BUSINESS at OECD

27 September 2022

Business at OECD (BIAC) comments on the proposed changes to the OECD MNE Guidelines, Chapters I-XI

INTRODUCTORY REMARKS

- As institutional stakeholder representing the OECD business community, we would like to provide the following comments on the draft proposal for changes to the OECD MNE Guidelines provided by the OECD Secretariat. Given the short review period for the draft proposal, we will provide more detailed comments on the specific chapters as the process continues. To that end, we would urge the Working Party to **provide institutional stakeholders with sufficient time for comments in the next stages of the process, as** meaningful engagement will be a prerequisite for 'ownership' by stakeholders of the final result of the update.

- We recommend the Working Party to have an **in-depth consultation with other relevant OECD Directorates and Committees** on respective draft chapters, considering their thematic expertise, including on relevant OECD instruments.

- We **are deeply concerned about many of the proposed changes**, which, rather than being a 'targeted review', entail **substantive extensions** and introduce **detailed new provisions.** Especially the environment and the science and technology chapters appear to have undergone a **full revision**.

- We have previously highlighted as general guiding principles for any targeted update that:
    1. It is fundamental to maintain the **voluntary nature** of the MNE Guidelines for companies.
    2. **Any proposed revisions** must be well founded, **proportional, workable and not create unintended consequences** for businesses and state economies.
    3. The rules and the flexibility of the **NCP process should be preserved,** as NCPs need to be able to manage potential complaints that can be brought up in the context of the Guidelines.

- Essentially, the proposed updates entail **many new requirements and expectations** for business, and on the other hand make an already long text of the Guidelines **even longer.**
    - In our view, it is important to ensure that the Guidelines remain a realistic **standard that can be applied in practice.** To that end, it is important for companies to understand **how** they can and should **prioritize RBC efforts.** The proposed text should provide the respective flexibility and guidance in this respect.

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- Against this backdrop, we recommend **further streamlining** the proposed text and **abstaining from the introduction of new concepts that are not sufficiently developed or defined** and which could entail far-reaching consequences.

- Business has always appreciated the Guidelines as an important tool and reference, championing a clear-cut, proportional approach to due diligence. It will be important to make sure that potential updates **do not dilute important core concepts** of the instrument, especially as it remains an important reference in other ongoing initiatives.

OVERARCHING COMMENTS

- We appreciate that the **unique, voluntary nature of the Guidelines has been preserved.** This must not be undermined in discussions about subsequent changes in the implementation procedures, specifically in the NCP complaint mechanism.

- We are **very concerned** and do not support the proposed introduction of a number of **complex and open-ended concepts**, which are too broad and are **not clearly defined.** Most notably among these is the extension from supply chain to 'value chains', which vastly expands the responsibilities of companies in scope and time, whereas it provides no guidance as to **practical limitations**. The supply chain ('upstream') is by definition determined in terms of scope and time, whereas the 'downstream' part of the value chain is by definition unlimited in time and scope. This will generate unfathomed **implementation challenges** and potentially also **enlarged burdens on companies**.

- Other examples include amongst others:
    - II: Business relationships
    - II: Undue pressure
    - V: Decent work
    - VI: Just transition
    - VII: Greenwashing

  Too broad concepts and imprecise language and definitions may moreover increase the **caseload of NCPs** and lead to **diverging interpretations**, thereby further hampering the achievement of a level playing field.

- We disagree with the proposed change to **expand the scope of the due diligence concept** explicitly to the environment and science and technology chapters (previously deliberately exempted), introducing new concepts and expectations with potentially far-reaching negative unintended consequences for business. These consequences have to be explored much more in detail before decisions on the expansion can be taken. a.o., a clear link and specification of how the *cause-contribute-directly linked to* framework would apply to environmental and technology matters is missing.
    - **Environment Chapter:** As mentioned also in our contribution to the consultation group discussions, we advise against the implementation as the consequences of introducing the due diligence concept in the context of environmental matters without the introduction of limitations could lead to huge **implementation challenges**

