Disclosure under the OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (the Guidelines), adopted in 1976 and regularly updated, are the leading international instrument on responsible business conduct. They are a set of recommendations from governments to business on key areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.\(^1\)

The Guidelines' chapter on disclosure calls for timely and accurate disclosure on all material matters regarding the enterprise, including the financial situation, performance, ownership and governance of the company. The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. Additionally, specific reporting recommendations are provided with regard to some of the areas covered by the Guidelines (e.g. environment, human rights, corruption).

The 2011 update of the Guidelines resulted in major changes which have influenced the expectation on what and how companies should disclose. One of these changes was the addition of a chapter on Human Rights, in line with the UN Guiding Principles on Business and Human Rights adopted the same year. Another key change was the inclusion of detailed text on the expectation that companies address adverse impacts caused by themselves, to which they have contributed, or to which they are directly linked through a business relation, e.g., a supplier. The tool to address these impacts is due diligence, which, in line with the Guidelines, involves: 1) identifying actual and potential adverse impacts; 2) preventing or mitigating adverse impacts; and 3) accounting for how adverse impacts are addressed, by tracking performance and communicating results.

Disclosure related to due diligence

Since 2011, the OECD has developed various sets of sector-specific due diligence guidance, to help companies implement the due diligence requirements of the Guidelines. These include the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affects and

High Risk Areas,\(^2\) the FAO-OECD Guidance for Responsible Agricultural Supply Chains,\(^3\) the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector,\(^4\) and a paper on Responsible Business Conduct for Institutional Investors.\(^5\)

All these sets of guidance include provisions on how enterprises are expected to communicate on their due diligence processes, as required under the Guidelines, although the text varies slightly among them. An overview is provided in Box 1 below.

**Box 1. Due Diligence reporting across sector specific OECD Guidance**

| OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affects and High Risk Areas (2011) | Companies should publicly report on their supply chain due diligence policies and practices and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence. This should include:
|                                                                                                                       | ✓ Company Management Systems
|                                                                                                                       | ✓ Company risk assessment in the supply chain
|                                                                                                                       | ✓ Risk management
|                                                                                                                       | ✓ Audits

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| OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2016) | [Enterprises should] communicate publicly on the enterprise’s due diligence process, including how the enterprise has addressed potential and actual harm. This includes:
|                                                                                                                       | ✓ The enterprise’s RBC policy or policies;
|                                                                                                                       | ✓ The enterprise’s due diligence management systems, including how due diligence is incorporated into decision-making processes and information management systems to support due diligence;
|                                                                                                                       | ✓ The most significant risks of harm in the enterprise’s own operations and in its supply chain.

| Responsible business conduct for institutional investors (2017) | [Investors should] provide disclosures on policies, procedures and activities undertaken to identify and prevent/mitigate RBC risks to beneficiaries and publically as necessary.
|                                                                 |

All of the OECD's specific due diligence guidances recognise the businesses should report on their due diligence processes, meaning generally their policies with respect to responsible business conduct, as well as procedures and activities undertaken to identify, prevent and mitigate risks in


their operations and throughout their business relationships. What this includes may be different according to the sector.

For example, companies reporting on their mineral supply chains are asked to explain the management structure responsible for the company’s due diligence and who in the company is directly responsible; describe the control systems over the mineral supply chain put in place by the company, explaining how this operates and what data it has yielded that has strengthened the company’s due diligence efforts in the reporting period covered; describe the company’s database and record-keeping system and explain the methods for disclosing all suppliers, down to the mine of origin, to downstream actors; disclose information on payments made to governments in line with EITI criteria and principles.

In the context of investors, reporting on due diligence activities may include a description of engagement activities undertaken by the investor; companies with which the investor has engaged; results of engagement with specific companies; decisions regarding divestment; and voting records of investor in investee company shareholder meetings and guidelines for voting in investee companies.

The OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector additionally specifies that companies should publically report on the most significant risks of harm in the enterprise’s own operations and in its supply chain. In the same line, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affects and High Risk Areas asks that risk assessments and external audit be made publically available for certain actors.

All of the guidances recognise that reporting should be done with due regard for commercial confidentiality and other competitive or security concerns. Some of the guidances also recognise that increasingly non-financial reporting and reporting on due diligence processes is being called for by domestic regulation. This includes, for example, Article 173 of the French Law for Energy Transition and Green Growth requiring investors to disclose their carbon footprint, and requirements in various countries which oblige investors to disclose relevant policies and activities on a ‘comply or explain’ basis, such as under the UK Stewardship Code. Other recent legal developments which promote due diligence disclosure are the 2015 UK Modern Slavery Act, and the 2017 French Law on the duty of vigilance.

**Due diligence disclosure in practice**

Disclosure of due diligence processes is at a relatively early stage, and many companies are still in the process of developing internal company approaches to meet disclosure expectations and

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requirements. A recent study by Shift assesses how, and to what extent, companies are disclosing information on their due diligence approaches to human rights risks.8

Key findings of this study include the following:

- Many companies are reporting on human rights due diligence, although often providing information in high level statements rather than explaining their processes for implementing their commitment to respect for human rights.

- Many companies are disclosing information about assessing impacts, integrating and acting, and the importance of grievance mechanisms. However, companies are typically disclosing that they acknowledge the importance of these principles and do not necessarily provide further information about their specific processes and programs.

- Often, the most detailed disclosure within a report is related to disclosure on supply chain contexts (tracking performance and details of compliance audits).

- Many companies disclose information about stakeholder engagement processes. However, they often describe processes that are led by corporate headquarters. Few companies disclose how they engage affected stakeholders in their processes for assessing impacts or tracking the effectiveness of actions taken.

- The companies with the strongest disclosure tend to be in the extractive sector, followed by those companies whose disclosure focuses primarily on supply chain impacts (the apparel; food, beverage and agriculture; and ICT sectors).

Information disclosed by companies is now also being used to benchmark companies. An example is the Corporate Human Rights Benchmark initiative, which recently published a ranking of how companies deal with human rights issues, based on company disclosures.9

Conclusion

The expectation reflected, i.a., in the OECD Guidelines and the UN Guiding Principles that companies manage sustainability risks not only related to their own operations but also through their supply chains is impacting companies’ approach to those risks, as well as the way they disclose related information. While companies' experience in this area is still developing, recent legislation making meaningful disclosure mandatory, company rankings based on disclosed information, and growing public attention to company performance in dealing with sustainability risks, is generating additional pressure.

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9 Corporate Human Rights Benchmark, https://www.corporatebenchmark.org/