



University of
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Social licence for business

A framework for reshaping the private sector in a post-pandemic world

During the pandemic governments across the globe have stepped in as buyer and lender of last resort for private sector firms, taking on huge debt for future taxpayers. While this support is both welcome and necessary, it should also lead to an urgent conversation about the proper relationship between business and society, exploring ways in which the power of business to do good can be harnessed to help us meet the very significant challenges society faces.

What's the problem?

For many years, private sector organisations have failed to tackle major failings, including unsustainable financial practices, adverse environmental impacts, and abuses of human rights. These failings have already led to wide-spread calls for changes in the culture and conduct of private sector organisations.

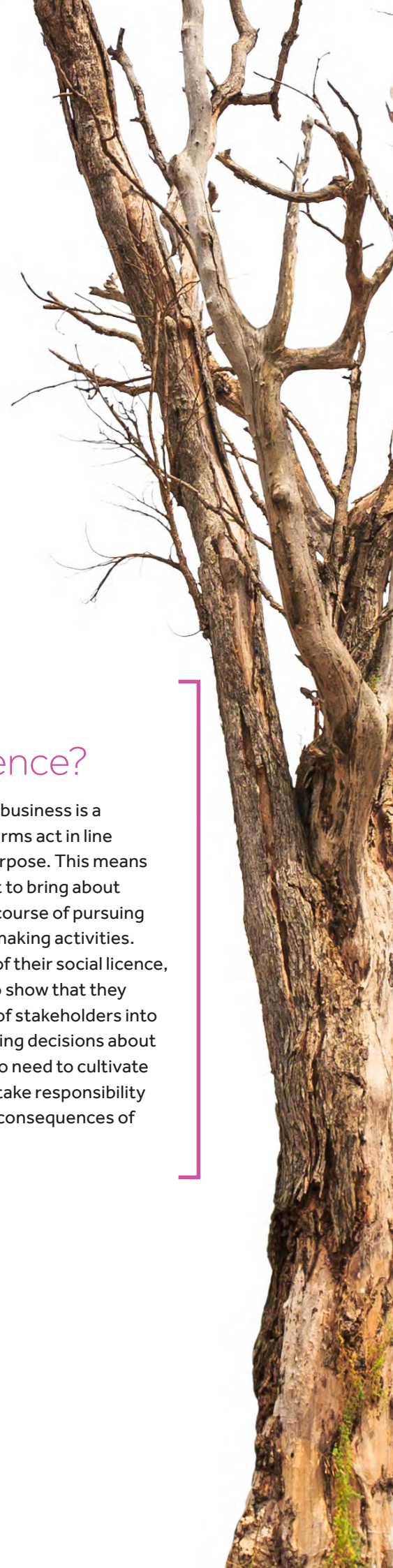
However, the current crisis has thrown these issues into even starker relief, raising questions about the fundamental purpose of business. As governments worldwide step in to provide massive financial support, there is a window of opportunity to reshape the relationship between business and the state, embedding ethical practices in the private sector.

Key findings

- There is a need to 'build back better' post-pandemic.
- Current regulatory moves are insufficient to achieve this.
- Steps in the right direction are being taken ...
- ... but reshaping business-state relations requires rethinking the private sector's social contract.
- The social licence model could provide the necessary framework.

What is a social licence?

A social licence for business is a requirement that firms act in line with their social purpose. This means that firms must act to bring about social value in the course of pursuing legitimate, profit-making activities. To fulfil the terms of their social licence, companies need to show that they take the interests of stakeholders into account when making decisions about activities. They also need to cultivate awareness of, and take responsibility for, the long-term consequences of their activities.