related to **identification and assessment** of actual or potential climate impacts as well as a **lack of common approaches** to define carbon footprint estimates. The text itself mentions that *'Adverse environmental impacts may be localised or transboundary in nature. They can also be cumulative and interlinked'* (Commentary, 62.). The note that '*targets should be 'science-based, informed by best practice'* (VI.,2.c) with the specification that *'best available science and benchmarks or standards* [are] *included in: local environmental regulatory frameworks; internationally adopted or widely accepted environmental commitments or goals, such as those listed in paragraph 60 of this commentary; and, where applicable, standards of environmental management such as ISO environmental management standards; and further informed by best practice* (Commentary, 62.) does not provide a realistic framework for companies. Especially the link to ISO standards and "further informed best practice" should be deleted.

- **Science and Technology Chapter:** We strongly call on the OECD to reconsider the **new concept of sell-side due diligence**. This concept goes beyond existing international standards and it is not clear why and to what degree companies could be expected to account for potential adverse effects related to end use. This creates large considerable negative uncertainties and could lead to far-reaching claims.

- The text, in several instances, addresses **international instruments** such as the Paris Agreement. It must be clearly recognized that these **place obligations on governments** and that they do not **establish responsibilities for companies** and were not developed with the intention to do so**.**

- Where expectations are being extended, it must be recognized that **companies are facing practical limitations** to implementing very detailed recommendations and that leverage is often very limited. Furthermore, the limitations and constraints of mid-sized multinational companies must be duly reflected in the text, as is now the case in Chapter II, the principle of proportionality.
  - In addition, it is important to recognize that companies are often confronted with **legal limitations** to the information that can be acquired or which can be disclosed, especially trade secrets. This should also be duly reflected.

SPECIFIC COMMENTS

Chapter I – Concepts and Principles

- We consider it essential that the proposal preserves the **nature of the Guidelines**, with the Guidelines remaining voluntary and not legally enforceable. This notion must also be reflected in the procedural guidance.

- We are concerned about the **changes in the description of multinational enterprises**. 'Doing business in more than one country' is certainly not enough to make a company a multinational enterprise. Furthermore, the following sentences should be deleted as they would blur the scope of the instrument "*The Guidelines allow for a broad and flexible approach in identifying*

which entities may be considered multinational enterprises and subject to the Guidelines". While we recognize the specification concerning the '*commercial and international nature*' (I.,4.), we suggest the OECD return to the original language.

- We suggest adding a qualifier to the call on governments to "*participate in appropriate review and consultation procedures (…)*", including to ensure "*their continued relevance in a changing world*" (I.,11.), clarifying that **a review of the instrument should only be undertaken when there is a well-founded argumentation for this**.

Chapter II – General Policies

- We expect that critical qualifiers specifying commensurate due diligence expectations and the recognition of limits to leverage (Commentary, 21.) are **safeguarded.**

- As underlined in our joint statement with TUAC and OECDWatch from March 2020, no submitter filing a specific instance with an NCP should face repercussions for doing so, and we therefore welcome the implementation of this topic in the proposed changes (II.,A.9.). However, we consider that the term **"undue" pressure** is too vague and that it should be reconsidered. Furthermore we want to stress that bona fide behaviour should be expected from all parties. .

- The addition that '*Enterprises, and stakeholders should be viewed as partners with government in the development and use of both voluntary and regulatory approaches*' (Commentary, 2.), should be amended, specifying that this also must **include social partners** and that all entities **have to be representative.**

- We recommend that the new proposed paragraph **addressing lobbying and undue influence** (II, B.6.) must be reconsidered. The concept and definition of undue influence are unclear, a.o. in relation to the constitutional right of free expression, and demand further discussion.
    - In line with our comments above, the term **"undue pressure"** against workers needs further discussion.

- Where references to the **due diligence guidance & sectoral guidance are proposed, it should be clear that these documents are** designed as **practical guidance for companies** and not as additional recommendations. In this respect, we would like to highlight that '*Not every practical action will be appropriate for every situation*', as is explicitly recognized in the due diligence guidance.

