

To: investment@oecd.org

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Reference: Public Consultation – Due Diligence Guidance for Responsible Business Conduct

Finnwatch welcomes the development by the OECD of specific guidance on the implementation of the due diligence recommendations in the *OECD Guidelines for Multinational Enterprises*. The draft *OECD Due Diligence Guidance* and the *OECD Due Diligence Companion* documents provide many practical tips and good practice examples which can assist companies significantly in their efforts to implement due diligence.

In its response to the public consultation, Finnwatch has chosen to focus narrowly on *Working with others through collaboration* section under II.B Due Diligence: Preventing and mitigating adverse impacts, C. Explanation of key actions, 1. Developing response plans that are fit for purpose (page 18 in the Companion document. In the Guidance document, these issues are discussed in brief under II-C. Due Diligence: Track performance on page 22).

Finnwatch is concerned that although this section rightly urges companies to address strategic challenges and root causes of adverse human rights impacts, the messaging in this section could be misinterpreted to endorse companies' own collaborative initiatives as alternatives to third-party auditing and certifications schemes.

Companies' own collaborative initiatives can help to shorten and increase transparency in often long and complex supply chains and thereby, foster long-term business relationships and help build leverage. However, many existing company collaborative initiatives lack transparency and independent monitoring / verification of impact and results. Without transparency and a robust monitoring mechanisms in place, these programmes cannot form a basis for credible consumer communications or company due diligence.

Already with the proliferation of auditing and certification schemes over the last couple of decades, it has become extremely difficult for the consumer to compare different schemes, tell trustworthy schemes apart from the rest and make informed purchasing decisions. An increase in the use of companies' own collaborative initiatives as the basis for responsibility claims over consumer products would make this practically impossible.

A multi-stakeholder structure can sometimes help to overcome transparency and credibility challenges, but is not a panacea. For example, NGOs are often considered desirable partners in multi-stakeholder initiatives as they are seen lending these initiatives more credibility, and some NGOs also themselves actively seek a role in

such initiatives. NGOs, however, do not necessarily represent workers' interests nor are they democratically governed. NGOs have their own agendas which might mean that some important perspectives are ignored in the process. For example, other aspects of sustainability – environmental or economic – might be emphasised over social sustainability.

As pointed out in the draft *OECD Due Diligence Companion* document, many of the existing auditing and certification schemes indeed tend to favour technical criteria (e.g. OHS, working hours, minimum wage) over process rights (e.g. freedom of association, living wage as a result of collective bargaining). Advancing process rights is key to achieving long-term, sustained improvements to terms of employment and working conditions.

However, to say that the auditing approach is in itself to blame for this is to simplify the matter. The auditing and certification schemes have partly been unsuccessful in advancing process rights because the criteria they have set in this regard, and the methods for verification of compliance, have been inadequate. Several schemes for example, accept the mere existence of a workers' committee in a work place as compliance with freedom of association and collective bargaining related criteria. In addition, often the schemes do not even seek to confirm whether the workers' committees have democratically elected leadership, whether the workers feel that they truly represent the needs of the workers, or whether they have been able to negotiate for improvements in terms of employment on the workers' initiative. According to some academic studiesⁱ, these shortcomings in some schemes are attributable to their ownership structure which places the power in the hands of companies and business interests. Companies' own collaborative initiatives are unlikely to change this power-balance.

Auditing and certification schemes need to also be further developed and strengthened. Finnwatch has for example recommended that concerted effort be made to involve trade unions in the development of auditing and certification schemes and in particular, to verify compliance with freedom of association and collective bargaining related criteria.ⁱⁱ

In addition, auditing and certification schemes must be supported by ongoing capacity building efforts. This work can benefit from the leverage and improved access created through companies' own collaborative initiatives. However, collaborative systems can be credible forms of due diligence and form basis for consumer communications only when they too incorporate robust monitoring of impact and results. Key characteristics of a robust monitoring mechanism include independence and transparency. Certification and auditing are therefore tools through which the impact and results of collaborative systems can be verified.

