

Main contents and implications of the 2023 revision of the OECD Guidelines for Multinational Enterprises*

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Abstract

Purpose – This study aims to provide the main contents of the revision of the 2023 OECD Guidelines for Multinational Enterprises and suggest implications for the Korean government and multinational enterprises.

Design/methodology/approach – Following the brief history of the revision of OECD Guidelines for Multinational Enterprises, this study reviews and evaluates major substantive and procedural revisions of the 2023 OECD Guidelines, and then suggests countermeasures for Korean government and businesses.

Findings – The most significant substantive change of the 2023 revision is that expectations for environmental due diligence and disclosure obligations, including climate change and biodiversity, for multinational enterprises have been expanded and strengthened. Regarding procedural changes, the biggest change is the introduction of a basis rule for the National Contact Points for Responsible Business Conduct (NCPs for RBC) to judge each issue and a rule that the final statement must include follow-up details and deadlines, which is expected to strengthen the effectiveness of the NCP dispute resolution mechanism.

Originality/value – This study is the first academic paper to introduce major substantive and procedural revisions to the 2023 OECD Guidelines for Multinational Enterprises in Korea. This study also provides implications for the Korean government and companies following the 2023 revised OECD Guidelines for Multinational Enterprises as follows. First, the Korean government must establish a public-private partnership to closely communicate to prevent Korean companies from being harmed by failing to meet strengthening international Environment, Social and Governance (ESG) standards. In addition, Korean government should actively participate in ESG-related international forums, including the OECD, and strive to reflect the needs and interests of Korean companies. Second, the Korean NCP should strengthen its activities to prevent potential damage by expanding education and promotions for Korean businesses on related overseas legislative trends and NCP dispute case studies so that Korean companies can effectively deal with the strengthened ESG standards. Third, Korean multinational enterprises should preemptively establish an advanced ESG management system to seize new opportunities in the global supply chain previously concentrated in China and India in the process of reorganizing global supply chains according to the trend of strengthening ESG standards and the US value alliance strategy.

Keywords Responsible business conduct, 2023 OECD Guidelines for Multinational Enterprises, National contact point, NCP grievance mechanism

Paper type Literature review

1. Introduction

On January 21, 1975, the OECD Council decided to establish the “Committee on International Investment and Multinational Enterprises” (hereinafter “CIME”). The CIME issued the “OECD Declaration and Decisions on International Investment and Multinational Enterprises” in 1976, and the OECD Guidelines for Multinational Enterprises (hereinafter



“OECD Guidelines”) are part of the above Declaration, and the OECD Guidelines are included as an annex of the Declaration (Ahn and Park, 2018). The fundamental concept underlying the principles and contents of the OECD Guidelines is Responsible Business Conduct (hereinafter “RBC”) [1] The OECD Guidelines were revised five times in 1979, 1984, 1991, 2000 and 2011, respectively, to address problems and challenges after the OECD Guidelines were enacted in 1976. On June 8, 2023, the OECD published the revised OECD Guidelines to reflect “the decade of experience since their last review in 2011 and responds to urgent social, environmental and technological priorities facing societies and businesses” (OECD, 2023).

This study aims to analyze the main contents of the revision of the 2023 OECD Guidelines and suggest implications for the Korean government and companies. To this end, this study briefly examines the history of the revision of OECD Guidelines in Chapter II, reviews and evaluates major substantive revisions of the OECD Guidelines in Chapter III, examines major procedural revisions of the OECD Guidelines in Chapter IV, and then suggests countermeasures for the Korean government and businesses in Chapter V.

2. History of the OECD Guidelines

As mentioned above, the OECD Guidelines were enacted in 1976 and have been revised five times before the last revision in 2023. However, the 1979, 1984 and 1991 revisions of the OECD Guidelines did not have much change, and there were significant changes in the 2000 and 2011 revisions.

2.1 The 2000 revision

The revision of the OECD Guidelines in 2000 brought about a wide range of changes. The entire Preface of the OECD Guidelines was rearranged and revised, splitting the preface from the Chapter on Concepts and Principles (van’t Foort, 2017). New provisions on the respect of human rights by Multinational enterprises (Chapter II, Art. 2) as well as new chapters on sustainable development (Chapter II Art. 1), local capacity building (Chapter II Art. 3), training opportunities (Chapter II Art. 4), Whistle-blower protection (Chapter II Art. 9), corporate governance (Chapter II Art. 6), child labor and forced labor (Chapter IV Arts. 1b and 1c), occupational health and safety (Chapter IV Art. 4b), environmental performance (Chapter V Art. 6), disclosure and transparency (Chapter III), and consumer protection (Chapter VII) and bribery (Chapter VI) (van’t Foort, 2017). Through the revision in 2000, the OECD Guidelines have expanded their scope of application. Previous Guidelines only dealt with issues arising “within the territory of the adhering states,” but the 2000 revised Guidelines required multinational enterprises to comply with the OECD Guidelines “where they operate.” (Lee, 2014). This means that multinational enterprises must comply with the OECD Guidelines even when operating in developing countries, and this change is significant considering that many adverse impacts by multinational enterprises mainly occur in developing countries (Lee, 2014). The revised guidelines in 2000 also stipulated that multinational enterprises should encourage their business partners, including suppliers and subcontractors, to apply the principles of RBC consistent with the OECD Guidelines (Chapter II, Art. 10). In other words, multinational enterprises are also obligated to bear responsibility for adverse effects in their supply chain, making it natural that the parent company should bear the responsibility if their subsidiaries caused adverse effects (Lee, 2014). However, this expansion was limited to business partners with “investment nexus,” and there is also a critical view that the limitation of this “investment nexus” requirements rather infringes on the efficiency of the OECD Guidelines and National Contact Points for Responsible Business Conduct (NCPs for RBC) (van’t Foort, 2017).