- The chapter unfortunately expands the term '*business relationships*' to include '*business partners, entities in the supply chain and value chain*' (Commentary, 14.). We strongly advise against this extension (see above)
  The proposed text also notes that '*Business relationships take a variety of forms including, for example, supplying and buying, franchising, licensing or subcontracting. Business relationships may include relationships with entities beyond contractual relationships, such as sub-suppliers,*

as well as relationships with buyers and users of products and services.' (Commentary, 18.) This constitutes a **significant expansion of due diligence expectations** and is problematic in practice, as it could require companies to carry out due diligence on partners which are unknown to them. We suggest **returning to the original text of the MNE Guidelines**, focusing on contractual relationships or to rephrase the wording encouraging companies to, to the extent possible, try to identify risks beyond their first-tier relationships. The Guidelines must recognize that there are **significant limits for companies** to identify, prevent, mitigate and communicate on risks, especially for multinational SMEs. This would also be an important addition to the paragraph addressing limits to leverage (Commentary, 22.)

- The proposed targeted updates attempt to specify the case of **(responsible) disengagement** (Commentary, 22., 23.). While we agree that such measures should only be taken as a last resort and that such decisions need to be carefully evaluated, **companies cannot be expected to mitigate the impacts of disengagement,** but instead can only be expected to take such potential adverse effects into account when making the decision to disengage. In instances where companies are seeking to mitigate it is further important to recognize that they can only make reasonable efforts. Furthermore, in II.B.22 the "size of the MNE" should be mentioned as larger companies have more resources than mid-sized multinational companies.

- We do not agree that 'enterprises should engage with suppliers and other business relationships entities (…) and, where appropriate, provide financial support' (Commentary, 24.), which we consider **too far-reaching** and advise the OECD to abstain from including such expectation**.** This notion is referred to in several chapters (e.g. VI, 8.e & Commentary 76)). Meanwhile, the wording does not take into account the **challenges that mid-sized companies may be facing**, nor does it clarify that support cannot be automatic.

Chapter III Disclosure

- We do not agree that companies should be expected to consider **"informational requirements of shareholders** and other stakeholders**" (III,1.)** as this could be unforeseeable and unpredictable. In any case, this recommendation would need to be limited to the **main or relevant stakeholders**. Companies can, however, be expected to **take into account established disclosure regulations in the countries in which they operate**.

- The additional provisions on RBC reporting (III,3.) contain unfortunately **many new very detailed expectations.** To that end, we recommend reconsidering and streamlining this extensive list, while paying due attention to **small and medium-sized multinational enterprises**, which may face tighter resource constraints. The "think small first"-approach should be acknowledged taking into account that SMEs are also excluded in regulations from reporting obligations. In the EU, for example, initiatives target companies over 250 employees. As mentioned before, we underscore that the Guidelines must recognize the practical limits that companies may be facing.

- Relatedly, we recommend maintaining a distinction between the first and the second set of recommendations, whereby businesses would only be **encouraged to follow the additional recommendations** in the second set, as was previously the case (*"The Guidelines encourage a second set of disclosure or communication practices",* formerly Commentary, 33.)

- Concerning the expectation for companies to disclose *"information on relationships with workers and other stakeholders across operations, supply chains and value chains, and other business relationships"* (III, 3.f)), we would like to stress that, as argued previously, **companies can hardly track all the relationships across the value chain**. Therefore, this requirement should be deleted. It should also be kept in mind that **trade secrets may apply** to lists of customers, and suppliers, which would make it impossible for companies to disclose such information.

- The changes introduced the consideration that **RBC information may become financially material over time** (Commentary, 29.). We note that expectations on disclosure are quickly evolving and that related discussions are ongoing. The proposed addition, however, is merely an observation and, to that end, is **not adding any further clarity**, but may rather induce additional uncertainty.

Chapter IV – Human Rights

- The clear distinction between a company's own acts and the acts of others must be maintained, specifying *distinct expectations* on businesses in cases where they ***cause, contribute* to, or** are merely **directly linked to** adverse impacts. (IV, 1. - 6.)

