



# ICGN

International Corporate Governance Network  
*Inspiring good governance & stewardship*

Mr. Mathias Cormann, Secretary-General  
Organisation for Economic Co-operation and Development  
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75016 Paris

Emailed to: [rbc@oecd.org](mailto:rbc@oecd.org)

9 February 2023

Dear Secretary-General Cormann,

## **Re: Consultation Draft: Targeted update of the OECD Guidelines for Multinational Enterprises and their Implementation Procedures**

The International Corporate Governance Network (ICGN) welcomes the substantive draft edits as described in the *Targeted update of the OECD Guidelines for Multinational Enterprises and their Implementation Procedures published in 2011*. The draft amendments appropriately refer to significant developments in responsible business conduct over the past few years, including those relating to human rights, the environment, bribery and corruption, consumer interests, science and technology, competition, and taxation.<sup>1</sup>

Established in 1995, ICGN's purpose is to convene capital market participants to develop, promote and embed high standards of corporate governance and investor stewardship worldwide to preserve and enhance long-term value, contributing to sustainable economies, societies, and the environment. ICGN Members, many of whom are investors responsible for assets of around \$70 trillion, are based in over 40 countries - largely in Europe and North America, with growing representation in Asia. For more information visit [www.icgn.org](http://www.icgn.org).

ICGN supports the draft amendments as presented in the '*Targeted update of the OECD Guidelines for Multinational Enterprises and their Implementation Procedures*' and offer the following points for further consideration:

- 1. ICGN endorses the OECD draft text which seeks to align responsible business conduct with sustainable development objectives and recommend that this be strengthened by referencing the United Nations Sustainable Development Goals (UNSDGs).** This features prominently in the ICGN Global Governance Principles<sup>2</sup> which are used by many ICGN Members in their voting policies, company engagements and investments. The ICGN Principles were updated substantially in 2021 recognising the mounting challenges of our society, such as climate change, biodiversity loss, wealth inequality and poverty, and the ways in which these issues present risks to investors, businesses, and the economy. Additionally, in 2022, ICGN launched the revised Model Mandate in partnership with UN-supported Global Investors for Sustainable Development Alliance. The revised Model Mandate sets out example contract terms for asset owners to consider in investment management agreements based on the UNSDGs<sup>3</sup> to demonstrate how investors should contribute to long term sustainable value creation relative to the SDGs.

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<sup>1</sup>G20/OECD, 2023 [Consultation draft - Public consultation: Targeted update of the OECD Guidelines for MNEs](#)

<sup>2</sup> [ICGN Global Governance Principles 2021](#)

<sup>3</sup> [ICGN - GISD Alliance Model Mandate Guidance | ICGN, 2022](#)

2. **ICGN endorses the draft text which suggests governments should retain flexibility on identifying which companies may fall under the auspices of OECD Guidelines for Responsible Business Conduct (“RBC Guidelines”).** The Guidelines should apply to companies listed on public stock exchanges and also private companies. This will help ensure that companies that have de-listed from stock exchanges maintain a high level of appropriate transparency. The RBC Guidelines should be widely applied, recognising that smaller companies with fewer resources should be provided opportunities to work towards implementation over a reasonable period.
3. **ICGN supports new text specifying that companies should “ensure transparency and integrity in lobbying”** supplementing previous text stating that companies should “refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.” We recommend that this could be supplemented by adopting text from Principle 4 of the ICGN Global Governance Principles as follows:

*The board should have a policy on political engagement, covering lobbying and donations to political causes or candidates to the extent permitted by law, and ensure that the benefits and risks of the approach taken are understood, monitored, transparent and regularly reviewed. Boards should address instances where there are significant inconsistencies between a company’s publicly stated policy positions and potentially conflicting views of trade associations of which the company may be a member.<sup>4</sup>*

ICGN members have noted several instances whereby company positions on significant environmental or social issues differ substantially from the trade associations they support. This inconsistency should be resolved in a direction that leads to more transparent disclosures and outcomes consistent with sustainability.<sup>5</sup>

4. **ICGN supports the draft text that specifies that companies must “Refrain from applying undue pressure or reprisals against any persons or groups who monitor or report practices of the enterprise or entities with which it has a business relationship that contravene the law, or are inconsistent with the RBC Guidelines, or the enterprise’s policies, including but not limited to submitters of Specific Instances, members of the press, whistleblowers, and human rights defenders, and those working on environmental matters referred to as environmental defenders.”** This provision is consistent with ICGN’s position on whistleblowing and to support activists for protections around human rights and the environment, many of whom are intimidated by entities seeking to advance projects and business activities that are inconsistent with the principles of sustainability.<sup>6</sup>
5. **ICGN supports the draft text which supplements previous wording on improper political activities specifying that companies must refrain from “engaging in acts of corruption or attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by public officials, by providing**

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<sup>4</sup> [ICGN Global Governance Principles 2021](#), Principle 4, Corporate culture, p. 18.

<sup>5</sup> [ICGN Guidance on Political Lobbying and Donations](#)

<sup>6</sup> [ICGN Global Governance Principles 2021](#), Principle 4.2 Whistleblowing, p. 18.

*covert, deceptive or misleading evidence or data.*” This is consistent with the ICGN *Guidance on Anti-Corruption Practices (2020)*.<sup>7</sup>

6. **ICGN supports the draft text specifying that there is increased recognition of the need for stakeholder consultation.** For example, in paragraph 28 of the general commentary, the OECD states: *“Relevant stakeholders are persons or groups, or their legitimate representatives, who are or could be adversely impacted by the enterprise’s operations, activities, products, or services. Meaningful stakeholder engagement refers to ongoing engagement with stakeholders that is two-way, conducted in good faith by the participants on both sides and responsive to stakeholders’ views. To ensure stakeholder engagement is meaningful and effective, it is important to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalisation.”*

This is consistent with Principle 1.4 of the ICGN Global Governance Principles as follows:

*The board, particularly the chair, lead (or senior) independent director and committee chairs, should constructively engage with shareholders and relevant stakeholders (particularly the workforce) for meaningful dialogue. This infers two-way communication between companies and shareholders/ stakeholders and not a unilateral presentation from just one party. Such dialogue should encompass all matters of material relevance to a company’s governance, strategy, innovation, risk management and performance as well as environmental and social policies and practices.*<sup>8</sup>

In particular, ICGN supports the references to the rights of Indigenous People and the UN Declaration on the Rights of Indigenous Peoples. In this context, we recommend that the OECD acknowledge the status of Indigenous Peoples as rights-holders rather than as stakeholders.

7. **ICGN supports new draft text regarding materiality stating:** *“Information under paragraph 2, including related to RBC issues and due diligence, should be considered material if it can reasonably be expected to influence an investor’s assessment of a company’s value, investment or voting decisions. The determination of which information is material may vary over time, and according to the local context, company specific circumstances and jurisdictional requirements. Some jurisdictions may also require or recommend disclosing sustainability matters critical to a company’s key stakeholders or a company’s influence on non-diversifiable risks.”*

ICGN also supports the OECD’s recognition of dynamic materiality as noted in the text *“...sustainability risks that may not seem to be financially material but that are relevant to society may reasonably be expected to become financially material for a company at some point.”*

We also note growing acceptance among companies and investors for the concept of double materiality as referenced in Principle 7.7 of the ICGN Global Governance Principles as follows:

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<sup>7</sup> [ICGN Anticorruption Guidance 2020](#)

<sup>8</sup> [ICGN Global Governance Principles 2021](#), p. 10.

*Sustainability disclosures should focus on materially relevant factors, with many environmental and social factors being sector specific, linked to the company's management of its natural and human capital. Where possible, sustainability related reporting should also seek to address "double materiality", for reporting on the company's external impacts on society and the environment, as well as internal impacts on the company's own financial performance. Moreover, boards should build an awareness of "dynamic materiality", recognising that materiality evolves over time alongside factors including emerging technology, product innovation and regulatory developments.<sup>9</sup>*

8. **ICGN supports the focus on human rights due diligence** in the draft text including direct references to the UN Guiding Principles on Business and Human Rights. We also support the OECD's recognition of forced labour in the global economy and the need for responsible businesses to undertake efforts to address this. We suggest inclusion of reference to modern slavery and refer you to Principle 4.7 of the ICGN Global Governance Principles as follows:

*The Board should ensure that it is sufficiently informed of how human rights and modern slavery issues may present material business and reputational risks or might compromise a company's own values and standards of behaviour. The Board should establish appropriate due diligence processes, strategy, disclosure, engagement, accountability, and other measures to deal with human rights issues which may materialise in connection with the company's workforce and operations.<sup>10</sup>*

We also refer you to ICGN letters to the governments of New Zealand and Australia, both of whom have joined the United Kingdom in establishing legislation to address modern slavery practices.<sup>11</sup>

9. **ICGN supports the new draft text on climate change.** The draft is broadly in line with letters ICGN sent to the Canadian Securities Administrators<sup>12</sup>, the Securities and Exchange Commission<sup>13</sup>, and the International Sustainability Standards Board.<sup>14</sup> In particular, we support the disclosure of Scope 3 emissions and observe the following:

- Carbon Trust reports that Scope 3 emissions can represent as much as 90% of all company emissions — information critical for managing climate risks and setting strategy. In addition, TCFD analysis shows that of the 2,500 companies in the MSCI All Country World Index, from 2017-2019 disclosure of Scope 3 emissions increased from 28% to 34%. Increasingly, companies are moving in the direction of Scope 3 disclosure even in the absence of mandatory regulations or standards.
- The Scope 3 GHG Protocol was first published in 2011. Since this time, companies and consultants have built considerable expertise in measuring Scope 3 emissions. Data and methodologies have matured

<sup>9</sup> [ICGN Global Governance Principles 2021](#), p. 28.

<sup>10</sup> [ICGN Global Governance Principles 2021](#), p. 19.

<sup>11</sup> [Modern Slavery Act Review](#)

<sup>12</sup> [Canada - CSA Climate Disclosure Letter Ontario, Jan 2022](#)

<sup>13</sup> [ICGN SEC CRD, June 2022](#)

<sup>14</sup> [Climate Related Disclosures ISSB](#), July 2022

sufficiently such that disclosure of relevant, material categories of Scope 3 emissions is now possible for companies operating in most sectors.

- Many investors demand complete disclosure of greenhouse gas emissions, including a declaration of net zero emission targets by 2050. This goal is supported by a proliferation of initiatives. As such an increasing number of corporations and investors are developing transition plans with near, medium, and long-term performance benchmarks to reach this goal.<sup>15</sup>

10. **ICGN supports the expanded draft text on biodiversity.** While many investors are just now beginning to recognise the risks of biodiversity loss and the complex relationship to climate change, there has been a proliferation of interest, energy, and initiatives. Most recently, ICGN published a *Viewpoint on Biodiversity and Systemic Risk* and identified 10 recommendations for boards of directors and investment stewards to acknowledge and/or deploy.<sup>16</sup> This is consistent with the July 2022, UN General Assembly adoption of a historic resolution recognising that a clean, healthy, and sustainable environment is a universal human right. The UN expects the resolution will help reduce environmental injustices, close protection gaps, and empower people, especially those in vulnerable situations, including environmental human rights defenders, children, youth, women, and indigenous peoples.<sup>17</sup> Given the OECD's appropriate multiple references to UN instruments, OECD should make specific reference to this new declaration to acknowledge this development and further strengthen the connection between responsible business conduct and the environment.<sup>18</sup>

In conclusion, ICGN expresses our appreciation for the opportunity to respond to this consultation. We congratulate the OECD on the new draft text and the significant changes it embodies. Should you have any questions around our letter, please contact me or Robert Walker, [rwalker@icgn.org](mailto:rwalker@icgn.org) or Carol Nolan Drake, [carol.nolandrake@icgn.org](mailto:carol.nolandrake@icgn.org).

Yours faithfully,



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<sup>15</sup>[Climate Related Disclosures ISSB](#), July 2022

<sup>16</sup>[Biodiversity as Systemic Risk Viewpoint](#), Jan 2023

<sup>17</sup>[UN General Assembly declares access to clean and healthy environment a universal human right | UN News](#), July 2022

<sup>18</sup>[Biodiversity as Systemic Risk Viewpoint](#), Jan 2023