Below, we suggest some specific changes to the section on *Working with others through collaboration* in the draft *OECD Due Diligence Companion* document, page 18. Original text is in bold, suggested new wording and additions are highlighted in

yellow, and comments in italics. We also suggest changes to ordering of paragraphs in this section for clarity.

Working with others through collaboration: The corollary of the deepening ties among enterprises of all sizes within the global economy, is the collaboration that may be required to address some of the strategic challenges for enterprises and their stakeholders. The *Guidelines* encourage enterprise to consider such collaboration.

- ~~Moving from auditing to collaborating~~ **Working with auditing initiatives:**

Finnwatch recommends that the title of the first bullet point is changed to Working with auditing initiatives. This formulation would also be consistent with the title of the second bullet point, Working with certification initiatives.

Many larger enterprises and increasing range of industries have developed **their own extensive systems of supplier audits for a range of issues covered in the *Guidelines* – environment, working conditions, bribery, quality control for consumer health and safety. These are also a form of due diligence.**

Finnwatch recommends that additions are made to the text to clarify that what is referred to here, are workplace inspections and suppliers' social audits, conducted or commission by the companies' themselves – as opposed to third-party auditing initiatives (see below).

While these systems can work well to track compliance - hard data about supplier performance on issues such as emissions, both the tracking systems and the underlying data they report have in many instances will be less effective in actually addressing impacts – what is achieved [sic].

This sentence should be revised as it appears to contain errors.

This is particularly true around worker and community issues in supply chains. In addition, these systems have led to duplication of audits and so-called “auditing fatigue” as each buyer audits the same supplier separately. From the stakeholders' perspective, companies own workplace inspections and social audits also lack credibility that is offered through independent, systematic, standardised and transparent third-party monitoring.

(Suggest moving this paragraph) **Some industries have moved to sharing ethical supply chain data, within the limits of competition constraints, or through industry associations, special-purpose non-profits and multi-stakeholder initiatives as a way of reducing the burden of multiple audits**

on suppliers, and increasing their leverage to push improved performance. This is preferable good practice over developing companies own workplace inspections and social auditing systems.

- Working with certification initiatives: Some enterprises choose to work with certification initiatives that have aligned requirements around RBC issues, as these initiatives have their own systems of not only assessment but also (usually) corrective action planning and follow through. Third-party certification and auditing schemes remain the only readily-available, structured, standardised and transparent means for credible supply chain monitoring and therefore, the preferred option. Differences exists between the initiatives though. As with auditing approaches, it is useful for enterprises to understand the advantages but also the limits of various certification systems and to inform themselves about the latest evaluations of certification systems and how they are evolving. As with auditing, they may be more effective in addressing certain issues than in others, particularly around workers and broader human rights issues and there will be differences in the approach and effectiveness of different types of certification programmes. Therefore, enterprises are encouraged to put active effort into further developing and strengthening the existing certification initiatives. Enterprises may also need to consider supplementary measures or combinations of approaches when operating in more complex countries and issues.

(Suggest moving this paragraph) Consequently, For example, some enterprises and some sectors are working towards more collaborative and partnership based initiatives that seek to address the root causes of adverse impacts that usually involves building supplier capacity and at times, government capacity as well. The Guidelines encourage enterprises to participate in private or multi-stakeholder initiatives and social dialogue on responsible supply chain management, such as those undertaken as part of the Guidelines proactive agenda.

ⁱ See for example, Barrientos S. and Smith S., 2007, Do workers benefit from ethical trade? Assessing Codes of Labour Practice in Global Production Systems. *Third World Quarterly*, Vol. 28, No. 4, Beyond Corporate Social Responsibility? Business, Poverty and Social Justice, pp. 713-729

ⁱⁱ Finnwatch, 2016, Perspectives on the quality of social responsibility monitoring schemes, available at http://finnwatch.org/images/pdf/PerspectivesOnVSS_forweb.pdf