Conditions on government funding show reforms are possible

In an unprecedented reaction to the economic consequences of the coronavirus pandemic and lockdown measures, governments worldwide have released funds to support struggling businesses via stimulus packages, bailouts, or regulatory changes.¹ These economic support measures have required governments – and taxpayers – to take on large amounts of new debt.²

Many governments have attached strings to coronavirus support measures.³ For example, in the UK, companies accessing bailouts through the Coronavirus Large Business Interruption Loan Scheme are not allowed to pay cash bonuses to executives or dividends to shareholders.⁴ In France, the government has attached environmental conditions to the Air France bailout.⁵ In Denmark, companies based in tax havens are restricted from accessing support.⁶

Conditions on state support for business can help distribute the benefits among those affected by the crisis,⁷ and ensure that businesses manage their environmental, social, and governance risks.⁸ By designing recovery plans, governments can steer funding in line with society's priorities.⁹

We shouldn't stop here: standard regulation will not bring the change we need

While they are a welcome development, conditions attached to business support schemes will not bring about lasting improvements in the ethical standards of businesses. The current patchwork of conditions that differ across support schemes and jurisdictions has several drawbacks.

- **Regulations are short-sighted.** Today's support schemes are funded with the money of future taxpayers. But conditions attached to government funding are temporary. They are not well suited to reshape the private sector in the long run.¹⁰
- **Regulations do not inspire best practice.** Conditions attached to support schemes only apply to companies that participate in these schemes. Environmental conditions might be futile if competitors are not subject to the same conditions.¹¹ Moreover, businesses might try to find ways around regulations, or follow the letter not the spirit of the rules.¹²
- **Regulations do not change the conversation.** Conditions imposed on business by the government do not encourage social dialogue or strengthen the voices of workers and communities. In fact, current support schemes could exacerbate the power of shareholders over workers.¹³
- **Regulations are complex and inflexible.** Current regulations form a patchwork: different conditions apply to different schemes in different countries. When regulations are too complex, they can become difficult to navigate¹⁴ and possibly delay delivery of government funding. On the flipside, even complex regulation cannot take into account every firm's individual circumstances, leading to binary rulings in areas where more nuanced decision making is needed.



EXAMPLE

The Covid Corporate Financing Facility (CCFF)

The CCFF support scheme was launched by UK Chancellor Rishi Sunak on 17 March 2020 and offers financing to larger firms. As of 19 August 2020, a total of £17.53 billion of short-term debt, in the form of commercial paper, was purchased through the CCFF (less redemptions). A total of 65 businesses have issued commercial papers to the CCFF.¹⁵

After receiving initial criticism over lack of transparency, the Bank of England announced that figures and recipients would be published weekly. However, total drawings prior to the publication of the list of participants of the scheme remain hidden.¹⁶

Critics have emphasized the lack of fair and green conditions on receiving CCFF money.¹⁷ At least ten companies with links to tax havens or tax avoidance have received money via the CCFF, and three of these

are from major polluting industries.¹⁸ 26 companies receiving financial assistance through the CCFF have cut jobs or announced plans to make layoffs, totalling at least 42,848 UK jobs.¹⁹

On 19th May, the Bank of England announced that any company wishing to draw from the CCFF with a term going beyond 21st May 2021 must sign a letter committing to restraint regarding senior pay and paying dividends.²⁰ However, this did not apply to those who accessed funds before this date. Whether this condition will ensure that future financing benefits workers remains to be seen. There are worries that, in order to avoid the restrictions, firms will cut costs and repay early, which risks jobs being lost rather than saved.²¹

The social licence for business framework: a way forward?

Policy makers have already recognized the need for fundamental reforms. For example, in April 2020, European Commissioner for Justice, Didier Reynders, announced plans for European legislation on mandatory human rights and environmental due diligence.²²

However, fundamental reforms require a shift in the way we think about business. The aim of the research project 'Reshaping relations between the state and the private sector post-COVID-19?' is to explore a 'social licence model' for business. This model could inform public discourse and underpin new legislation aimed at reshaping the relationship between business and society.²³

Which reforms would the social licence model support?
Steps towards a social licence framework include:

- **Mandatory implementation of a social licence strategy.** Companies should be legally required to implement a social licence strategy and disclose key environmental,²⁴ social,²⁵ and governance risks.²⁶ Such strategies would look different for different businesses, they are not 'one size fits all'²⁷ – but they should reflect a move away from corporate governance models based on shareholder primacy.²⁸
- **A social licence board to broaden the voices being heard.** The terms of a social licence need to be determined in a collaborative and ongoing dialogue with governments, employees, further stakeholders and the broader public.²⁹ Multinational companies could be required to install an additional board that operates alongside the corporate board, to formulate social licence terms and hold the executive to account for meeting these terms.³⁰

- **Identifying and building institutions³¹ to mediate and adjudicate.** In order to deal with disputes around corporate governance, institutions should be identified or designed that offer mediation and adjudication. Examples of institutions that offer services along these lines include the Workplace Relations Commission and the labour court in Ireland, and the Enterprise Chamber in the Netherlands.³² Accountability mechanisms could be guided by the criteria for the National Contact Points for responsible business conduct (RBC).³³

Get involved in the conversation!

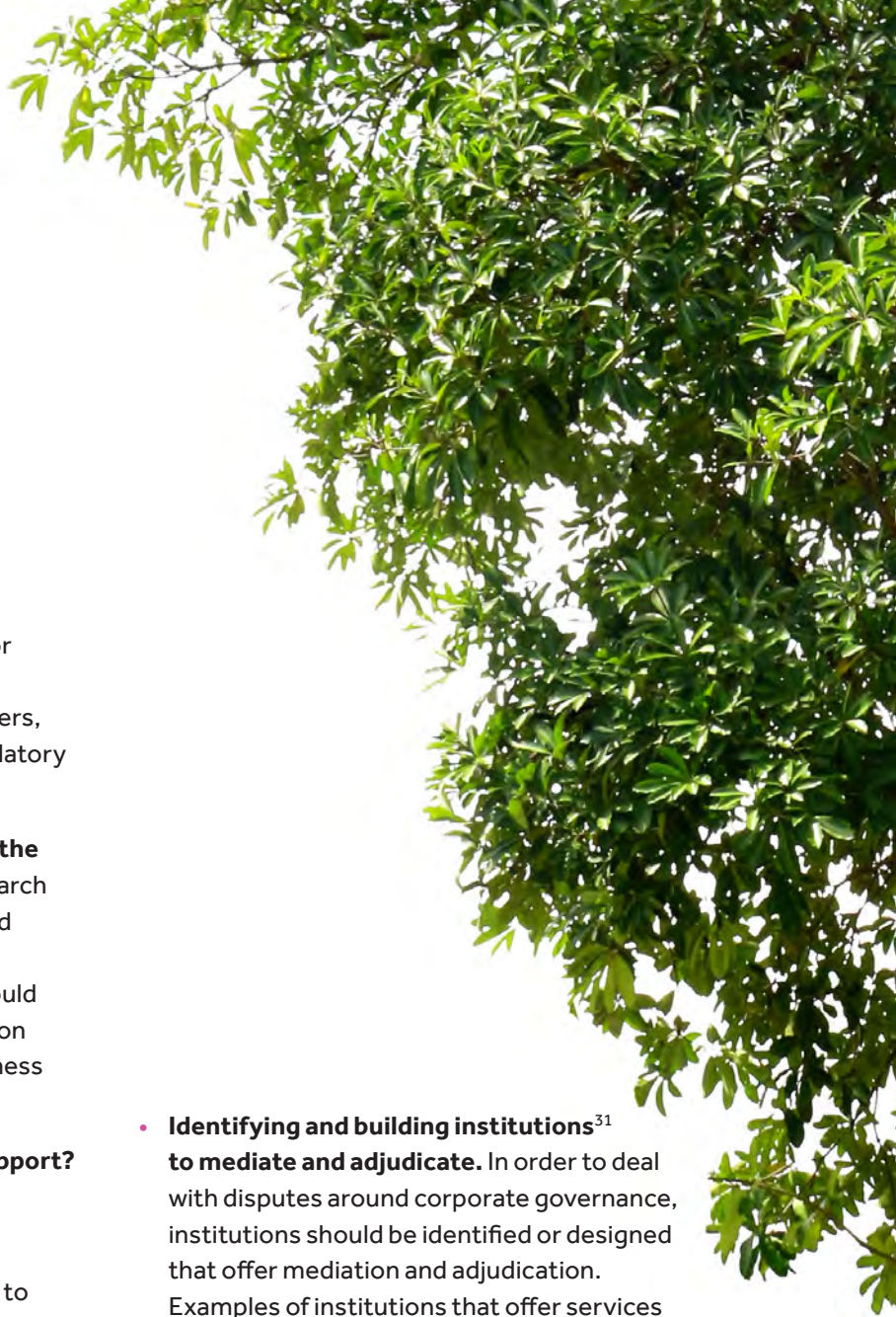
We are interested in hearing your thoughts on these issues. If you have questions or comments, or simply want to connect:



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Endnotes

- 1 For a review of government support for European companies, see Geoffrey, B. P., McIver, T., Bisch, A., & Chesney, G. (2020, August 28). COVID-19 - Review of State-Sponsored Help for European Companies. *Debevoise Insights*. <https://www.debevoise.com/insights/publications/2020/03/covid19-so-far-state-sponsored-help-for>.
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- 3 For an overview of policy measures that impact environmental, social, and governance (ESG) objectives in different countries, see Beall, E., Brennan, M., & Atherton, T. (2020, July 07). *Insight: Rolling back or building back better?* <https://www.global-counsel.com/insights/blog/rolling-back-or-building-back-better>.
- 4 Chapman, B. (2020, May 19). Large firms that take bailout loans can't pay bosses bonuses or dividends. *Independent*. <https://www.independent.co.uk/news/business/news/coronavirus-loan-scheme-bailout-executive-bonuses-dividend-a9522721.html>
- 5 *Coronavirus aid: Air France must cut domestic flights to get state loan* (2020, May 04). BBC. <https://www.bbc.co.uk/news/world-europe-52527517>
- 6 Moskowitz, E. (2020, April 21). *Denmark Will Not Give Aid To Companies Registered in Tax Havens*. Organized Crime and Corruption Reporting Project. <https://www.occrp.org/en/daily/12149-denmark-will-not-give-aid-to-companies-registered-in-tax-havens>
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- 8 OECD (2020, April 16). *COVID-19 and Responsible Business Conduct*, pp. 16-17. <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/>
- 9 OECD (2020, April 16). *COVID-19 and Responsible Business Conduct*, pp. 16-17. <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/> See also OECD (2020, March). *Global financial markets policy responses to COVID-19*, p. 6. <https://www.oecd.org/coronavirus/policy-responses/global-financial-markets-policy-responses-to-covid-19-2d98c7e0/>
- 10 Shadow climate change minister Matthew Pennycook has suggested partial nationalising some firms in the aviation sector which receive state support: "Take an equity stake so you can drive and change behaviour over the long run, conditionality in this moment isn't going to be enough." Gye, H. (2020, July 14). *Labour split claims as Ed Miliband calls on state to take shares in bailed-out airlines*. INews. <https://inews.co.uk/news/politics/labour-split-claims-ed-miliband-green-policy-539356>
- 11 For example, in the case of environmental conditions for airlines, a worry is that competitors that aren't subject to conditions will just fill in. Costanzo, G. (2020, June 19). *Strings attached? Environmental conditionalities and state aid*. Global Counsel. <https://www.global-counsel.com/insights/blog/strings-attached-environmental-conditionalities-and-state-aid>
- 12 *Premier League: What is your top-flight club doing to plug the coronavirus cashflow gap?* (2020, April 25). BBC. <https://www.bbc.co.uk/sport/football/52130206> For one example, Liverpool furloughed non-playing staff, despite the club making a profit of £42m last year. Roan, D. (2020, April 6) *Liverpool: Premier League leaders reverse furlough decision & apologise to fans*. BBC. <https://www.bbc.co.uk/sport/football/52191140>
- 13 Positive Money claims that the current corporate model maintains unequal power structures between shareholders and workers, and the response to the current crisis exacerbates such inequalities. Barmer, D., Kazi, D. and Youel, S. (2020, July). *The COVID Corporate Financing Facility. Where are the Conditions for the Billion £ Bailouts?* Positive Money. P. 16. <https://positivemoney.org/publications/ccff/>
- 14 For example, many businesses in Russia have not applied for the government's financial support fund because of complex rules. Ashby, D. (2020, August 27). *Battered Russian businesses unable to access emergency COVID-19 support cite overly complex rules* [Video]. CNA. <https://www.channelnewsasia.com/news/business/battered-russian-businesses-unable-to-access-emergency-covid-19-13060214>
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- 17 For example, in July 2020, the UK Youth Climate Network projected a video onto the Bank of England and Treasury buildings to demand using public money to support green and fair initiatives during the Coronavirus pandemic. Smoke, B.C. (2020, July 17). *Students Project Video Onto Bank of England to Protest Bailout of Polluters*. VICE. https://www.vice.com/en_uk/article/5dzwmq/bank-of-england-bailout-polluters-coronavirus/
- 18 Smoke, B.C. (2020, August 4). *Corporations Receiving Bailout Billions Have Laid Off Staff and Paid Investors*. VICE. https://www.vice.com/en_us/article/m7jxvn/corporations-receiving-bailout-billions-have-laid-off-staff-and-paid-investors
- 19 Smoke, B.C. (2020, August 4). *Corporations Receiving Bailout Billions Have Laid Off Staff and Paid Investors*. VICE. https://www.vice.com/en_us/article/m7jxvn/corporations-receiving-bailout-billions-have-laid-off-staff-and-paid-investors
- 20 Bank of England (2020, May 19). *Update to the Covid Corporate Financing Facility*. <https://www.bankofengland.co.uk/news/2020/may/update-to-the-covid-corporate-financing-facility>
- 21 Barmer, D., Kazi, D. and Youel, S. (2020, July). *The COVID Corporate Financing Facility. Where are the Conditions for the Billion £ Bailouts?* Positive Money. P. 13. <https://positivemoney.org/wp-content/uploads/2020/07/CCFF-Final-version.pdf> The Positive Money report also mentions another worry, namely that there is no strong enforcement mechanism for compliance with the commitments.
- 22 The announcement was made by Didier Reynders during a European Parliament webinar. Details remain to be decided; however, the new law will require companies to carry out checks on their supply chains and consider risks of human rights violations arising from their activities. Fox, B. (2020, April 30). *New human rights laws in 2021, promises EU justice chief*. Euractiv. <https://www.euractiv.com/section/global-europe/news/new-human-rights-laws-in-2021-promises-eu-justice-chief/> See also the position paper published by Bernd Lange, the Chair of the Parliament's Committee on International Trade, in which he advocated for a binding supply chain law: Lange, B. (2020, April 28). *Positionspapier: Handelspolitik in Zeiten der Corona-Pandemie – zwischen Neustart und Systemwechsel*. <https://bernd-lange.de/meldungen/positionspapier-handelspolitik-in-zeiten-der-corona-pandemie-zwischen-neustart-und-systemwechsel>
- 23 Reshaping the relationship between society and business in the form of a new 'social contract' is also addressed by Robinson, M. and Bloomer, P. (2020, April 8). *Shaping a new social contract through the pandemic*. OpenDemocracy. <https://www.opendemocracy.net/en/shaping-new-social-c-ontract-through-pandemic/> and Kirkup, J. (2020, March 30) *Returning the favour: A new social contract for business*. Social Market Foundation. <https://www.smf.co.uk/publications/returning-favour/>
- 24 For a call for green economic renewal, see Institute for Innovation and Public Purpose (June 2020) *A green economic renewal after the COVID-19 crisis*, UCL IIPP COVID-19 Briefing Papers 04. https://www.ucl.ac.uk/bartlett/public-purpose/sites/public-purpose/files/04_-_a_green_economic_renewal_after_the_covid-19_crisis_1.pdf
- 25 For a call for better standards of tax compliance post Covid-19, see *Paying in equally?* Taxwatch. https://www.taxwatchuk.org/paying_in_equally/#dfnote1sym
- 26 For a call for a corporate sustainability strategy, see Johnston, A., Veldman, J., Eccles, R.G. et al. (2020, June 30). *Corporate Governance for Sustainability*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3502101
- 27 For the blog of the New Economics Foundation, Alex Chapman suggests different frameworks for bailout conditions, depending on size of business and business area. Chapman, A. (2020, April 27). *Bailouts: Creating the New Normal*. New Economics Foundation Blog. <https://neweconomics.org/2020/04/bailouts-the-new-normal>