- We do not agree with and ask for a deletion of the **direct references to the due diligence guidance & sectoral guidance, which could be interpreted as if these documents were part of the Guidelines, which they are not.** The due diligence guidance & sectoral guidance documents were designed as practical guidance for companies. This provision, in its current form, would thus add great complexity to the Guidelines, referencing several hundreds of pages of specifications, without qualifying that *'Not every practical action will be appropriate for every situation',* as is explicitly recognized in the due diligence guidance

- We would like to request clarification on the identification of **'vulnerable groups'** (Commentary, 40.). The text singles out "indigenous peoples", but does not specify which other societal groups may be considered in this context. We furthermore take note of the notion of paying attention to individuals who are at heightened risk, but point out that is not clear what ***'additional steps'*** (Commentary, 40.) would be expected to assess and address adverse impacts which affect these groups. This may lead to **diverging interpretations.**

Chapter V – Employment

- We note the references to several **ILO standards**, which, as we had previously argued, have been developed for states, not companies. We underline that **companies are obliged to**

implement national labour law, but they cannot be expected to implement international agreements or conventions, whose enforcement falls within the responsibility of the host country.
    - A pertinent example is the reference in the Commentary (57.) to **ILO Convention 155.** Conventions are ratified by States not companies, and the reference is therefore not appropriate to be included in the context of the Guidelines and should be deleted. The reference is further not substantially motivated.

- The chapeau of the chapter includes the addition *"in line with due diligence expectations as described in Chapter II and IV"* (V). The concept of **due diligence in Chapter II should be corrected, especially the reference to the Due Diligence Guidances should be deleted.**

- We further underline that the note in the commentary pointing out that '***Adverse impacts*** *covered by the present chapter* ***should be considered as adverse human rights impacts*** *in accordance with Chapter IV.'* (V, 47.) **does not reflect the uniqueness of human rights.**

- We stress that the deletion of the qualification **'workers ~~employed by the MNE'~~** (V, 1.a. &b.) should be reversed as this would considerably expand the scope instrument with unclear consequences. Especially in the context of V.1.b), it must be noted that collective bargaining for sub-contractors and workers in the supply chain must not be expected from MNE as this is a prerogative of their respective employers.

- We would like to point out that the addition in the context of workers' right to establish or join trade unions, establishing that ***"Avoid taking any action …"*** (V, 1.a)) **interfere with national law and practice** and could even be seen as compromising an employers' ability to inform workers or to exercise rights of free speech. As alternative wording we suggest *"In line with national law and practice avoid interfering with workers' choice to establish a trade union or representative organisation of their own choosing."*

- We are concerned about the additional language addressing ***"unlawful employment and industrial relation practices"*** in the paragraph that was previously addressing child labour exclusively (V, 1.c)). Noting that child labour may be one form of "unlawful" practice, we would suggest amending by *"In line with national law and regulation avoid any unlawful employment and industrial relations practices and contribute <u>in particular</u> to the effective abolition of child labour"* to maintain a distinction.

- The updates propose a new paragraph on a **healthy and safe working environment** (V.1.f), in line with the update to the ILO Declaration on Fundamental Principles and Rights at Work. To that end, we would recommend **an alignment with the wording of the instrument.**

- The additions addressing the **digital, gig and platform economy** (Commentary, 50.), create unfortunately an **indirect link (and therefore a negative association)** between informality, diverse forms of work and platform work, which are very different in nature. **Non-standard forms of work** may include workers with temporary contracts, which is prevalent practice and hardly comparable with informality. We would further like to note, that a formally agreed definition for the above-mentioned concepts (specifically digital, gig and platform work) is missing. To that end, we propose to rephrase to the broader statement *"This is especially*

relevant in the context of new forms of organizing work; and in sectors where informality and decent work deficits are common."

- The proposed update creates expectations on business related to the creation of **'decent' work** (Commentary, 52. & 59.), which are **too broad.**

- Where the Commentary sets out what **information companies should provide to their workers and their representatives,** a more flexible approach would be needed, and it should be clarified whether the text is referring to "*environmental health and safety*" or "*environmental, health and safety*" impacts and performance (Commentary, 55.) In general, this addition is too broad and far-reaching.

