

February 2017

**Afep comments**

**OECD Due Diligence Guidance for Responsible Business Conduct (Draft 2.1)**

**and Draft Due Diligence Companion**

Afep responds to the public consultation on OECD Due Diligence Guidance for Responsible Business Conduct (hereafter “the Guidance”) and the Draft Due Diligence Companion (hereafter “the Companion”).

* ***Large French companies are already strongly committed to Due Diligence for Responsible Business Conduct***

Afep’s member companies are among the recognised **world leaders** in terms of adopting, implementing and being accountable for their Responsible Business Conduct policies. Vigeo’s 2015 report found that **French companies present the highest level of non-financial information** compared to a panel of more than 1000 companies worldwide. Vigeo Eiris’ 2017 study on Human Rights and companies is finding that **French companies obtain the best results** among the 3000 companies under review.

Due Diligence for Responsible Business Conduct has been on the top of the companies’ agenda for the past several years and will continue to be a great challenge due to the difficulties it presents. **Collaboration is key** here - by opposition to constraint or, worse, legal sanction - to successfully prevent and mitigate adverse Responsible Business Conduct impacts. Also, companies believe that Responsible Business Conduct is not only about preventing negative impacts but also about increasing positive ones. They would like this message to be reinforced throughout the document.

* ***OECD cross-sector Due Diligence Guidance is urgently needed***

**The companies are in favour of well-balanced OECD Guidance**, rather than national guidance which could lead to potentially diverging national sets of recommendations. In addition, soft and hard law tend to gradually converge, requiring all multinational companies to set up Due Diligence processes. Companies urgently need cross-sector due diligence guidance to tackle difficulties linked to risk identification and assessment, prevention and mitigation of adverse Responsible Business Conduct impacts, remediation and communication.

* ***The proposed Guidance is a valuable explanation of what is expected of companies***

The proposed Guidance provides **welcome support to enterprises on how they should implement due diligence recommendations contained in the OECD Guidelines for Multinational Enterprises** (MNE Guidelines). The proposed Guidance is the first publicly available detailed cross-sector guidance specifically designed to help companies implement due diligence processes. As such it is highly useful and meets a growing demand for guidance in this field. Yet, it is essential that the Guidance also clarifies and repeatedly states:

* the **importance for companies to prioritise their most severe risks**, acknowledging the fact that it is **practically impossible to address all other possible risks**; this is especially important for SMEs who would otherwise face inefficient processes and administrative burdens;
* the **practical limitations of due diligence**, specifically with complex supply chains.

Cautious and balanced wording is essential, especially when hard law initiatives that explicitly refer to OECD guidelines are emerging, such as in France.

* ***OECD Guidance should be fully in line with MNE Guidelines***

**The Guidance** **should be fully in line with the MNE Guidelines** and should **not impose additional requirements on companies**. There are some changes Afep specifically proposes to avoid any misinterpretation or lack of clarity because it will serve as a reference for law-makers who wish to introduce legal requirements to establish due diligence.

* ***OECD Guidance and the Due Diligence Companion should be user friendly and easy to read***

**The** **Guidance should ideally make things easier and simplify complex concepts**. The companies welcome the fact that the Guidance offers **different levels of granularity** of a due diligence process, from the “Two-page summary” to the “Core Concepts” and finally the “Practical Steps”. This is essential to allow users with different levels of expertise (and time) to grasp what is useful for them.

* ***The role of National Contact Points (NCPs) is of key importance***

**NCPs are key to promote the implementation of the MNE guidelines**. The Guidance could recap how they are organized and work and how they implement the specific instances in accordance with the procedural guidance for NCPs.

Companies believe that **NCPs should become the recognized bodies handling and resolving stakeholder's grievances relating to OECD, UN and ILO standards for corporate responsibility**, consistent with the objective of functional equivalence highlighted by the OECD. In that context, national regulators would not need to invent or create new grievance mechanisms if they adhere to OECD guidelines and have NCPs in place.

The Guidance could also set out a standard for practical implementation capitalizing on the good practices of the most active NCPs such as the French one.

\* \* \*