

BANKTRACK

BANKTRACK'S SUBMISSION TO THE OECD'S PUBLIC CONSULTATION ON A TARGETED UPDATE OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

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Submitted via the OECD's [online public consultation survey](#).

GENERAL COMMENTS

BankTrack welcomes the opportunity to provide feedback to the OECD's consultation on a targeted update of the OECD Guidelines for Multinational Enterprises (the Guidelines). This update is much needed and provides an opportunity to address gaps, strengthen global standards, and encourage responsible business conduct further. While BankTrack appreciates the Consultation Draft presents promising elements to this end, and is on the whole an improvement on the original text, serious concerns remain. Firstly, the proposed language on human rights and environmental defenders, and Indigenous peoples is concerning and needs considerable reframing. BankTrack's benchmark found that very few banks include considerations on the need for business safeguards, and on the importance of meaningful and safe stakeholder engagement as an integral part of due diligence. Text in both Chapters IV and VI, as well as in the General Policies, could be elaborated further to provide more clarity on these issues, and to enhance the protection of the singular rights of these groups. Secondly, while BankTrack welcomes the addition of climate change impacts as an explicit due diligence aspect in Chapter VI, the link between the environment and human rights remains weak and narrow in scope. Thirdly, revisions are needed in the Procedural Guidance to strengthen the effectiveness of the NCPs system, which remains crucial in how enterprises integrate the standards into their practice and address impacts to workers and communities. It is our hope that the OECD takes this feedback into consideration and makes the necessary changes to ensure the Guidelines remain relevant.

CHAPTER I: CONCEPTS AND PRINCIPLES

BankTrack suggests the OECD delete the proposed text in Chapter I paragraph 4 applying the Guidelines to "companies or other entities conducting *a significant amount of business* in more than one country," as this could unnecessarily limit the scope and number of enterprises falling under such definition.

CHAPTER II: GENERAL POLICIES

The suggested language does not adequately address human rights defenders and does little to safeguard their rights. In paragraphs 9 and 10, the use of the term "undue pressure" is misleading, as there is no situation in which pressure by business enterprises on workers, defenders, and their legitimate representatives is "due". BankTrack suggests the term be deleted. Further, paragraph 10, as currently proposed, seems to imply that individuals, including human rights defenders, have the right to protest a business activity only when this "contravene[s] the law", or is "inconsistent with the Guidelines", or "the enterprise's policies". This should be changed to recognise the right of any individual to protest any business activity, regardless of its legality, its alignment with the enterprise's own policies, or the Guidelines.

The text in paragraph 14 does not sufficiently convey the need for business safeguards for human rights defenders, nor what “developing appropriate safeguards” would entail. Additional explanations on what safeguards enterprises should adopt, including proactive steps to engage with defenders and discourage business relationships from retaliating against them, would be helpful.

BankTrack welcomes the OECD’s addition of “meaningful” in paragraph 16 in reference to stakeholder engagement. However, the explanation of what “meaningful” entails should be strengthened, including by calling for engagement to be safe, ongoing, and involve defenders.

In the commentary, a new paragraph should be added between paragraph 25 and 26 to clarify what responsible disengagement should entail. Further, while the addition in paragraph 16 of language acknowledging that a relationship to an impact may change from being directly linked to contributing is welcome, further clarification is needed to explain that the foreseeability of impacts, and the effectiveness of due diligence are two factors that should be taken into account in assessing this shift.

CHAPTER IV: HUMAN RIGHTS

The current language proposed in Chapter IV on Human Rights – specifically in commentary 40 regarding Indigenous peoples – needs to be revised and expanded on. The text should explicitly acknowledge that Indigenous peoples possess unique rights such as Free, Prior, and Informed Consent (FPIC), self-determination, and culture, which are all enshrined in international law. The commentary text would benefit from additional references to international instruments protecting these rights, and from the inclusion of a clear call to business to respect the rights of self-identified Indigenous peoples.

BankTrack is also concerned as the proposed text in Chapter IV makes no mention of human rights defenders; the addition of a paragraph – either between commentaries 41 and 42, or between commentaries 45 and 46 – would be appropriate to highlight the central role human rights defenders play and the importance of consulting them and their legitimate representatives in due diligence.

BankTrack also recommends that issues relating to intersectionality, and to the marginalisation of vulnerable groups, be more strongly reflected in the text. Additional or existing commentary in Chapter IV could elaborate further on the need of business enterprises to pay particular attention to these issues. For example, by taking additional steps in their due diligence processes to identify and address impacts on vulnerable and marginalised groups, and to do more to remove barriers to effective participation when engaging and consulting with rights-holders.

CHAPTER VI: ENVIRONMENT

BankTrack welcomes the OECD’s additions to Chapter VI on the environment, including additional language clarifying that climate change and biodiversity loss, among others, are tangible impacts subject to due diligence. Nonetheless, the proposed text would benefit from some amendments. Firstly, the text as currently proposed is at odds with the steps of due diligence outlined in the Guidelines. For example, paragraph 3 requires enterprises to “seek to address” environmental impacts, where the standards, and other international frameworks such as the UNGPs make it abundantly clear that enterprises are required to address and remediate impacts they cause or contribute to, not just “seek” to do so.

Secondly, the link between environmental and human rights impacts is not adequately addressed. The proposed text places a narrow focus on “health and safety” impacts in relation to the environment, which does not fully capture the wide array of human rights violations that can derive from business impact on the environment. Paragraph 1 should better reflect the interconnectedness of the environment with human rights and should call on enterprises to closely integrate human rights and environmental due diligence. In addition, relevant commentary should provide a list of human rights commonly impacted in connection with adverse environmental impacts, such as the right to life and a healthy environment, among others.

Lastly, BankTrack would like to reiterate that there is a need to place more of a focus on defenders, and in the case of this Chapter, on those protecting land and the environment; in their revised form, the Guidelines should include a clear call to business to give defenders heightened consideration when assessing and addressing actual or potential impacts.

IMPLEMENTATION PROCEDURES

In Part II pages 71 to 72, the admissibility criteria would benefit from a revision so that they are easier to understand and implement for the NCPs. Crucially, the threshold for accepting plausible complaints should be low, and analysis at the initial assessment stage should be focused on assessing *eligibility* of the claim rather than its merits.

The initial assessment should consider whether the allegations are plausible and covered by the chapters of the Guidelines, whether the complainant has an interest in the matter, and whether the company is covered by the Guidelines and subject to the complaint handling services of that specific NCP.

The language in the Draft - though already presenting an improvement on the original text - should be further expanded with regards to follow-up monitoring. The NCPs should by default undertake follow-up to ensure enterprises carry out agreements reached, and recommendations given, including on provisions for remedy. This specification should be added in text on pages 59, 74, and 76.

The proposed text would also benefit from adding the word “may”, or ideally “should”, on pages 59 and 74 encouraging NCPs to issue determinations on whether enterprises have met the Guidelines, or implemented recommendations made or agreements reached between the parties. That NCPs issue determinations is critical to ensuring complaints result in meaningful outcomes for affected individuals and communities. Since many NCPs already issue determinations, it is important that this option is also reflected for all NCPs in the text of the Guidelines. In addition, in Part II at pages 59 and 74, text should be added to encourage NCPs to request that consequences be applied against companies that fail to engage in good faith in the complaint process. This could also be reflected by the addition of the word “should” or at a minimum “may”.