- The additional wording introduced in Commentary, 53. appears **inconsistent in that it appears to address migrant workers whereas the overall paragraph is referring to forced labour.** We would further like to note that regarding the reference to not charging any costs, the ILO Fair Recruitment Guidelines do recognize legitimate recruitment costs to be paid by migrant workers.

- Expectations on companies to provide training including '***Training for up-skilling and re-skilling*** *[which]* ***should anticipate future changes in operations,*** *including those responding to societal, environmental technological and regulatory changes, risks and opportunities linked to automation, digitalization, climate transition and sustainable development.'* (Commentary, 58.) should be limited by the **qualifier *"to the extent reasonable and possible".*** It is furthermore unclear how companies should be able to foresee **'regulatory changes',** and how these would interact with skills, and would therefore recommend dropping "*regulatory*".

- The extension that companies should give reasonable notice on **moves towards automation** involving collective or large-scale layoffs or dismissals (Commentary, 59.) is **quite far reaching**, recognizing that automation is part of structural change and that respective developments may hardly be foreseeable for companies themselves.

Chapter VI – Environment

- The chapeau of the chapter mentions that '*Enterprises should recognise their contribution to delivering an effective and progressive global response to environmental challenges (…)'.* This is missing a qualifier underlining that these **efforts ought to be undertaken in the framework of existing laws and regulations** as has previously been the case.

- We are concerned about the introduction of **due diligence obligations on environmental matters** (VI.,1.), which may have unclear practical and economic consequences. The text further mentions that companies should establish targets that are (…) *science-based, informed by best practice and consistent with relevant national policies and international environmental commitments* (VI., 2.b.). This must be changed for several reasons:
    - **Technical discussions on what constitutes best practice are ongoing. Measurement is not always straightforward.** In the absence of a consensus on standards as well as

measurement approaches, targets concerning a range of environmental matters will not be comparable.

- Importantly, in order to be able to apply the due diligence framework to the environmental issues mentioned, it would be important to **implement the cause-contribute-directly linked to framework to the environment chapter**. In other words, it will be important to establish in which instances a company would be causing an environmental impact and in which instances it would merely be contributing or be directly linked to an impact. This is only vaguely addressed in the text, and further clarity would be needed.
- Given the fact that adverse environmental impacts are often interlinked and recognizing that direct causality is in many instances difficult to establish, we are very concerned regarding the application of **the due diligence framework to environmental matters.**

- The proposed updates establish that *'Enterprises should (…) Contribute towards a **Just Transition,** including by assessing and addressing potential or actual adverse impacts of environmental management activities on matters covered by the Guidelines'* (VI., 3.). The concept of the just transition as well as associated expectations, however, **could lead to large interpretational and implementational challenges.**

- As noted in the context of Chapter II, we consider the expectation that companies '*should continually seek to improve corporate environmental performance, (…) including by providing support, including capacity building on environmental management to suppliers and other business relationships, particularly SMEs, in their supply and value chains'* (VI., 8.e.) as **too far reaching.**

- The proposed changes specify that *"environmental management"* should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the short, medium and long-term.' (Commentary, 61.). This creates **confusion,** noting that **companies shall not be liable for acts/actions committed by others.** This sentence, therefore, should be reconsidered.

- We are concerned about the proposed changes, which establish an expectation that '*In line with the goals of the Paris Agreement enterprises should contribute to a just transition to climate neutrality, consistent with the goal of limiting global temperature rises to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. For the purposes of these Guidelines, in the context of climate change, adverse impacts result from activities that 1) contribute directly or indirectly to increasing GHG emissions or to reducing the sequestration of GHGs in a way that is not consistent with the objectives of the Paris Agreement and the assessments of the Intergovernmental Panel on Climate Change (IPCC) of the need to reach greenhouse gas neutrality by 2050; or 2) do not take into account adaptation needs or undermine climate resilient development.'* (Commentary, 74.). To that end, we underline that Paris agreement addresses **governments, which have committed reducing GHGs according to national defined contributions (NDCs).** That said, while many companies have adopted strategies that align with the targets of the Paris Agreement, they **cannot be**

expected to comply with the Paris Agreement. It is also important to keep in mind that the Paris agreement defines **net targets** that apply to a given economy as a whole, but which **cannot be translated to the performance of a single company.** It is further important to recognize that in the EU, approaches are planned to apply to companies only over 250 employees. The Guidelines should also recognize that there are practical limits.

- As far as **animal welfare** is concerned (Commentary, 82.), we suggest that the Guidelines refer to the **need for companies to comply with existing rules and legislation.**

Chapter VII – Bribery

- We note that the proposed changes to the chapter adopt a **broader definition of corruption** that extends beyond the act of bribery.

- We also note the **updated references** and related edits, in particular to the **2021 Anti-Bribery Recommendation** and the Good Practice Guidance contained in its Annex II, and welcome new references that address bribery and **officially supported export credits** and **anti-corruption and integrity in SOEs** (Commentary, 76.).
    - Relatedly, we appreciate **additional language on the demand side** of bribery, which has been included in line with the updates to the 2022 Anti-Bribery Recommendation.

- As mentioned during the consultation group discussion, we maintain that the chapter should not be opened up to the issue of **lobbying,** which is distinct in nature. We appreciate that the issue is now being addressed via the General Policies Chapter (II,5.)

- Where the proposed updates introduce working on **politically exposed persons**, we recommend changing *"can also be important* "to *"might be relevant"* (VII, 4.)

- Where the Commentary addresses **sponsorships and donations**, we recommend clarifying *"It may also encompass trading in influence, embezzlement, misuse of sponsorships and illegitimate charitable donations'* (Commentary, 74.)

Chapter VIII – Consumer Interests

- We note that the proposed updates focus on **aligning the Chapter with relevant OECD instruments.**

- The term ***"Consumers who may be experiencing vulnerability or disadvantage"*** (VIII, 8.) is problematic as it is **vaguer** than the previous term *"disadvantaged or vulnerable consumers"*, which was clearly defined as *'particular consumers or categories of consumers, who because of personal characteristics or circumstances (like age, mental or physical capacity, education,*

income, language or remote location) may meet particular difficulties in operating in today's information-intensive, digital and globalised markets.' (Commentary, 92.). While deliberately chosen to account for a broader range of situations, it also leads to greater uncertainty.

- We understand that **discussions on durability and reparability** (Commentary, 85.) **are ongoing,** and in the absence of authoritative OECD standards, recommend to abstain from including such reference in the text of the Guidelines.

- We are concerned that the proposed changes introduce the concern of **'greenwashing'** (Commentary, 86.), without further specification. In order to prevent uncertainties and far-reaching claims, this reference should be deleted.

- To be consistent with the amendment to Commentary 91, we propose to *replace* ***"threats"*** in Paragraph 7 with *"risks".*

Chapter IX – Science and Technology

- We appreciate that **no changes have been made to the title of the chapter**, keeping the scope broad, and welcome small additions that help to provide further clarity (e.g. replacing '*reasonable'* with '*mutually agreed terms and conditions'* in IX, 3.)

- However, we are very concerned that the proposed changes not only **expand the due diligence concept** to the science and technology chapter, but also extend due diligence expectations to the '*sale, licensing, trade and [end] use of technology'* (IX, chapeau & IV, 5.).

    - The text thus introduces **a new concept of sell-side due diligence,** substantially broadening the prevailing due diligence framework, **without any further explanations or specifications.**
    - It is furthermore **not clear how the '*cause-contribute-directly linked to'* framework** – and relatedly expectations on companies to cease/prevent, provide remedy, and use leverage - **would apply to technology and science matters.**
    - We reiterate that companies may be **facing practical limitations** to carrying out due diligence on the whole value chain, even more so, potential **end uses may be difficult – or almost impossible, to foresee.**
    - The above-mentioned issues are likely to generate **large interpretational challenges and uncertainty** for business as well as for NCP that would need to mediate in related specific instances.
    - An alternative approach to account for potential adverse impacts could be to reference relevant OECD work that addresses potential risks, without establishing links to the due diligence concept and thereby complicating its application.