- 28 See also Kavanagh, D. and Veldman, J. (2020, July 29). *It's a myth that companies must put shareholders first – coronavirus is a chance to make it stop*. The Conversation. <https://theconversation.com/its-a-myth-that-companies-must-put-shareholders-first-coronavirus-is-a-chance-to-make-it-stop-129104> Another voice for a move away from shareholder primacy in UK corporate governance is the Trades Union Congress (2020, May 20). *A Better Recovery. Learning the lessons of the corona crisis to create a stronger, fairer economy*. <https://www.tuc.org.uk/ABetterRecovery>. See also the OECD (2020, April 16). *COVID-19 and Responsible Business Conduct*. <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/> It states (p. 17): 'Calls are already being heard to ensure that fiscal support will create value not only for company shareholders, but also for company stakeholders and the public more broadly.'
- 29 The International Labour Organization presents social dialogue as one of four pillars to fight COVID19. International Labour Organization (2020, April 29). *ILO Monitor: COVID-19 and the world of work*. Third edition. P. 10. https://www.ilo.org/wcmsp5/groups/public/-/-dgreports/-/-dcomm/documents/briefingnote/wcms_743146.pdf From a perspective on ESG investing, Indranil Ghosh and Shelly Goldberg note that system change 'will require a partnership between investors, businesses, and governments'. Ghosh, I. and Goldberg, S. (2020, August 20) *Covid-19: The Deathknell of ESG Investing or a New Beginning?* TheStreet. <https://www.thestreet.com/economonitor/financial-markets/covid-19-esg-new-beginning>
- 30 Worker representation on company boards is proposed, for example, by the High pay centre as a condition for government bailouts of large businesses. 'Government bail-outs of large businesses affected by the coronavirus must include social and environmental conditions including fair pay, fair tax contributions and worker representation on company boards' High Pay Centre (2020, March 18). *Conditions are critical: why publicly-funded bail-outs for private companies must include social and environmental conditions*. <http://highpaycentre.org/pubs/conditions-are-critical-publicly-funded-bail-outs-for-private-companies> (Retrieved 11 September 2020)
- 31 In connection with planned EU corporate due diligence legislation, European Commissioner for Justice, Didier Reynders, suggested a possible network of supervisory authorities at national level, coordinated at EU level. European Coalition for Corporate Justice (2020, April 30). *Commissioner Reynders announces EU corporate due diligence legislation*. <https://corporatejustice.org/news/16806-commissioner-reynders-announces-eu-corporate-due-diligence-legislation>
- 32 Kavanagh, D. and Veldman, J. (2020, July 29). *It's a myth that companies must put shareholders first – coronavirus is a chance to make it stop*. The Conversation. <https://theconversation.com/its-a-myth-that-companies-must-put-shareholders-first-coronavirus-is-a-chance-to-make-it-stop-129104>
- 33 The OECD Centre for Responsible Business Conduct suggests that criteria applicable to the National Contact Points for responsible business conduct could help guide accountability mechanisms to help monitor conditionality and resolve disputes. OECD (2020, April 16). *COVID-19 and Responsible Business Conduct*, pp. 16-17. <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/>

The OECD Guidelines for Multinational Enterprises (<http://mneguidelines.oecd.org/mneguidelines/>) are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. National Contact Points for Responsible Business Conduct (<http://mneguidelines.oecd.org/ncps/>) are agencies established by governments. They serve to promote the OECD Guidelines and they also handle cases as a non-judicial grievance mechanism.