absence of dedicated funding, has been unable to support Adherents in their implementation of the MSE Recommendation. This lack of a dedicated implementation programme to support Adherents might be one reason for the minimal actions reported. Adherents have taken a much broader and wider ranging set of actions to implement the Recommendations on due diligence in other sectors⁷, such as in minerals and agriculture supply chains, where forms of support (e.g. through tool development, peer learning, and multi-stakeholder platforms) are more readily available.

41. Moreover, the finding in this Report that observance of the Guidance by companies has been reported as very limited should also be carefully considered. On one hand, this may support the conclusion that Adherents should be doing more to implement the Recommendation and improve their efforts to disseminate the Guidance and promote its observance by companies operating in or from their territories. On the other hand, noting that, given their inherent interconnection, the MSE Recommendation can only be as relevant as the Guidance it calls on governments to disseminate and promote observance of, the lack of observance of the Guidance by companies may also raise questions regarding the continued relevance of the Guidance itself in light of ongoing developments on the ground.

Continued relevance of the MSE Recommendation

42. Many Adherents stressed that the issue of meaningful stakeholder engagement continues to be critical to support sustainable development in extractive communities and combat negative impacts in the extractive sector. However, the lack of dissemination and implementation activities on the part of

⁷ The five OECD Recommendations on Supply Chain Due Diligence are the: Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) [[OECD/LEGAL/0386](#)]; Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2016) [[OECD/LEGAL/0427](#)]; Recommendation on the OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) [[OECD/LEGAL/0428](#)]; Recommendation on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [[OECD/LEGAL/0437](#)]; and Recommendation on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].

Adherents together with the lack of observance among companies shows that significant work needs to be done.

43. Drawing on the complementarities between the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [[OECD/LEGAL/0386](#)] and the MSE Recommendation and Guidance, the latter has the potential to be a valuable resource for enabling countries with large extractive sectors to benefit from their natural resources. While the first seeks to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices, the Guidance's focus on social and economic impacts on stakeholders can help more directly enhance business' positive contribution to sustainable and inclusive growth in such countries.

44. As the role of artisanal and small-scale mining (ASM) in the global market for critical minerals and other commodities important for the low-carbon transition, as well as its place in local economies, comes into fuller view, the MSE Recommendation and Guidance, can help consolidate and further develop a movement towards responsible engagement of ASM workers. Especially in context of physical interface between large-scale mining (LSM) and ASM, the interaction between the two spans from tolerance to hostility, is fraught with ambiguity, and often managed through a combination of improvisation and regulatory workarounds. Beyond the formalisation and inclusion of ASM into responsible global value chains, the principles and approaches expounded in the Guidance could help extractive companies and governments identify avenues for professionalisation of informal workers by consulting workers themselves. The same principles could also help put in place strategies to gradually transition ASM workers out of the sector in line with local economic growth and development patterns, for example as producing countries' economies diversify, instead of crude attempts to hastily replace ASM with unviable alternative livelihoods.

Next steps

45. Given the relevance of the issue of meaningful stakeholder engagement beyond just the extractive sector, as was referenced in the NCP Specific Instances raising issues related to the engagement of companies within local ecosystems, including with indigenous peoples, Adherents could explore the usefulness of applying the Guidance beyond the extractive sector to include sectors that involve large-scale impacts on land. Adherents could also highlight complementarities between the Recommendation of the Council on OECD-FAO Due Diligence Guidance for Responsible Agricultural Supply Chains [[OECD/LEGAL/0428](#)] and the MSE Recommendation and Guidance. Accordingly and taking into account the broader challenges set out in this summary and conclusions section, the IC, through the WPRBC, may wish to review how fit-for-purpose the Guidance is in its current form, given the relevance of the issue of meaningful stakeholder engagement beyond just the extractive sector.

46. In addition, in order to foster implementation of the MSE Recommendation, Adherents are strongly encouraged to consider more meaningful efforts to promote the Guidance and its observance by companies, including through:

- Enhancing NCPs' awareness and use of the Guidance in decision making (e.g. through sharing best practices and trainings on the Guidance);
- Leveraging the government's role as a market actor by setting rules for public procurement and government-backed funding that require implementation of RBC standards, for example by promoting use of the Guidance by companies in the provision of export credits and other forms of financial support for extractive sector projects and related assets;
- Considering introducing mandatory requirements given for companies to implement responsible business conduct instruments, including the Guidance, given the severity of potential risks in the

sector and complex supply chains that are difficult for Adherents to monitor in the absence of a clear regulatory framework in line with international RBC standards.

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