

Due Diligence – OECD Advice

The 2011 version of the OECD Guidelines introduced new and comprehensive provisions on due diligence and responsible supply chain management. The UK NCP reprints below key passages of the 2011 Guidelines that relate to due diligence. Complainants and enterprises may find it helpful to refer to this advice in describing whether and how due diligence obligations have been met (complainants and enterprises are encouraged to refer to the full text of the Chapters II and IV of the Guidelines for a complete picture of the relevant obligations).

The due diligence provisions were added to the Guidelines when they were updated in 2011. The UK NCP applies the updated 2011 Guidelines to actions of companies from 1st September 2011 and to outstanding impacts known to companies at that date.

DUE DILIGENCE COMMENTARY IN THE OECD GUIDELINES

Chapter II. (General Policies) Paragraph 10:

Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

Commentary

14. For the purposes of the *Guidelines*, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the *Guidelines*. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The *Guidelines* concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, ‘contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. The recommendation in paragraph A.10 (of Chapter II) applies to those matters covered by the *Guidelines* that are related to adverse impacts. It does not apply to the chapters on Science and Technology, Competition and Taxation.
15. The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the

enterprise, context of its operations, the specific recommendations in the *Guidelines*, and the severity of its adverse impacts. Specific recommendations for human rights due diligence are provided in Chapter IV.

16. Where enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, priorities suppliers for due diligence.

Chapter IV. (Human Rights) Paragraph 5:

Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

Commentary

45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve.