OECD Watch

To: The OECD Working Party on Responsible Business Conduct (WPRBC)
From: OECD Watch
Re: Input to the January/February 2023 public consultation on the consultation draft of targeted updates to the OECD Guidelines for Multinational Enterprises
Date: 10 February 2023

OECD Watch appreciates the opportunity to provide input on the January 2023 consultation draft of targeted updates to the OECD Guidelines for Multinational Enterprises. We respectfully offer the following submission, which follows the format of the online consultation survey form.

Name of submitting organisation or individual
OECD Watch

Organisation type
Civil society organisation

General comments
OECD Watch welcomes the efforts of the OECD Investment Committee and Working Party on Responsible Business Conduct to update the OECD Guidelines for Multinational Enterprises (Guidelines). The Guidelines are seriously out of date in many ways, and the current consultation draft proposes many positive updates to strengthen responsible business conduct standards for multinational enterprises (MNEs) and improve the functioning of the National Contact Point (NCP) grievance mechanisms. OECD governments should preserve the many positive updates already included in the draft text.

However, on many critical topics, civil society priorities have not yet been accepted, the proposed edits do not go far enough, or the proposed edits could even be negative in the current global context. OECD Watch urges that critical amendments be made to the consultation draft before the OECD should adopt updated text.

In addition to our specific comments by chapter below, we highlight the following general comments:

- We urge the OECD to consult directly with Indigenous Peoples on the process to update the Guidelines. OECD Watch stands ready to support such consultation efforts in the coming months.
- We urge the OECD to work closely with experts from civil society and multilateral bodies to ensure that any new text added aligns with or improves upon relevant parallel international standards on responsible business conduct issues.
- We urge the OECD to ensure consistency in the language on due diligence in the proposed updates, such as by ensuring the term is consistently referred to either as “due diligence” or “risk-based due diligence” and by ensuring the steps of due diligence are correctly and completely presented.
- We encourage synchronisation of the approach of the chapeaux across the standards chapters.
- We urge greater focus on “rightsholders” and the use of meaningful stakeholder engagement to guide and inform enterprises’ implementation of the standards.
- We urge greater cross-reference between the chapters, perhaps in chapeaux, to highlight the interrelation between enterprises’ conduct and impacts in any one chapter for the other chapters.

Chapter I: Concepts and Principles

- Description of the scope of the standards: Add a NEW paragraph 2 asserting "These recommendations represent minimum standards to support enterprises' implementation of responsible business conduct. Enterprises can exceed these minimum standards and might be expected to do so in particular instances to be considered to conduct business responsibly." Such text would clarify that these standards represent a floor and not a ceiling for corporate conduct, and that enterprises may need to go further to act responsibly. This helps set an ambitious tone for the instrument.
- Clarifying business responsibility vis-à-vis state duty: Add to the end of the *current* paragraph 2 the following text: "Further, a State's failure either to enforce relevant domestic laws or to implement international human rights obligations, or the fact that it may act contrary to such laws or international obligations, does not diminish the expectation that enterprises align their activities with the *Guidelines* and respect human rights." This language is taken almost verbatim from current commentary 38 in the Human Rights chapter. Multinational enterprises (MNEs) regularly claim incorrectly that they do not have responsibility to respect human rights or align their conduct with the Guidelines where a state has established inferior laws or otherwise failed in its own duty to protect human rights. Unfortunately, National Contact Points (NCPs) regularly accept such incorrect claims as a valid ground for dismissing complaints in their initial assessments. Given the importance of this point and MNEs' and NCPs' persistent confusion over it, we believe the text should be placed here, where it is elevated in focus and more clearly applies both to MNEs' respect for human rights (using the framing of the UN Guiding Principles) and their alignment with other standards in the Guidelines.
- Definition of Multinational Enterprise: In paragraph 4, we suggest two amendments:
  - Modify the following proposed update as follows: "or, companies or other entities conducting ~~a significant amount of~~ business in more than one country." The proposed update is positive on the whole, ensuring businesses are covered whether or not they are established in more than one country. However, the vague qualifier "a significant amount of" business could significantly and unhelpfully narrow the scope and number of enterprises covered by the Guidelines and complaints, which would contradict governments' stated goal of ensuring the "widest possible observance of the Guidelines" (paragraph 6).
  - Insert a sentence explaining that the Guidelines may also apply to public or semi-public entities when acting as economic actors (e.g. development financial institutions, export credit agencies, public procurement authorities, intergovernmental organisations, etc.). This reflects the practice of many NCPs, and including such text would not necessarily cover all such entities, but simply remind them of their own responsibilities (and remind NCPs of the broad scope of the definition).

Chapter II: General Policies

- Responsible lobbying: In paragraphs 5, 17, and corresponding commentary 6 and/or a NEW commentary, expand explanation of the expectation that lobbying activities be transparent and align with respect for human rights and global environmental goals. Paragraphs 5 and 17 could be merged or placed next to each other, and commentary 6 could be expanded, or a new commentary added, to make these points clear. This is particularly important in relation to climate change-related lobbying. Non-science-based or misleading lobbying efforts that do not align with the goals of the Paris Agreement have been recognised by the UN Intergovernmental Panel on Climate Change as a serious barrier to achieving climate goals.

The UN OHCHR has also called for lobbying to be transparent and aligned with the responsibility to respect human rights, including related to climate change. The UN Framework Convention on Climate Change Race to Zero Criteria requires members to align lobbying with the goal of halving emissions by 2030. The UN High Level Expert Group on Net Zero Commitments states that enterprises should advocate for positive climate action and not against it, including detailed recommendations on disclosure and policy alignment (see Recommendation 6). Institutional investors have also called for lobbying to be aligned with the Paris Agreement. The Guidelines should reflect these international standards on transparency and alignment with human rights and climate goals in lobbying.

- Human Rights Defenders: In paragraph 10 and commentary 14, reframe the current proposed text on human rights defenders. New text should align with that in other international standards set by other national and multilateral bodies. To that end, the OECD should consult relevant international entities (UN Special Rapporteurs, the UN Working Group on Business and Human Rights, the OHCHR, and international finance institutions, among others) as well as experts in civil society to ensure coherence and consistency on the language. We urge the following amendments:
    - Delete (*everywhere* it appears in the Guidelines, Part I and II) the problematic term "undue pressure", which is not found in other international legal texts and suggests that some pressure is "due," which is incorrect and would set a dangerous precedent.
    - In place of the framing around refraining from undue pressure, call on enterprises to refrain from causing or contributing to adverse impacts to human rights defenders, and to use leverage to address such adverse impacts to which it is directly linked through business relationships. Several more specific terms could be used in place of "adverse impacts" or "pressure," including "reprisals," "retaliation," or "intimidation." Whichever term or combination of terms is used, they should be defined in commentary to clearly call on enterprises to:
        - Refrain from intimidating defenders, including communities, from speaking out about business activities. Often enterprises proactively intimidate communities before defenders have even taken steps to protest business activity. Such early and harmful intimidation needs to be discouraged by the Guidelines, but might, without clear inclusion in the definition, be thought missing from the terms "reprisal" and "retaliation," which both could be understood to discourage only business action *responding* to defenders.
        - Refrain from threatening or actually retaliating against defenders for raising concerns about business activity.
        - Use leverage to mitigate intimidation, threats, and actual retaliation to which the enterprise is directly linked, including through business relations with *government entities*, which are often directly or directly involved in adverse impacts against human rights defenders.
        - Take proactive steps to promote civic space/create safe space for defenders to raise concerns about business activity. Examples of proactive steps are mentioned in a sign-on letter to this public consultation that OECD Watch has supported, and include steps such as adopting a public zero tolerance policy towards retaliation, raising awareness of the policy and expected risk mitigation and risk response strategies among own employees and business relations including states, and ensuring active and ongoing meaningful engagement with defenders among other stakeholders to understand, legitimise, and address their concerns.

- Expand the text "monitor and report" to ensure it reflects the full scope of activity defenders may undertake in relation to the business activity.
- Delete the text that narrows the scope of prohibited pressure against individuals protesting *illegal* or *Guidelines-inconsistent* business activity: defenders protesting *any* business activity have a free speech right to do so.
- Include reference to racial, ethnic, and sex and gender-based discrimination and harassment in the list of examples of reprisal forms.
- Change the word "death" to "killing" in the list of examples of reprisal forms. Such wording is consistent with other international instruments.

- Remediation responsibilities: In paragraph 14, add text explaining enterprises' responsibility, even *when just directly linked to impacts*, to use leverage to influence the entity causing the adverse impact to remediate it (see slightly better example at Chapter VI.2.d, although that text should also clarify that the leverage relates specifically to the directly linked scenario). This clarification is necessary to ensure that enterprises are aware of their responsibility to do so, and to ensure consistency throughout the Guidelines text.
- Meaningful stakeholder engagement: In paragraph 16 and commentary 28, strengthen the explanation of what makes stakeholder engagement meaningful, including by calling for engagement to be undertaken in an ongoing and *safe* manner from *before* business decisions impacting rightsholders have been taken, and ensuring engagement involves *all* potentially impacted rightsholders, including opponents of the proposed business activity, as well as human rights defenders. Presently the term "rightsholder" does not appear in the text; it is critical that this word appear and that enterprises be expected to engage all (potentially) impacted rightsholders, including those that oppose the business activity. Often, businesses engage only those that favour the business activity (sometimes after having "bought" supporters and sought to divide communities). Emphasise meaningful stakeholder engagement as a central part of the steps of due diligence and critical to helping enterprises conduct business responsibly.
- Engagement in self-regulation and multistakeholder initiatives (MSIs): In commentary 12, delete the text "thereby contributing to sustainable development," because that framing implies that all self-regulation and MSIs will necessarily contribute to sustainable development, which is untrue, based on extensive scholarly and civil society analysis of the practical functioning of MSIs.
- Practical actions on due diligence: In commentary 15, delete the added text "Not every practical action mentioned in the Due Diligence Guidance will be appropriate for every situation." This text is clearly true and thus is unnecessary, whereas stating such an obvious point sets a tone of weakening the expectations for enterprises to undertake every *relevant* practical action to implement effective due diligence. The tone of this voluntary instrument should be to encourage MNEs to take all relevant practical actions to carry out effective due diligence, in alignment with the prioritisation criteria.
- Non-static nature of an MNE's relationship to harm: While it is positive that proposed updates seek to note that an enterprise's relationship to harm is not static, the text used is inadequate. Accordingly, in commentary 16, delete the phrase "as situations evolve and depending upon the degree to which due diligence and steps taken to address identified risks and impacts decrease the risk of the impacts occurring." This comes from the Due Diligence Guidance, but out of context, it is shorthand that does not accurately state how the shift in an enterprises' relationship to an adverse impact from directly linked to contributing may occur. We recommend using instead the three (non-exhaustive) factors for contribution laid out at pg. 70 of the Due Diligence Guidance to explain how an enterprise may come to be in

a position of contributing to an impact where it was once only directly linked to it through a business relationship:

- the extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring;
- the extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability;
- the degree to which any of the enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

- Downstream scope of due diligence: In commentary 16, clarify that due diligence covers impacts directly linked to an enterprise through its *downstream* business relationships by explicitly using the term "downstream" (as it is used in commentary 18). To avoid the incorrect implication that only downstream impacts from *first-tier contracts* should be addressed, replace the word "receive" with "use." Insert "whole" before "supply chain" or use the term "value chain" in place of supply chain in this paragraph to avoid the incorrect implication that only impacts in the enterprise's *own* supply chain should be considered, rather than in the broader product or service supply chain in which the enterprise sits. Risk prioritisation criteria/foreseeability should guide enterprises in understanding how to undertake due diligence over downstream impacts. In commentary 18, the mention of downstream impacts is good, but the text should clarify that prioritisation is about sequencing focus on impacts, not ignoring some impacts, and that all actual impacts must always be addressed.
- Application of due diligence to tax planning: Commentary 17: Make clear that the due diligence provisions of the Guidelines *do* apply to the Taxation chapter. It is increasingly obvious to policy makers that irresponsible corporate tax practices have negative implications on RBC issues such as human rights, environmental protection, and corruption. Critically, due diligence and corporate reporting initiatives are increasingly calling on enterprises to address adverse impacts of their tax practices. The Guidelines should align with such trends and ensure enterprises address the risk of irresponsible tax practices in their due diligence process (see further comments with respect to Chapter XI: Taxation).
- Responsible disengagement: Add *NEW* commentary between 25 and 26 explaining that enterprises should disengage responsibly *whenever* they disengage, for any reason, and clarifying what responsible disengagement should entail. Presently the language on responsible disengagement in paragraph 25 is technically limited to disengagement *only* resulting from inability to meaningfully influence a business relation's irresponsible conduct. In fact, disengagement for any reason should, like all other business decisions, be undertaken responsibly, following the steps of due diligence. New text is needed to ensure this important point is clear, particularly as irresponsible disengagement has been a concern in relation to Covid-19 and Russia's war of aggression in Ukraine.
- Marginalised and disadvantaged groups: In commentary 28, define a non-exhaustive list of individuals or groups that may experience marginalisation or vulnerability to include women, children, sexual and gender minorities, Indigenous Peoples, people subject to discrimination based on descent such as caste discrimination, migrants, and human rights defenders, among others. Ensure that whenever the terms "marginalised and vulnerable" appear, they consistently refer to individuals or groups "experiencing" these conditions, not individuals or groups that "are marginalised or disadvantaged."

Chapter III: Disclosure

- Scope of "risks": Clarify throughout Chapter III that "risks" refers to potential impacts on people and the environment, whether or not they pose risks to enterprises. In reflection of the purpose of the Guidelines, materiality assessments should be done in accordance with the principle of double materiality, which requires enterprises to consider not only how responsible business conduct issues may impact the enterprise, but also the impacts of the enterprise on people and the planet.
- Scope of disclosure: The scope of disclosure standards in Chapter III should be selectively broadened to reflect the nature of risk-based due diligence under the Guidelines.
  - In paragraph 1, insert the following bolded italicised text: "Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance, ***and impacts***. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines ***or aspects of the value chain*** or geographic areas." The inclusion of "impacts" in the scope of "all material matters" accords with the scope and purpose of the Guidelines. Further, the inclusion of "aspects of the value chain" is important as information on an enterprise's value chain may be material under both senses of double materiality.
  - In paragraphs 2(g) and 3(f), and commentary 29 (where it relates to "other stakeholders"), insert text on "..., and other stakeholders affected by the enterprise's operations and value chains." This is necessary to ensure that an enterprise's risk-based due diligence is not limited to the first tier of its business relationships, but goes deeper into other aspects of its value chain.
  - The additions to paragraph 3 are strong, but we recommend further strengthening this paragraph through the following text:
    - In paragraph 3(d), it is important to maintain the current text on "the enterprise's provision of or co-operation in any remediation." Insert also the following bolded italicized text: "…including where possible estimated timelines and benchmarks for improvement and their outcomes, including ***progress against targets and their outcomes and*** the enterprise's provision of or co-operation in any remediation;".
    - Insert a NEW paragraph 3(h): "information on the enterprise's business model and strategy, including how responsible business conduct matters have been considered and the impact of the enterprise's business model and strategy on responsible business conduct issues." Such information is necessary to enable all stakeholders to understand the RBC measures taken by an enterprise, including any due diligence conducted by the enterprise.
  - In commentary 29, insert the following bolded italicised text: "This set of disclosure recommendations calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company ***and any other information regarding responsible business conduct issues included in the company's public disclosures***." The new text is limited to non-confidential, public information previously disclosed by the enterprise, and therefore is in our view non-controversial. But the inclusion of this new text would greatly increase an enterprise's transparency and the accessibility of its information in relation to any responsible business conduct measures taken by the enterprise.
  - In commentary 30:
    - Amend the first sentences with the following bolded italicised text: "The Guidelines include a second set of disclosure recommendations on

responsible business conduct information including the enterprise's actual or potential adverse impacts on people, the environment and society, and related due diligence processes*. **Disclosures of RBC information should include information necessary for an understanding of the enterprise's impacts on people, the environment and society throughout the value chain, and should not be confined to disclosures on RBC issues which may give rise to financial risks to the enterprise or are material to an investor's decision making. Determining what is material in terms of impacts on people, the environment and society should take into account the views of a broader set of stakeholders, including, workers, worker representatives, local communities, other people affected by the enterprise's products and services,*** and civil society, among others." In reflection of the Guidelines, disclosures should go beyond impacts on the enterprise and extend to potential and actual adverse impacts to people and the environment. And stakeholder engagement should be emphasized.

- Insert the following bolded italicised text into the final sentence: "For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners***, or others with whom the enterprise has a business relationship***". This addition is necessary to reflect the agreed scope of due diligence under the Guidelines.

- In commentary 31:
  - To ensure the broadest application of the standards in Chapter III, insert a sentence on the relevance of paragraphs 2 and 3 to a broad array of entities.
  - Insert the following bolded italicised text: "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 ***short, medium and long-term*** value, investment or voting decisions ***or is necessary for an understanding of the enterprise's impacts on people, the environment and society.***" An enterprise's value should not be assessed only in the short-term, as is often the case by many enterprises, but also in the medium- and long-term. Doing so is important to ensure that short-term profits are not prioritised at the expense of more sustainable long-term investments.
- In commentary 35, insert the bolded italicised text: "In the context of disclosure, due diligence processes, as outlined in paragraph 3, can be a useful means by which enterprises can ensure they are effectively identifying and communicating relevant RBC information in a consistent and credible manner, including information which may be material ***in terms of the company's financial position and performance***."

- Reported financial information: In paragraph 4, to ensure that assurances cover all financially-material information related to responsible business conduct, insert the bolded italicised text: "An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that all reported financial information***, including in relation to responsible business conduct issues,*** fairly represents the financial position and performance of the enterprise in all material respects."

Chapter IV: Human Rights

- Focus on stakeholder engagement: Paragraph 5 and commentary 45 should cross-reference the steps of due diligence laid out in Chapter II including commentary 15, to ensure that the

chapters are in synch. Commentary 45 should identify stakeholder engagement as a critical means of identifying potential adverse impacts, and of identifying intersecting risks individuals may face as a result of different aspects of their identity and/or their experience of marginalisation or vulnerability.

- How to respect all human rights: In paragraphs 40 and 45, language should be tweaked to ensure coverage of the following topics: that enterprises should respect human rights; engage meaningfully with all relevant stakeholders, including rightsholders and human rights defenders, and including as a part of due diligence; remove barriers to engagement especially for individuals or groups experiencing marginalisation or vulnerability (as defined in Chapter II; see above in our submission); and take into account how individuals may experience impacts differently as a result of intersecting aspects of their identity. These topics are not yet succinctly and fully covered in the Guidelines as a whole, let alone in these commentary on human rights.
- Interlinkage between human rights and other RBC issues: As indicated in the "General Comments" section of this submission, adverse impacts under any one chapter of the Guidelines are usually related to adverse impacts in other chapters. In particular, most irresponsible business conduct adversely impacts human rights, whether directly or indirectly, immediately or over time. Chapter IV's commentary 41 should be amended to state explicitly that enterprises should identify and address adverse human rights impacts associated with/related to/arising from their other RBC impacts. In particular, the commentary should call on enterprises to address the human rights impacts associated with climate change, as well as the human rights impacts associated with other environmental impacts, corruption, digitalization, and irresponsible tax practices.
- Rights of Indigenous Peoples: Commentary 40 should be modified to clarify that enterprises should respect human rights, including those elaborated in UN instruments or other guidance on the rights of numerous individuals and groups, including national or ethnic, religious and linguistic minorities; women; children; sexual and gender minorities; persons with disabilities; migrant workers and their families; Indigenous Peoples, and others. The paragraph should note that some individuals or groups possess *unique* rights, such as self-identified Indigenous Peoples, whose particular rights such as to free prior and informed consent, self-determination, and culture (all of which should be enumerated explicitly in the commentary) have been recognised in a body of international jurisprudence, including UNDRIP.
- Gender and sexual-based discrimination: In addition to references to women's rights, in commentary 40, the text should note UN resolutions on protection against violence and discrimination based on sexual orientation and gender identity more broadly

Chapter V: Employment and Industrial Relations

OECD Watch is supporting the submission of the Trade Union Advisory Committee on this chapter.

Chapter VI: Environment

- Chapeau: Delete the text "Enterprises can play a key role in advancing sustainable development," because this phrase puts the focus on development rather than avoidance of harm and makes the role of enterprises sound optional.
- Due diligence focus: The chapeau and paragraphs 1-5 need some reorganisation and rephrasing to ensure clear and correct alignment with the six steps of due diligence.
  - The term "environmental management" should be replaced throughout the whole chapter with the more understandable term "due diligence," particularly in

paragraph 1, where "As part of their management" should be replaced with "as part of their due diligence to prevent and address adverse impacts."
    - In several places in paragraphs 2-5, several of the steps of due diligence are mentioned, but out of order, sometimes more than once, and in a confusing manner. Even more concerning, the suggested actions are sometimes lower than what is expected under current due diligence understanding. For example, paragraph 3 suggests that companies should only "seek to" address environment-related impacts on workers and communities, but due diligence expects them *actually* to address and remediate (not just seek to) impacts they cause or contribute to. OECD Watch urges that these paragraphs be rephrased to more simply and cleanly follow the steps of due diligence.
- Link between environmental and human rights impacts: The chapeau and paragraphs 1 and 3, and commentary between 60 and 63, should explicitly highlight the correlation between adverse environmental impacts and adverse human rights impacts.
    - Paragraph 1 or associated commentary should call for enterprises to integrate their environmental due diligence with their human rights due diligence in order efficiently and completely to identify and address all human rights impacts that may be associated with their actual or potential adverse environmental impacts, including climate impacts.
    - The phrase "environmental, health and safety impacts" should be replaced with "environmental and associated human rights impacts" wherever it appears. The current use of "environmental, *health and safety* impacts" could be read to exclude the application of the UN Guiding Principles to environmental including climate impacts, thereby denying the existence of human rights responsibilities in respect of environmental, including climate, impacts. Such an approach is out of synch with international law, including guidance by the UN Working Group on Business and Human Rights. Although human rights are addressed in a separate chapter, enterprises commonly disregard the human rights impacts of their environmental impacts. Because the Guidelines are meant practically to guide companies towards better conduct, clarifying the close relationship between environmental impacts and (potentially all) human rights is critical to helping MNEs address those human rights impacts.
        - Commentary should elaborate an illustrative but non-exhaustive list of the range of human rights commonly impacted in connection with adverse environmental impacts, to include rights to a clean, healthy and sustainable environment, to life and security, freedom of movement, ownership of property, health and wellbeing (food, housing, etc.), education, and land, among others.
        - Commentary should particularly explain that many if not all human rights can be affected by an enterprise's impacts on the climate.
- Just Transition: Paragraph 3 and commentary 63 need rephrasing. As mentioned, in paragraph 3, enterprises should not just "seek to address" impacts they have caused or contributed to. Further, the mention of "just transition" is made without reference or logic. A paragraph calling on MNEs to contribute to a just transition is essential, and could read: "Enterprises should contribute to an international just transition by shifting away from fossil fuels and carbon-intensive sources of energy toward sustainable sources of energy. A just transition should be seen as a form of responsible disengagement from fossil fuels and thereby entail:

  - addressing actual adverse impacts that were incurred during the period of fossil fuel development or use;
  - addressing actual and potential adverse impacts to workers and communities associated with the company's transition to sustainable sources of energy;
  - addressing (particularly by avoiding) actual and potential adverse impacts arising in connection with the development or use of sustainable sources of energy;
  - working towards ensuring equitable access to affordable, reliable, and renewable energy especially for impacted communities; and
  - ensuring their business activities or decisions do not contribute to delaying, undermining, or halting a just transition."
- Access to information and engagement: The current formulation of paragraph 4 seems to imply that cost and administrative burden, business confidentiality, and protection of intellectual property rights take precedence over communities' and workers' right to information and public participation in environmental decision-making processes regarding activities and products that may affect their health and wellbeing. The text should be better aligned with the Arhus Convention and the Escazu Agreement, and clarify that the due diligence step of communication must (like all steps of due diligence) be adequately resourced.
  - In relation, commentary 62 and 67 should make clear that meaningful stakeholder engagement is essential to correct identification and addressing of adverse impacts.
- Resource efficiency: It is positive that paragraph 5(c) and commentary 70 reference sustainable consumption, but they should be amended to explain that resource efficiency involves reduction of consumption, reuse, and recycle of material (reduce, reuse, recycle). 5(c) should be amended with the following bolded italicised text: "advancing sustainable ***design,*** production and consumption patterns ~~notably~~ including by ***avoiding use of resources that are scarce or typically have serious adverse environmental and human rights impacts***, pursuing resource efficiency by ***reducing use of, reusing, and recycling materials***, and contributing to a more circular economy among other approaches."
- Definition of environmental impact: Paragraph 5 and commentary 62 would limit the definition of what can be considered an environmental impact to something that is "known or reasonably foreseeable" (even though there can be unforeseen impacts/accidents, and such a limitation does not exist in Chapter IV for human rights impacts) and something that has a "significant deleterious effect" on an ecosystem (it is not clear what "significant" and "deleterious" mean in this context, and again no such qualifiers exist for other chapters of the Guidelines). Paragraph 5 should instead read: "Assess, and address in decision-making, the potential environmental and associated human rights impacts of their…". Commentary 62 should be edited as follows: "… For the purposes of the Guidelines adverse environmental impacts are ~~known or reasonably foreseeable~~ changes in the physical environment or biota, resulting from an enterprise's activities, which have ~~significant deleterious~~ ***adverse*** effects on the composition, resilience, or productivity of natural and managed ecosystems." A key point is that while an enterprise may not be able to include in its due diligence an impact that is unforeseeable, that impact is still an environmental impact that it has some level of responsibility to address (if the impact is at least directly linked to the enterprise through business relationships).
- Cost qualifiers: In paragraph 6, delete the mention of "cost-effective": under standard due diligence framing, measures taken should be those adequate to address the harms, regardless of their cost or cost-effectiveness. This may need to be corrected elsewhere in the chapter.

- Shared responsibility: In commentary 60, the first two sentences should be modified as follows: "***Business is responsible for playing a critical role in achieving global environmental objectives.*** The Guidelines set out expectations on how enterprises should ***address*** actual and potential adverse environmental and associated human rights impacts."
  - The first change is necessary to emphasise the *business* role, which is appropriately the focus in this set of standards for business. Mention of "a" role suggests that other roles are fulfilled by other actors, whereas mentioning those other actors is not necessary and could unhelpfully downplay the responsibility of business. We note that the current framing could support resistance to due diligence responsibility over scope 3 climate change emissions.
  - The second change is necessary to align with due diligence expectations that enterprises should address, not just manage, adverse impacts.
- Land rights: It is critical that land rights be addressed in a paragraph and NEW commentary focused on the topic. Numerous other international standards set out explicit expectations on land, including in particular the land-related rights of Indigenous Peoples. At present the proposed text – an oblique reference ("Environmental management can be linked with.."), in commentary only, to what the Voluntary Guidelines on the Responsible Governance of Tenure say about land rights and MNEs, with no actual statement that MNEs "should" respect land rights by taking certain actions – will not have meaningful impact in improving corporate conduct or victims' ability to file claims over land rights violations. Significant changes are needed to build upon the basic start provided:
  - The chapeau list of impacts or core paragraphs (most likely between paragraphs 2 and 4), should call for enterprises to refrain from dispossessing legitimate tenure right holders in alignment with due diligence framing and with the expectations for enterprises in the VGGTs. The paragraph should specifically call on MNEs to respect the unique internationally recognised right of Indigenous Peoples to free prior and informed consent.
  - A new commentary should be added between commentaries 60 and 63 to focus solely and explicitly on expectations and guidance for MNEs on respecting land rights. The commentary should explain that land security underpins the realisation of numerous human rights, and therefore that respect for land rights, in particular the internationally recognised rights of Indigenous Peoples, is an essential precursor to respecting other human rights. The new commentary should define "legitimate tenure holders" and elaborate on the vulnerability of and particular need for enterprises to identify and address potential or actual impacts to the legitimate tenure rights of traditional, customary and communal tenure holders as well as women. Common adverse impacts, including land grabbing (including for conservation and carbon trading purposes) should be identified. The commentary should also highlight the particular vulnerability of human rights defenders that are defending land rights and the environment from adverse business impacts.
  - Another commentary should note (with reference to Chapter IV) that Indigenous Peoples have unique internationally recognised rights related to land and territories, including their rights to free prior and informed consent (FPIC), self-determination, and culture (all three rights should be named). The commentary should call for enterprises to respect self-identified Indigenous Peoples' internationally recognised rights, including when those rights could be impacted in connection with the enterprise's adverse environmental impacts. With respect to Indigenous Peoples' right to FPIC, the text should, among other things, make clear that enterprises should not attempt to secure FPIC through undertaking consultations to that effect

themselves, but rather have a responsibility to ensure the *state* has secured FPIC by following the particular protocols and process desired by the particular group(s) potentially impacted by the business activity. Where the state has failed to implement that duty correctly or fully, the enterprise should not begin operations and should encourage the state to correct or complete the process. If consent is not given by the impacted Indigenous People(s), the enterprise should respect their right to FPIC by refraining from the intended business activity.

- Responsibility of enterprises for impacts: In commentary 62, the last sentence is incorrect and must be changed: "In such situations, whether an enterprise is causing, contributing to or directly linked to an adverse environmental impact may be assessed on the basis of the quality of its environmental management practices, including its due diligence in addition to its compliance with regulatory standards." This sentence wrongly suggests that an enterprise may not even be directly linked to an impact if it has conducted good quality due diligence. In fact, direct linkage exists simply on the basis of business relations. Once direct linkage to an impact is established, then, whether or not an enterprise is *contributing* to an impact, versus just directly linked to it, may only *partially* be assessed according to *the degree to which any of its activities* (including in connection with due diligence) *actually mitigated the impact or decreased the risk of the impact occurring* (see Due Diligence Guidance pg. 70). We urge that the sentence be reframed in accordance with the analysis here. Furthermore, it is unnecessary for the penultimate sentence to note that it is complex to assess responsibility for environmental impacts. Assessing responsibility is complex for all kinds of impacts (child labour, living wage, land dispossession, etc.), not just environmental impacts. Stating this is not good, because stating it tends to suggest that enterprises be given leniency (including by NCPs in complaints) when they claim lower level of responsibility for impacts. Instead, the text should simply lay out how the three factors for contribution can be useful in assessing whether the enterprise is contributing, rather than merely directly linked to, the impact.
- Carbon offsets: While we appreciate the new reference to a carbon mitigation hierarchy in commentary 75, offsets may not actually have any positive benefit or can even increase carbon emissions. With that in mind, we urge adding text to make clear that enterprises using this as a last resort must do heightened due diligence to ensure the strategy is actually reducing emissions.
- Scope 3 emissions: In commentary 75, scope 3 emissions are often the largest portion of emissions, and "hard to measure" scope 3 emissions cannot simply be exempt from transition plans. In fact, due diligence already provides a well-understood framework for managing scope 3 emissions. Therefore, the following sentence should be edited as follows: "These should be, based on best available science including as assessed by IPCC, and take into account scope 1, 2, and~~, to the extent possible based on best available information, scope~~ 3 GHG emissions."
- Transition plans: Paragraph 75 should include a reference to transition plans: "including plans to align finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development in line with the goals of the Paris Agreement." Transition plans should take scope 3 emissions into account (and implement available decarbonisation levers for them) whether or not they can be precisely measured.
- Conservation: At present, commentary 78 simply calls for enterprises to avoid adverse impacts in particular designated areas. Enterprises are already expected to do this, so this adds nothing. We recommend the paragraph be modified to call for heightened due diligence in these areas because of the heightened risk of severe impact. Critically, it is also important that this due diligence cover heightened risk of severe impact to *people*, in

particular Indigenous Peoples and other traditional communities with interests in the designated areas.

- Climate adaption: Commentaries 74 and 77 should call more explicitly for enterprises to refrain from activities or product development that will hinder *communities' own ability* to adapt to climate change**.** Adaption is a global necessity at this stage, and enterprises whose mode or product of business challenges communities' own adaptability must be guided towards changing their practices.

Chapter VII: Combatting Bribery, Bribe Solicitation, and Extortion

- Link between corruption and other RBC issues: Enterprises are accustomed to considering corruption in their operations or value chains as a financial and legal risk, not as a risk to rightsholders. We appreciate the additions in commentary 74 regarding the impacts of corruption, including on groups experiencing marginalisation or vulnerability. Nevertheless, we believe the chapter should draw out the interrelatedness of corruption with human rights violations, environmental degradation, and other harms. The chapeau may be an appropriate place to do this.
- Transparency about corruption management systems: In paragraph 5, enterprises should be called on to be transparent not only about their "management systems and internal controls" for corruption, but also the effectiveness or outcomes of these.
- Scope and applicability of corruption training: To ensure effectiveness, the following portion of paragraph 6 should be amended with the bolded italicised text following: "…among employees and persons or entities linked by business relationships, including ***suppliers, sub-contractors, and subsidiaries***, through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures ***that take into account applicable language, cultural and technological barriers.***"
- Safe whistleblowing: Commentary 75 should be strengthened to call on enterprises to ensure employees and workers *throughout an enterprise's value chain* are *empowered* to report corruption to the enterprise through *safe* mechanisms.

Chapter VIII: Consumer Interests

- Inclusion of 'end-users': This chapter should be broadened in its definitions and scope to cover "end-users" in addition to "consumers." Given the changing nature of the economy, users of a free tech platform may not be consumers in the traditional/technical sense and thus may not be captured by this chapter as currently drafted. However responsible business conduct entails taking into account these users' interests and avoiding adverse impacts to them. Accordingly, insert into the chapeau the following bolded italicised text: "When dealing with consumers ***including end-users,***…".
- Privacy principles: Paragraph 6 currently emphasises the requirements of fairness, lawfulness and transparency, but should be expanded to incorporate cardinal principles relating to the processing of personal data, namely, data minimisation, purpose limitation, and storage limitation and the right to access tier personal data (as laid out in the EU's General Data Protection Regulation). Incorporation of these principles will ensure consumer interests are at the forefront of processing of personal data.
- Consumer interest in social impacts: In commentary 85, insert the bolded italicised text: "This would include information on the financial ***and social*** risks associated with products, where relevant." Enterprises are increasingly responding to growing consumer interest in social, as well as environmental, impacts. This insertion ensures the Guidelines keep pace with current environmental and social concerns, and also recognises the interconnection between environmental and social impacts.

- Consumer involvement in design of grievance mechanisms: In commentary 87, insert text highlighting the importance of including consumers, rightsholders and other stakeholders in the design and development of grievance mechanisms, in addition to retaining the current text on making consumers aware of the existence and benefits of such mechanisms. Involving stakeholders from the design phase onwards helps ensure the effectiveness of such mechanisms.
- Consumer protection: Commentary 88, as well as commentary in Chapter IX as appropriate, should be expanded to explain, including using examples from new technologies, the new text in Chapter VIII paragraph 4 on avoiding practices that subvert consumer choice in ways that harm consumers or competition.

Chapter IX: Science, Technology and Innovation

- Due diligence focus: The chapter currently focuses too narrowly on promoting the transfer of technology and innovation. This narrow focus clashes with the newly added (and necessary) text on due diligence to identify and address adverse impacts related to digitalisation. We urge elevating the focus on due diligence by:
    - Significantly shortening the text on technology and innovation transfer. Or, at a minimum, underscoring in commentary 97 that the chapter's emphasis on encouraging MNEs to share technological know-how and promote technological and scientific innovation *should be understood as balanced with* an equal emphasis on due diligence to identify and address adverse RBC impacts caused, contributed to, or directly linked to their engagement with technology.
    - Emphasizing in the chapeau and/or paragraph 1 as well as commentary 97 that the development and use of technology can result in diverse adverse impacts to people, societies, and the planet (not only to the rights to privacy and intellectual property protection, which currently dominate the text).
    - Providing several illustrative and non-exhaustive examples of the range of adverse environmental, social, and human rights impacts that can result from the various ways enterprises engage with technology (as creators, sellers, users, licensors, etc.), and acknowledge that impacts evolve quickly - as do technologies. Enterprises would benefit from being reminded of the diverse range of impacts they may cause, contribute to, or be linked to and should address in due diligence – from the rights of workers mining or making the materials for technological hardware, to the environmental harms of increased CO2 emissions and electricity use of digital technologies, to violations of free speech or life through misuse of certain technologies by repressive regimes, to the impact on democratic institutions of certain platform technologies, to the cognitive or decisional autonomy impacts of newer forms of artificial intelligence.
- Data handling (personal and non-personal): Paragraph 2 and commentary 98 should ensure proper protection and control over personal data, with language aligning with relevant national, regional, and international legal instruments and standards on data protection. Commentary should elaborate on the diverse adverse human rights impacts that can result from irresponsible use of data (including through targeted advertisements and nudging), broadly. The text should also call for the benefits of large-scale data collection to be passed on to the 'source communities' or generators of data in some manner or form, as can be extrapolated from the Nagoya Protocol under the Convention on Biodiversity.
- Downstream due diligence: Commentary 100 should include reference to downstream adverse impacts associated with misuse by *government entities*, which are often involved in such impacts.

- At-risk populations: Commentary 102 should be amended in a couple ways. The reference to children and youth should be merged into one reference to children, as youth are not as clearly defined legally. Further, the commentary should reference other rightsholder groups that may be particularly challenged in benefiting from technology developments or may be more at risk of negative impacts from technology.

Chapter X: Competition

- Competition law and collaboration to address adverse impacts: The new text in commentary 95 and the framing of new commentary 100 could be read to discourage enterprises from participating in collaborative efforts to address potential or actual social and environmental impacts. This is a problem because many such issues are sector-wide and require joint effort to be resolved.
  - Commentary 95 should be amended to state explicitly that enterprises should consider the intent of applicable laws and regulations (namely, to protect a fair market) and not use such laws as an excuse to avoid collaborative efforts to address systemic adverse RBC impacts.
  - Commentary 100 should be restructured to emphasise encouraging collaboration on RBC within the constraints of competition law as follows: "While enterprises and the collaborative initiatives in which they are involved should take proactive steps to understand competition law issues in their jurisdiction and avoid activities which could represent a breach of competition law, in many cases enterprises can collaborate on RBC initiatives and due diligence efforts without breaching competition law."
- Impacts on labour rights: Commentary 101 should be further broadened to acknowledge threats to the labour market beyond wage-fixing and no-poach or no-hire agreements. For example, enterprises can reduce overall job options by monopolising the market, thereby weakening workers' ability to advocate for stronger workplace policies (e.g. safety) and choose another job.
- Promotion of competition in the digital economy: There is growing awareness of the importance of competition policy for the digital economy. Increased law making and enforcement in this arena is evidenced by, for example, the introduction of ex-ante competition regimes aiming to identify and prevent anti-competitive practices before they arise, particularly in the digital economy, and more rigorous merger control rules designed to prevent excessive consolidation and acquisitions seeking to neutralise early-stage competitors. Yet gaps remain allowing anti-competitive behaviour to occur, particularly in the digital sphere, yielding adverse impacts on local economies and autonomy, and a range of human rights harms. While the legal and regulatory regime is being developed, we suggest adding language asserting that enterprises should structure their operations and activities to support and enable competition in the global, including digital, economy, including where relevant law and regulation are still in formation.

Chapter XI: Taxation

- Due diligence: As underscored in our comment under Chapter II, we urge inclusion of due diligence language in Chapter XI (chapeau and/or paragraphs) calling on enterprises to undertake due diligence to address the adverse impacts to people and the planet of their aggressive tax planning practices. Commentary should explain that tax evasion and tax avoidance deprive states of the vital resources they need to meet their human rights obligations and that consequently, corporate engagement in such aggressive tax planning is irresponsible and contributes to such adverse impacts.

- Tax avoidance: Paragraph 1 and commentary 102 should be amended to call explicitly on enterprises to minimise tax avoidance through aggressive tax planning and base erosion and profit shifting. Paragraph 1 should call on enterprises to avoid exploiting gaps between the spirit and letter of the laws in home, host, and tax haven jurisdictions with the purpose of reducing their tax liability (i.e. avoiding taxes) in the countries in which their activities take place. The text should call on enterprises to avoid structuring transactions so as to avoid tax liability consistent with the underlying economic consequences of the transaction, and avoid using shell or letterbox companies for tax minimisation purposes. The text should elaborate on the meaning of transactions whose tax results are inconsistent with the underlying economic consequences of the transaction. Critically, the text should *call out* such transactions, and/or the exploitation of gaps between the letter and spirit of applicable tax laws, as irresponsible where it unduly seeks to minimise the enterprise's tax liability. Reference to UN Resolution 77/244 (Promotion of inclusive and effective international tax cooperation) may be relevant.
- Link between tax avoidance and other RBC impacts: Paragraph 2 and commentary 104 should be updated with text calling on enterprises to ensure their tax risk management strategies take into account risks to rightsholders, not only the enterprise, as well as the duty of governments in whose countries the enterprise's activities take place to provide essential public services and ensure appropriate infrastructure for economic development. Commentary on tax governance should propose that company's boards consider the UN Sustainable Development Goals and the ability of countries to increase their domestic resource mobilisation in planning the enterprise's tax practices. Commentary should also note that irresponsible or unethical tax planning especially harms those most vulnerable in society including the poor, children, women, the aged, etc.
- Transparency of tax practices: Commentary 105 should include text seeking transparency of information relevant to identify whether the enterprise's tax risk management strategy is meeting the expectations laid out in paragraph 2 and commentary 104, and whether the enterprise is engaging in transactions whose tax results are inconsistent with the underlying economic consequences of the transaction (such as amount of tax paid in which jurisdictions; existence and location of letter box companies, use of internal loans, etc.). Transparency should also be sufficient to enable evaluation of the potential adverse RBC impacts linked to the enterprise's tax practices.

Procedures:

- Admissibility criteria: In Part II, pages 71-72, the admissibility criteria should be redrafted to make them more understandable for notifiers and implementable by NCPs. Critically, the admissibility criteria should set a low threshold to accepting plausible complaints. The NCP's analysis at the initial assessment stage should assess simple *eligibility* of the claim, not its merits or whether the claim "warrants" consideration. The criteria should ask NCPs whether: 1) the allegations against the company are plausible and covered by the chapters of the Guidelines, 2) the complainant has an interest in the matter, and 3) the company is an MNE under the Guidelines and subject to the complaint handling jurisdiction of that particular NCP.
  - The qualifiers added in the consultation draft at commentary 32, on "whether the issues raised are of **significant relevance** to the implementation of the Guidelines and appear plausible… beyond **the submitter's mere assertion and speculation**" should be removed; they are clearly aimed at lowering accessibility to complaints. Plausibility is already a clear threshold that submitters will need to meet: they will need to show enough facts to convince an NCP that it is plausible the company has

not met the Guidelines in the specific instance. Additional demands for "significant relevance" (this is undefined) to the Guidelines, and for material beyond assertions and speculation (which may be key to building a plausible claim, particularly given lack of disclosure by enterprises), would not bar frivolous claims, as may be the goal, but bar valid claims that could meaningfully be explored and addressed during good offices.

- Voluntary nature of the process: Commentary 10(f) and 24 repeatedly state that participation in specific instances is "voluntary." These references should be deleted. Stating this is unnecessary and sends the wrong message to enterprises and adhering governments, which should take steps to encourage business strongly to participate in the process and implement agreements reached and recommendations from NCPs.
- Transparency: Transparency is a core effectiveness criterium for NCPs and a vital element of levelling the imbalance between the parties in relative power and incentive to engage in the voluntary process. In Part II at pages 65, 66, 68, 69, and especially 74-75, language should be reframed to consistently prioritise transparency over confidentiality. Presently confidentiality is established as the rule, with numerous exceptions for transparency. Instead, transparency should be established as the rule, with limited exceptions for confidentiality. This would not represent a major change in substance, but a critical change in tone and emphasis – and therefore in messaging to enterprises involved in complaints.
    - Ensuring transparency is maintained in NCPs' rules of procedure: Critically, in pages 74-75, the text must be reframed to (among other things) state not only that "the Procedures do not prevent the submitter from…. (etc. etc.)," but also that *NCPs' own rules of procedure* **may not prevent** these actions, either. Otherwise, if the improvements on transparency made in the consultation draft are not reflected in NCPs rules of procedure, these gains are irrelevant.
- Follow-up: Follow-up monitoring is critical to ensuring enterprises carry out agreements reached and recommendations given. This helps build legitimacy of the NCP mechanism and trust and confidence of stakeholders and users, and helps ensure enterprises align with the Guidelines in future. While the consultation draft includes strengthened language on follow-up, the message is out of sync across various sections, and the changes are still insufficient.
    - While commentary 45 encourages follow-up, the core paragraph C5 describes follow-up as occurring at the discretion of NCPs. While still allowing discretion, the core text should specify that NCPs should *by default* undertake follow-up unless not warranted by the facts of a particular case.
    - Commentary 50 should be amended to clarify that follow-up monitoring will occur until the issues have been addressed and any agreement between the parties, including for provision of remedy, and recommendations from the NCP have been fully implemented.
    - Critically, the Procedural Guidance should make clear in commentary 45 at page 70 that the NCP's follow-up statement(s) *should evaluate (determine)* whether the enterprise (or, where applicable, the parties) have implemented agreements reached and recommendations given.
- Determinations: In Part II, paragraph C4(b) at page 59 and commentary 43 at page 70 should be amended to call on NCPs ("should" or "is encouraged") to issue determinations on whether enterprises have met the Guidelines' standards. Like transparency, determinations are critical to balancing the power imbalance between parties and ensuring meaningful outcomes in complaints, including both some form of remedy for notifiers as well as clarity on the meaning of the Guidelines and better implementation in future by enterprises. Since many NCPs already routinely issue such determinations, it is vital that the text propose them

at least as an option ("may") for all NCPs. The text should not encourage determinations 'where allowed by national law,' but rather 'unless prohibited by national law.'
- Consequences: In Part II, paragraph C4(b) at page 59 and commentary 43 at page 70 or a new commentary, text should be added encouraging ("should" or "is encouraged to") or, at a minimum, permitting ("may") NCPs to request their government to apply consequences against companies that fail to engage in good faith in the complaint process, including by failing to implement recommendations given or agreements reached. Some NCPs already do this; there is no reason it should be not highlighted minimally as an option ("may") for all NCPs.
- Role of NCPs/outcomes of complaints: In Part II at page 66, the text should explain with respect to the outcome of complaints and the role of NCPs that although NCPs lack (unless otherwise authorised by domestic law) the ability to provide remedy or require remediation by enterprises, the Procedures allow them to issue determinations on enterprises' alignment with the Guidelines, encourage enterprises to support remediation where expected under the Guidelines, follow-up on implementation by enterprises, and request consequences for enterprises that fail to engage in good faith in the process.
- Limitations on institutional arrangements: Governments require some flexibility to establish an NCP suitable to their particular context. However, to ensure effectiveness (capacity, expertise) and accountability of NCPs, the Procedural Guidance at A2 should prevent or discourage governments from appointing a single government official as the NCP, and locating the NCP in an export promotion agency. Further, if the NCP is not a multi-stakeholder body or fully independent from government, the Procedural Guidance should require the NCP to establish an independent oversight body or advisory body involving diverse stakeholders, currently identified only as optional.
- Core effectiveness criteria: In direct submissions to the OECD, OECD Watch has consistently called for revisions to clarify the descriptions of the meaning of several core effectiveness criteria, especially on transparency and accountability. We reiterate our previous calls here.
- Professional mediator: In C7 and commentary 37 at page 73, the text should call on NCPs to ensure ("should") engagement of an external professionally trained mediator to undertake the mediation. Use of professional independent mediators helps secure stakeholder trust in the NCP, ensure the impartiality of the process, and rectify power imbalances between parties. Use of such mediators also ensures that the person handling the mediation is not subsequently tasked with making determinations on the merits of the claims, which poses a conflict.

About OECD Watch

OECD Watch is a global network of civil society organisations with over 130 members from more than 50 countries. Membership consists of a diverse range of civil society organisations – from human rights to environmental and development organisations, from grassroots groups to large, international NGOs – bound together by their commitment to ensuring that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe. OECD Watch is recognised as the representative of civil society to the OECD Investment Committee. Founded in 2003, OECD Watch helps communities and civil society understand and use the Guidelines. OECD Watch also advises the OECD and adhering governments on how to improve uptake of the Guidelines by MNEs and strengthen implementation by NCPs.

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