- Among the substantial provisions we are concerned about the several indirect (text) references to **OECD instruments** (IX, 1., 4. & 6.), for which the **circle of adherents may differ**

from the set of adherents to the Guidelines. It must be ensured that this would not create any inconsistencies with approaches pursued in other chapters.[1] Moreover, is important to **ensure that where the substantial provisions paraphrase relevant OECD instruments, exact source wording** is being used (proposed changes in red)

- (IX, 1) Recommendation on Enhancing Access to and Sharing of Data: "Adopt, where practicable in the course of their business activities, practices that permit the voluntary safe and secure transfer and rapid diffusion of technology and know-how on mutually agreed terms, as well as access to and sharing of data to foster data-driven scientific discovery and innovations with due regard to the protection of intellectual property rights and privacy and personal data protection as mentioned in the OECD Recommendation on Enhancing Access to and Sharing of Data [OECD/LEGAL/0463]."
- Example (IX, 4.) Recommendation on Facilitating International Technology Co-operation with and among Businesses: "Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations, including SMEs and civil society organisations. Such cooperation should take into account effective risk management, appropriate regulatory environments and ethical considerations of stakeholders, including social partners; whilst recognising the need for safeguards on academic freedom and research and scientific autonomy."
- The proposed updates further reference the Recommendation on Enhancing Access to and Sharing of Data, adding the mention of "responsible data governance practices" and "data value cycle" (IX, 6.). This specific language is not being used in the instrument itself. We recommend sticking to the agreed text of the Recommendation at its para. 1 ("Minimise restrictive measures to financial, trade, and cross-border data flows so as to help maximize the effectiveness of private sector and related public-sector tangible and intangible investments while respecting existing regulations and safeguards").

- The commentary elaborates that *'scientific research and technological innovation has driven productivity in all sectors, as well as the ability of enterprises to conduct due diligence and contribute to sustainable development, but is also associated with challenges and adverse impacts'* (Commentary, 93.). Relatedly**, a balance must be pursued** throughout the Chapter **highlighting not only potential adverse impacts but also duly acknowledging the positive role that technology can play** to advance RBC considerations.

- We **advise against explicitly listing types of digital technologies**, non-digital technologies and digital services (Commentary, 93.), which may risk rendering the **Guidelines outdated quickly**, recognizing that new technology tends to evolve and emerge constantly.

[1] Chapter XI (Taxation) includes a footnote stating that *'Brazil, does not apply the OECD Transfer Pricing Guidelines in its jurisdiction and accordingly the use of the guidance in those Guidelines by multinational enterprises for purposes of determining taxable income from their operations in this country does not apply in the light of the tax obligations set out in the legislation of this country.'*

- **Wording changes** need to be **clearly motivated** and **vague expressions should be avoided**.
    - The proposed updates replace '*capacity*' with '*development functions*' (IX, 2.). As this concept has not been defined by other OECD instruments or reports, we suggest maintaining the original wording.
    - Need to motivate addition that '*Multinational enterprises (….) can contribute to the national innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technology by domestic enterprises and institutions.*' (Commentary, 94)
    - Need to clarify '*this affects all areas of the Guidelines, including core concepts such as how an enterprise's responsibility is understood, how due diligence is conducted, and the role of other stakeholders in addressing impacts.* ' (Commentary, 93)
    - The wording change in the statement that '*When selling or licensing technology, not only should the terms and conditions negotiated be reasonable mutually agreed, but MNEs ~~may want to~~ should consider the long-term developmental, environmental and societal impacts of technology for the home and host country*' (Commentary, 95.) significantly alters expectations towards businesses. **Businesses cannot always realistically foresee potential future impacts of their technologies** and to that end, **can only be encouraged but not expected** ('*should*') to take such impacts into account.

Chapter X – Competition

- We note that the proposed updates are limited to **aligning the Chapter with relevant OECD instruments.**

- We concur that collaboration on **RBC should not interfere with competition law**.

Chapter XI – Taxation

- We note that the proposed updates in the Commentary are limited to **aligning the Chapter with relevant OECD instruments**, including incorporating references to the BEPS Recommendations.

- We recommend to rephrase '*Tax transparency can be an important way of ensuring and demonstrating that enterprises are in compliance with ~~the letter and spirit of~~ tax laws*' (Commentary, 103)