In addition, the 2000 revision was also intended to increase the effectiveness and effectiveness of the OECD Guidelines and NCP’s grievance mechanism by introducing

visibility, accessibility, transparency and accountability (“VATA”) standards as key criteria to achieve the purpose of securing functional equivalence among NCPs (OECD, 2000). Lastly, one of the most important changes in the 2000 revision is to allow all those who have an interest in the case to file a complaint to any NCP concerned, resulting in NGOs becoming the complainant to the “specific instance” procedure in the NCP grievance mechanism. The 2000 revision also served as an important opportunity to change the role of NCPs in handling individual cases into a more formal one by stipulating that, if an agreement between the parties to the specific instance is not reached, the NCPs should issue a statement and make appropriate recommendations (van’t Foort, 2017).

2.2 The 2011 revision

The OECD revised the OECD Guidelines on May 25, 2011 (OECD, 2011). The most important issue of the 2011 revision is the introduction of a new chapter on human rights and the strengthening of human rights-related provisions throughout the OECD Guidelines (van’t Foort, 2017). This chapter is almost identical to the 2008 UN Framework for Business and Human Rights (Ruggie, 2008) and the 2011 UN Guiding Principles on Business and Human Rights (hereinafter “UNGP”) (UN, 2011) in terminology as well as in its framework. Considering that there is no its own implementation mechanism within the UN, it is no exaggeration to say that the OECD Guidelines have played a role as a *de facto* implementation body of the UN Framework for Human Rights and the UNGP (Lee, 2014).

The second important revision is the introduction of risk-based due diligence to prevent and address the adverse impacts of multinational enterprises. The 2011 revision stipulates that by incorporating risk-based due diligence into the enterprise-wide risk management framework, actual and potential adverse effects should be identified, prevented and mitigated, and how these adverse effects were addressed (Chapter II, Art. A.10). Furthermore, the chapter on human rights also stipulates that human rights due diligence should be conducted according to the size, nature and operating conditions of the company and the severity of the risk of adverse impacts (Chapter IV, Art. 5). This means that the scope of risk-based due diligence is not limited to the activities of multinational enterprises themselves, but has been extended to the global supply chain, including their business relationships.

The revision in 2011 newly stipulated the scope of the company’s responsibility based on the adverse impacts regardless of the existence of investment relevance. In other words, the scope of application of the OECD Guidelines was expanded from the investment nexus in the 2000 revision to “operational link” in the 2011 revised OECD Guidelines (Chapter II, Arts. A.12 and A.13). In this regard, The 2011 revision stipulates that multinational enterprises “operate in all sectors of the economy” (Chapter I, Art. 4). As a result, the problem of investment nexus to apply the OECD Guidelines has been overcome, as it can be seen that it is clearly required to comply with the OECD Guidelines even in financial transactions (Schliemann, 2012; Lee, 2014).

In addition, as regards the NCP grievance mechanism, it stipulates that the procedure of a specific instance should not be terminated just because there is a parallel procedure such as a lawsuit or other type of disputes (Procedural Guidance, para. 26) and provides an indicative timetable for each stage of the NCP procedure to improve the transparency and speed of the procedure.

Table 1 below summarizes the changes in the 2000 and 2011 revisions, which were extensive and important revisions to the 1976 OECD Guidelines.

3. Major substantive revisions of the OECD Guidelines

3.1 Overview

The OECD released its sixth revision on June 8, 2023, to reflect its 10 years of experience since the last revision of the OECD Guidelines in 2011 and to respond to the urgent social,

	The 1976 revision	The 2000 revision	The 2011 revision
Structure	Preface General Policies Disclosure Competition Finance Taxation Employment and Industrial Relations Science and Technology	Preface I. Concepts and Principles II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment VI. Combating Bribery, Bribe Solicitation and Extortion VII. Consumer Protection VIII. Science and Technology IX. Competition X. Taxation	Preface I. Concepts and Principles II. General Policies III. Disclosure IV. Human Rights V. Employment and Industrial Relations VI. Environment VII. Combating Bribery, Bribe Solicitation and Extortion VIII. Consumer Protection IX. Science and Technology X. Competition XI. Taxation
Implementation Body	CIME BIAC and TUAC as an advisory body The concept of the NCP appeared in the mid-1980s –	Reorganized from CIME to OECD Investment Committee in 2004 Introducing the NCP’s “Specific Instance” procedures, Recognition of NGO’s right to file a complaint OECD Watch launched in 2003	
Remarks	The Chapter on “Environment” was added in the 1990 revision	<ul style="list-style-type: none"> • Deletion of the Chapter on “Finance” • Addition of Chapters on “Anti-Bribery” and “Consumer Protection” • The term “adhering countries” appeared instead of “member countries” 	The Chapter on “Human Rights” was added

Note(s): CIME listens to the opinions of the industry and labor community through BIAC and TUAC, and on the contrary, BIAC and TUAC can actively express their opinions on CIME, and directly file a complaint to NCP for breach of the OECD Guidelines

It is said that there was no provision for NCP in the 1976 Guidelines, and the exact time when the expression NCP officially appeared in the OECD Guidelines was not confirmed, but some point out that the term ‘NCP’ was introduced in 1979; Oldenzel (2000), “The 2000 Review of the OECD Guidelines for Multinational Enterprises: A New Code of Conduct?”, SOMO (Center for Research on Multinational Corporations), p. 12; Sang Soo Lee (2014), *op. cit.*, re-cited at p. 225, fn. 16). BIAC, Business at OECD; TUAC, Trade Union Advisory Committee
OECD Watch was launched in the Netherlands in March 2003 as a network of NGOs interested in the OECD Guidelines

Source(s): Lee (2014), *op. cit.*, pp. 224–225, Table 1

Table 1.
Summary of OECD
Guidelines transition
process

environmental and technological priorities faced by society and companies. Although the topics covered in the OECD Guidelines have not changed significantly, many revisions have been made to the details within the topics (Denton *et al.*, 2023). The name of the OECD Guidelines was also revised to “OECD Guidelines for Multinational Enterprises on RBC” to reflect the latest understanding and social attitude toward the risk domain of enterprises and the concept of RBC. Furthermore, the name of the NCPs, which plays a key role in the implementation of the OECD Guidelines and the grievance mechanism, was also changed to “National Contact Points for RBC.”

3.2 Main contents of the 2023 revision

3.2.1 *Climate change and biodiversity.* Chapter 6 of the OECD Guidelines addresses the expectation that companies should perform risk-based due diligence on the adverse environmental impacts related to their operations, products and services (Chapter VI, Art. 1(a)), such as, among others, those associated with climate change, biodiversity loss, degradation of land, marine and freshwater ecosystems, deforestation, air, water and soil pollution and mismanagement of waste, including hazardous substances (Chapter VI, chapeau) (Denton *et al.*, 2023) [2]

It is worth noting that the 2011 OECD Guidelines did not mention climate change (Littenberg and Cohen, 2023). In contrast, the 2023 Revision have identified climate change as a significant environmental impact that companies must address in due diligence and require companies to regularly report, review and update their GHG emissions targets so that their emissions and impacts on carbon sinks are consistent with continuously evolving internationally agreed global temperature targets, including assessments by the Intergovernmental Panel on Climate Change (hereinafter “IPCC”)[3] (Littenberg and Cohen, 2023). The IPCC provides periodic evaluation data on the scientific basis, impact, future risks, adaptation and mitigation options of climate change, and reports published by the IPCC are also used as key basic data for international climate change negotiations. Furthermore, it is often cited in NCP cases of specific instance. For example, in the BP and ClientEarth case [4], Claimants have argued that language should be included in the form of a warning or disclosure that the use of BP’s oil and gas products results in greenhouse gas emissions that contribute to global climate change, citing “The IPCC found that greenhouse gas emissions from fossil fuels are the main cause of global warming.” These objectives should be updated regularly based on the latest scientific evidence available, and the various national or industry-specific transition paths that are developed and updated should be considered (Chapter VI, Art. 1(b)). In this regard, as part of its Green Deal policy, the EU is paying attention to the electric vehicle and battery industry that considers both the environment and the economy, and plans to introduce a battery passport system to realize a digital circular economy system. To this end, the EU has been preparing to legislate on the disclosure regulations of carbon footprint. The Korean government and businesses also need to monitor these trends and prepare countermeasures. The OECD Guidelines also emphasize the “just transition,” providing that companies should prioritize eliminating or reducing emissions rather than taking measures to offset, compensation or neutralization (Chapter VI, Commentary, para. 77). The OECD Guidelines reflect the latest scientific assessment on emissions and includes provisions regarding adopting, implementing, monitoring and reporting short-, medium- and long-term GHG emission reduction targets on scope 1, 2, and, to the extent possible based on best available information, scope 3 GHG emissions (Chapter VI, Commentary, para. 77). In addition to climate change targets, the 2023 revision emphasizes the importance of preserving biodiversity, stating that preventing biodiversity damage is a top priority for companies. If avoidance is not possible, companies should reduce or minimize it, and offset and restoration should be used only as a last resort against unavoidable adverse impacts. Where appropriate, companies should also contribute to sustainable land and forest management (Chapter VI, Commentary, para. 80).

3.2.2 *Due diligence.* Regarding due diligence, the biggest change in the 2023 revision is the expansion of the scope of due diligence requirements and business relations.

First, the 2023 revision expanded the scope of due diligence requirements. Previously, due diligence was only recommended for specific environmental and corruption issues and human and labor rights. But companies are now required to conduct risk-based due diligence (Chapter II, Commentary, para. 20) under the “OECD Due Diligence Guidance for Responsible Business Conduct” (Chapter II, Commentary, para. 15) on the issues mentioned above, as well as climate change, biodiversity, deforestation, animal welfare, pollution and all forms of corruption.

In this regard, it is worth noting that the said Guidance does not cover the Chapters on Science and Technology [5], Competition and Taxation in the OECD Guidelines (Denton *et al.*, 2023) [6]. These expansion of the scope is a clear sign that all aspects of sustainability are interconnected. It is also an expression of will that some problems can be solved while others cannot be left unattended (Sandberg, 2023). As regards the Chapter on Science, Technology and Innovation, the 2023 revision clarifies that the scope of this chapter, including due diligence requirements, addresses development, financing, sale, licensing, trade and use of technologies, including data collection and use, as well as scientific research and innovation (Littenberg and Cohen, 2023). In particular, a whole new set of recommendations for technology has been added to keep up with the rapid change in technology. The 2023 revision enhances greater transparency in how data is accessed and shared when collecting, sharing and using, and encourages the adoption, across the data value cycle, of responsible data governance practices that meet widely recognized or accepted among Adherents to the OECD Guidelines, standards and obligations including codes of conduct, ethical principles, rules on manipulation and coercion of consumers, and privacy and data protection norms (Chapter VIII, Art. 6). Businesses should further respect freedom of expression, peaceful assembly and association online, where appropriate and in an open, freely global, interoperable, trustworthy, accessible, affordable and consistent with the matters which are covered by the OECD Guidelines. Cooperative efforts should be supported in appropriate forums to promote a secure and resilient Internet (Art. 7).

Second, the 2023 revision expressly stipulates that companies should conduct due diligence on adverse impacts over upstream and downstream throughout their supply chain, including those caused by consumers and users (Ingrams *et al.*, 2023). In other words, the 2023 revision requires companies to undertake due diligence on business relationships including business partners, subcontractors, franchisees, investee companies, clients and joint venture partners, and other state agencies and NGOs directly connected to the company's operations, products or services (Chapter II, Commentary, para. 17). Generally, relationships with individual consumers are not considered business relationships, but the 2023 revision requires companies should prevent or mitigate adverse impacts related to their operations, products or services in consideration of that companies may be adversely affected by individuals (Chapter II, Commentary, para. 17). As such, the 2023 revision further clarifies that business relationships extend beyond contract or "first-tier" relationships to the entire supply chain of businesses (Littenberg and Cohen, 2023). However, regarding the scope of due diligence, the biggest problem in current practice is that there is no internationally agreed standard on the extent to which business relationships should be mapped and due diligence should be undertaken. This issue appears to be the most urgent challenge that needs to be addressed as soon as possible through close cooperation between international organizations, industry associations and international initiatives.

3.2.3 Protections for at-risk persons and groups. Noting that human rights are at high risk of being negatively affected by businesses in certain situations and industries, the 2023 revision recommends that companies pay specific attention to the adverse impacts on marginalized and vulnerable individuals, either personally or as members of certain groups or populations, such as human rights defenders and indigenous people (Chapter IV, Commentary, para. 45). Businesses are recommended to actively engage with stakeholders to respect and protect vulnerable groups, including whistleblowers and those who express concerns about the company's actions (Sandberg, 2023). Another thing to note is that the 2023 revision recommends that businesses strengthen due diligence at a high risk of armed conflict or serious abuse, including violations of humanitarian law (Chapter IV, Commentary, para. 45). This seems to have been added in consideration of the increasing number of armed conflicts around the world, including the Ukraine–Russia war, and under these circumstances, it is thought that the OECD Guidelines will play a more role in this matter.

3.2.4 Disclosure. The purpose of this chapter is to help multinational enterprises build transparency and accountability in their business operations (Chapter III, Commentary, para. 30). This chapter consists of 4 set of disclosure recommendations.

The first set of recommendations was amended to align with the G20/OECD Principles of Corporate Governance, which is identical to disclosure issues set out in the said Principles (Chapter III, Commentary, para. 31).

The second set of recommendations is characterized by the addition of more specific details about what material information is in relation to the disclosure principle. For example, the 2023 revision added sustainability-related information (Chapter III, Art. 2(b)), capital and group structure and control arrangements (Chapter III, Art. 2(c)), ownership and voting rights of major shareholders including beneficial owners (Chapter III, Art. 2(d)), information on the composition of the board and its members (Chapter III, Art. 2(e)), remuneration of the board members and key executives (Chapter III, Art. 2(f)), the extent of compliance with national corporate governance codes or policies and the process by which they are implemented (Chapter III, Art. 2(i)) and debt contracts, including the risk of non-compliance with the covenant as material information (Chapter III, Art. 2(j)).

In case of the third set of recommendations, the 2011 revision listed additional information for companies to communicate regarding disclosure principle, but the 2023 revision clearly stipulated “RBC information” linked to due diligence instead of the term “additional information.” (Chapter III, Art. 3). The 2023 revision emphasizes that disclosure of RBCs should be consistent with the unchanged OECD’s six-step due diligence framework, which are to (1) embed RBCs into policies and management systems, (2) identify and evaluate adverse impacts on operations, supply chains and business relationships, (3) cease, prevent or mitigate adverse impacts, (4) track implementation and results, (5) communicate how adverse impacts are addressed and (6) provide for or cooperate in remediation where appropriate (Chapter III, Art. 3(a) to 3(h)) ([Littenberg and Cohen, 2023](#)).

The fourth set of recommendations stipulates that the credibility reported by companies to be consistent with the due diligence framework should be strengthened by third-party review and assurance, and since the publication of the 2011 amendment, third-party review and assurance has become more common. Assurance is also part of some legal requirements and proposals, particularly those relating to climate change disclosure (Chapter III, Art. 4) ([Littenberg and Cohen, 2023](#)).

3.2.5 All forms of Corruption. The 2023 revision has changed the title of Chapter 7 from “Combating Bribery, Bribe Solicitation and Extortion” to “Combating Bribery and Other Forms of Corruption,” expanding the scope of corruption to include influence trading in influence, embezzlement and misuse of sponsorships and charitable donations (Chapter VII, Commentary, para. 86). The 2023 revision added details on measures to strengthen transparency as a way to address these issues in Art. 5 of Chapter 7 [7]. In this regard, the 2023 revision particularly recommends that businesses are encouraged to disclose, without prejudice to national laws and requirements, all misconduct in relation to bribery and other forms of corruption, as well as the measures adopted to address cases of suspected bribery and other forms of corruption. These measures may also include processes for identifying, investigating and reporting the misconduct and truly and actively engaging with law enforcement authorities (Chapter VII, Art. 5). As regards political contributions, the 2011 Guidelines only required businesses to report to senior management, while the 2023 revision goes one step further, requiring senior management to approve the contributions (Chapter VII, Art. 7). The 2023 revision also added that enterprises should not require employees to support political candidates or organizations (Chapter VII, Art. 7).

3.2.6 Lobbying activities. One of the “key amendments” to the 2023 revision is a clearer recommendation that companies should not engage in lobbying activities that are inconsistent with commitments and goals on issues covered by OECD Guidelines. It also

further stipulates active requirements to “ensure” transparency and integrity of lobbying activities (Chapter II, Art. 5). This is a step further than the previous passive expression of “refrain from” in 2011 version (Chapter II, Art. 5) (Denton *et al.*, 2023). Governments are responsible for establishing a public integrity framework to address the risks associated with lobbying of public officials. The 2023 revision generally recommends that companies avoid efforts to secure exemptions not contemplated in the legal or regulatory frameworks in relation to human rights, environment, health, safety, labor, taxation and financial incentives, among other issues (Chapter II, Art. 5, Commentary, para. 6). Addressing the problem that corporate’s political engagement, including lobbying activities that are not conducted in a responsible manner, often undermines efforts to achieve global respect for human rights, and it is expected that these revisions will help to strengthen responsible investment that are spreading around the world.

4. Major procedural revisions of the OECD Guidelines

As mentioned above, the OECD Guidelines are divided into Part I, which defines substantive norms of the OECD Guidelines, and Part II, which sets out procedural norms. Part II is again divided into (1) Decision of the Council for Multinational Enterprises on Responsible Business Conduct (hereinafter “the Decision of the Council”) [8] and (2) Procedures [9]. This paper will examine the major procedural revisions dividing into (1) NCPs and (2) specific instance in turn.

4.1 NCPs

The 2023 revision changed the name of NCPs from “National Contact Points” to “National Contact Points for Responsible Business Conduct” [10] to better reflect their role (Decision of the Council on the Guidelines for Multinational Enterprises on Responsible Business Conduct, I). Countries adhering to the OECD Guidelines shall establish NCPs and they have the two-fold responsibilities to (1) promote awareness and understanding of the OECD Guidelines and (2) provide a non-judicial grievance mechanism by contributing to the resolution of problems arising from the implementation of the OECD Guidelines in specific instances (Decision of the Council on the Guidelines for Multinational Enterprises on Responsible Business Conduct, I.1).

Regarding NCPs, the biggest change in the 2023 revision is the addition and strengthening of core criteria for improving functional equivalence of NCPs. In the 2011 revision, the core criteria for evaluating the functions of NCP were “VATA” (Procedural Guidance, I), but in the 2023 revision, criteria such as Impartial and Equitable, Predictable, and Compatibility with the OECD Guidelines this was added (Procedures, I). The 2023 revision also changed the peer review system for NCPs from a voluntary regulation into a mandatory one to share best practices and promote functional equivalence among NCPs (The Decision of the Council, I. 5).

4.2 Specific instance

The most important function of NCPs is the responsibility to resolve these issues, should any specific instance arise regarding the breach of the OECD Guidelines (Ahn, 2022). Any individuals or group related to the OECD Guidelines, such as multinational corporations, workers and NGOs, can submit a complaint of non-compliance of a multinational enterprise with the OECD Guidelines to a NCP. If the NCP determines that the complaint has merit, it will investigate the alleged of the breach of the OECD Guidelines, offer good offices or mediation service between the complainant and the multinational enterprise concerned, and issue a set of recommendations based on the findings on its findings (Littenberg and Cohen, 2023). The 2023 revision aims to effectively and efficiently resolve the specific instances under a non-

judicial grievance mechanism of NCPs. This paper will explain most important changes in the 2023 revision related to specific instances proceedings by dividing them into (1) initial assessment, (2) recommendations and (3) follow-up in turn below.

4.2.1 Initial assessment. The 2023 revision newly added for an initial step for an NCP to assess whether the specific instance concerns NCPs in other jurisdictions and, if so, to coordinate in good faith to select a lead and support role (Procedures, I. C. 1). In addition, it was specified that the alleged breach should be material and substantiated when conducting an initial assessment of whether a problem raised in a specific instance requires further investigation in the 2011 revision without any further clarification (Procedural Guidance, Commentary, para. 25). However, the 2023 revision clarified that the issue of “material” should be related to the implementation of the OECD Guidelines, and the issue of “substantiated” should be supported by sufficient and reliable information (Procedures, Commentary, para. 33).

4.2.2 Statement and recommendations. At the conclusion of the specific instance proceedings and after consultation with both parties, the procedure is usually terminated for three reasons, namely, (1) where the NCP determines that the issue raised do not warrant further investigation, (2) where both parties reach agreement on the issues raised or (3) where a party is unwilling to participate in the proceedings or where no agreement is reached between the parties (Procedures, I. C. 4). In this regard, the 2011 revision stipulated that a recommendation would be made only in the case of 3) above. The 2011 revision also stipulated that a statement would be issued only in the cases of (1) and (3), while a report would be issued in the case 2) above ((Procedures, I. C. 4).

In relation to the recommendations, the 2023 revision had three major changes. First, it allowed NCPs to publish recommendations even when the parties agreed on the issues raised, as appropriate (Procedures, I. C. 4. b)). Second, where a party is unwilling to participate in the proceedings or where no agreement is reached between the parties, the NCP is now obliged to publish recommendations on the implementation of the OECD Guidelines where relevant (Procedures, I. C. 4. c)) [11]. Third, the NCP was empowered to “may, at its own discretion, set out its views in its final statement on whether the enterprise observed the Guidelines”, where allowed by applicable and the NCP’s case-handling procedures (Procedures, I. C. 4. c)). In practice, many NCPs already follow these steps in the specific instance procedures. However, these revisions may be nothing more than stipulating existing practices, but at least explicitly providing a basis for making recommendations on the implementation of the OECD Guidelines is not trivial in that it may bring about another change in the future (Joe, 2023). For example, this may include laying the foundation for empirical research on further investigation on this issue, or for a movement to urge NCPs which do not have such regulation on the issue of the statement and recommendations.

4.2.3 Follow-up. At the conclusion of the specific instance procedures, the NCP shall, where appropriate, make recommendations on the implementation of the OECD Guidelines, and furthermore, the NCP should follow-up on the adoption of the recommendations and issue a follow-up statement containing its findings (Procedures, I. C. 5) (Littenberg and Cohen, 2023). Regarding follow-up, the 2011 revision stipulates no recommendations in the substantive provisions, but only in the commentary, it provides that 1) “the parties may also agree to seek the assistance of the NCP in following-up on the implementation of the agreement and the NCP may do so on the agreed terms between the parties and the NCP” (Procedural Guidance, Commentary, para. 34), and 2) “[...] if the NCP deems it appropriate to follow-up on its recommendations, the timeline for doing so should be addressed in the statement of the NCP” (para. 36).

The 2023 revision newly established substantive provisions regarding the follow-up, which were only stipulated in the commentary in the Procedures of the 2011 revision. The 2023 revision expressly provides that the parties engage in follow-up on the implementation

of the recommendations, or if any, the agreement reached between the parties once the specific instance proceedings has closed where relevant, and the NCP should issue a follow-up statement. The 2023 revision also explicitly stipulates that the NCP intends to carry out should also be mentioned in the final statement, including deadlines to do so (Procedures, I. C. 5).

If these follow-up amendments in the 2023 revision are combined with the above revised provisions on recommendations, the author thinks that the efficiency and effectiveness for the implementation of the OECD Guidelines will be considerably improved even though they do not have the same legal binding force as court judgments or arbitral awards.

5. Conclusion

In the past, the trade order was focused on expanding market access by lowering tariffs or lowering trade barriers between countries. However, the Free Trade Agreement (“FTA”) more actively includes ESG issues including environment and labor etc. For example, the USMCA, which took effect in July 2020, included a strong environmental and labor chapter. In the case of the EU, the Korea-EU FTA signed in 2010 included a chapter on sustainable development. The US and EU also tend to legislate strengthened ESG standards. In particular, regarding the environment, the US has enacted the Inflation Reduction Act (“IRA”) and includes regulations for environmental purposes, such as responding to climate change and transiting to green energy. The EU plans to implement Carbon Border Adjustment Mechanism (“CBAM”) from 2026. As regards social agenda, The EU Parliament and Council announced provisional agreement on the Corporate Sustainability Due Diligence Directive (“CSDDD”) on December 14, 2023, mandating human rights due diligence in supply chains. This Directive is an instrument that requires companies to conduct due diligence on human rights and environmental impacts not only for their own business but also for their supply chains. In the meantime, as the US-China supremacy competition is intensifying, the US is attempting to establish a strategic value alliance with Allies and partners including Korea that share common values such as human rights and the environment. These values are also connected to ESG, and one of the international instruments that contains all related elements of ESG is the OECD Guidelines for Multinational Enterprises.

Under these circumstances, the 6th revision of the OECD Guidelines was made on June 8, 2023. The most significant substantive change in the revised 2023 OECD Guidelines for Multinational Enterprises is that expectations for environmental due diligence and disclosure obligations, including climate change and biodiversity, for multinational companies have been expanded and strengthened. Regarding procedural changes, the biggest change is the introduction of a basis rule for the NCP to judge each issue and a rule that the final statement must include follow-up details and deadlines, which is expected to strengthen the effectiveness of the NCP dispute resolution mechanism.

Korea is a country that has developed through exports. For Korean companies, the global supply chain reorganization following the global trend of strengthening ESG standards and the US-China supremacy competition may be a crisis, but it can be an opportunity at the same time. If Korean companies would strengthen their ESG management further, there may be opportunities in the global supply chain, which had been concentrated in China and India (Lim, 2023).

Considering these circumstances, the Korean government and companies need to thoroughly monitor and prepare for global trends in strengthening and legislating ESG issues including disclosure and due diligence for human rights, environment and labor etc. In particular, the Korean government should establish an effective ESG public-private partnership system to prevent Korean companies from being harmed by failing to meet global ESG standards. Furthermore, the Korean government should actively participate in

rule-setting so that the needs and interests of Korean businesses can be reflected as much as possible in international ESG-related forums, including the OECD.

The Korean NCP also should strengthen its activities to prevent potential damage by expanding education and promotions for Korean businesses on related overseas legislative trends and NCP dispute case studies so that Korean companies can effectively deal with the strengthened ESG standards.

Notes

1. In accordance with [Nieuwenkamp \(2016\)](#), RBC means that companies must make a positive contribution to economic, environmental, and social development in order to achieve sustainable development, and that they are responsible for avoiding and dealing with the negative impact of corporate activities. Furthermore, it emphasizes the integration of responsible practices in business relations and supply chains as well as the company's own activities.
2. These 6 topics are aligned with the 6 environmental goals of the EU Taxonomy Regulation, including (1) climate change mitigation, (2) climate change adaptation, (3) sustainable use and protection of water and marine resources, (4) transition to a circular economy, (5) pollution prevention and control, and (6) protection and restoration of biodiversity and ecosystems. It is expected to serve as a benchmark for measuring substantial contributions to environmental goals and serious damage.
3. The IPCC was founded in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP) with the aim of providing all the level of governments with scientific information that can be used to develop climate policies.
4. ClientEarth v. BP, available at <http://mneguidelines.oecd.org/database/instances/uk0054.htm> (lastly accessed on February 18, 2024).
5. The title of Chapter IX of the 2023 Revision was changed to "Science, Technology and Innovation."
6. This is because these chapters mainly focus on (1) positive contributions that companies can contribute to sustainable development regarding Chapter IX (now Science, Technology and Innovation) and (2) major adverse impacts arising from their own activities in relation to Chapter X (Competition) and Chapter XI (Taxation).
7. These measures may include "(1) strong, explicit and visible support and commitment from the board of directors or equivalent governing body and senior management to the enterprise's internal controls, ethics and compliance programs; (2) a clearly articulated and visible corporate policy prohibiting bribery and other forms of corruption, easily accessible to all employees and relevant third parties, including, *inter alia*, foreign subsidiaries, agents, and other intermediaries; and (3) disclosing the management systems and the internal controls, ethics and compliance programs or measures adopted by enterprises in order to honor these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation in the fight against bribery other forms of corruption."
8. The Decision of the Council consists of recommendations for (1) NCPs, (2) Investment Committee and Working Party on Responsible Business Conduct (WPRBC) and (3) the implementation and evaluation of the said Decision.
9. The name of "Procedural Guidance" in the 2011 Revision was changed to "Procedures" in the 2023 Revision, and the Procedures consists of recommendations for (1) NCPs, (2) Investment Committee and WPRBC, and (3) Miscellaneous.
10. For convenience, the term "NCPs for RBC" will be hereafter referred to as "NCPs."
11. Article I. C. 3. (c) of the 2011 revision stipulates that "The NCP will make recommendations on the implementation of the Guidelines as appropriate. Which should be included in the statement." [Emphasis added]

References

- Ahn, K.H. (2022), “A study on the use of arbitration of ESG disputes for responsible business conduct (RBC)”, *Korean Journal of International Trade and Business Law*, Vol. 31 No. 1.
- Ahn, K.H. and Park, S.H. (2018), *Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises*, Samyoung Publishing Co, Seoul.
- Denton, S.-J., MacBean, A. and Crutchley, F. (2023), “Revamp of the OECD guidelines: what’s changed?”, *Legal Briefing, Travers Smith*, available at: <https://www.traverssmith.com/knowledge/knowledge-container/revamp-of-the-oecd-guidelines-whats-changed/> (accessed 27 June 2023).
- Ingrams, M., Booth, K. and Wilde-Ramsing, J. (2023), *What’s New?: ‘Targeted Update’ Strengthens OECD Guidelines for Multinational Enterprises*, OECD Watch, available at: <https://www.oecdwatch.org/whats-new-targeted-update-strengthens-oecd-guidelines-for-multinational-enterprises/> (accessed 9 June 2023).
- Joe, I.H. (2023), “The revision of the OECD guidelines for multinational enterprises”, *Presented at the Korean Association of Social Security Law & the Korean NCP Joint Seminar, 30 June, 2023*, Seoul, Korea.
- Lee, S.S. (2014), “OECD guidelines for multinational enterprises as an instrument addressing human rights abuses committed by multinational enterprises”, *Seoul Law Journal*, Vol. 55 No. 3.
- Lim, S.T. (2023), “New standards for international trade, ESG”, *Tongsang*, Vol. 14, Ministry of Trade, Industry and Energy, available at: https://tongsangnews.kr/webzine/1622303/sub2_2.html
- Littenberg, M. and Cohen, K. (2023), “The OECD publishes updated guidelines for multinational enterprises on responsible business conduct for the first time in over a decade”, *Ropes & Gray Alert*, available at: <https://www.ropesgray.com/en/newsroom/alerts/2023/07/the-oecd-publishes-updated-guidelines-for-multinational-enterprises-on-responsible-business-conduct> (accessed 11 July 2023).
- Nieuwenkamp, R. (2016), “CSR is dead! What’s next?”, available at: <https://friendsoftheoecdguidelines.wordpress.com/2016/01/22/2016-csr-is-dead-whats-next>
- OECD (2000), “Consultations on the OECD guidelines for multinational enterprises, aide-mémoire”, DAF/FE/IME(2000)2.
- OECD (2011), *OECD Guidelines for Multinational Enterprises*, 2011 Edition, OECD Publishing, Paris.
- OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris.
- Oldenziel, J. (2000), “The 2000 review of the oecd guidelines for multinational enterprises: a new code of conduct?”, *SOMO (Center for Research on Multinational Corporations)*.
- Ruggie, J. (2008), *Protect, Respect and Remedy: A Framework for Business and Human Rights : Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, United Nations, available at: <https://digitallibrary.un.org/record/625292>
- Sandberg, U. (2023), *2023 Update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, Worldfavor, available at: <https://blog.worldfavor.com/2023-update-of-the-oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct>
- Schliemann, C. (2012), “Procedural rules for the implementation of the OECD guideline for multinational enterprises – a public international law perspective”, *German Law Journal*, Vol. 13 No. 1, pp. 51-85, doi: [10.1017/s2071832200020344](https://doi.org/10.1017/s2071832200020344).
- UN (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, United Nations, New York and Geneva.

van't Foort, S. (2017), "The history of national Contact points and the OECD guidelines for multinational enterprises", *Journal of the Max Planck Institute for European Legal History*, Vol. 25.

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