

Public consultation: Targeted update of the OECD Guidelines for Multinational Enterprises

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(This question is mandatory)

Name of submitting organisation or individual

Please include the name of the organisation or individual in whose name the submission is made (max. 200 characters)

DIHK: German Chamber of Commerce and Industry, DIHK

(This question is mandatory)

Please identify the organisation type of the submitting party

Choose one of the following answers

Please choose...

DIHK: *Other:* German Chamber of Commerce and Industry, DIHK

General comments

Please include any overall comments you wish to make on the consultation draft (max. 2000 characters)

DIHK: We would like to thank you for the opportunity to comment on the revision of the OECD Guidelines for Multinational Enterprises. This statement is based on the comments of the Chambers of Industry and Commerce, of companies and the economic policy positions of the DIHK received by the time the statement was issued. Should the DIHK receive further relevant comments not yet taken into account in this statement, this statement will be supplemented accordingly.

In their social commitment, internationally active companies are already guided by numerous already guided by numerous internationally agreed principles and reference frameworks, such as the OECD Guidelines for Multinational Enterprises.

We are, however, very concerned about the proposed draft of the updated Guidelines as it would create additional bureaucratic burdens at a time marked by the negative economic impact of the pandemic and the war in Europe. This will lead to less business, declining sales and ultimately to job losses - in Europe as well as outside Europe. It is therefore important that the Guidelines preserve practicability and contribute to the goal of a level playing field.

Generally, we would recommend to avoid several broad references as well as the introduction of vague concepts and expectations in order not to create unintended consequences for companies and significant interpretational challenges in the context of mediation.

To: Preface para 7

The activities of multinational companies also contribute to higher social and environmental standards, better education and thus to growth and prosperity abroad. Many companies also contribute to the sustainable development goals (SDGs), e.g. through the development of innovative products and services.

Chapter 1: Concepts and Principles

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

To: Chapter I para 2

DIHK: The sentence “or set lower expectations than” should be deleted: The common effort of stakeholders to contribute to responsible value chains can make a significant contribution to sustainable development. However, the actual opportunities for companies to influence the supply chain vary greatly, depending on company size, structure and market position. Small and medium-sized companies in particular often have only limited influence and few opportunities for control when it comes to compliance with standards on site.

To: Chapter I para 3

DIHK: In the sense of a “partnership of responsibility”, the governments must fulfill their task of to enforce social and environmental standards and protect human rights, also in developing and emerging countries. This state responsibility must not be transferred to the host countries to the companies.

To: Chapter I para 4

DIHK: “or, companies or other entities conducting a significant amount of business in more than one country”: This phrase could lead to even small and medium sized companies are also being affected. However, these often do not have the necessary capacities, structures or the ability to enforce the implementation of higher standards.

To: Chapter I para 11

DIHK: The proposed changes foresee authority and oversight by the OECD Secretariat in the context of the interpretations of the Guidelines. The authoritative interpretation of the Guidelines must remain the sole responsibility of the OECD Investment Committee and the OECD Working Party on Responsible Business Conduct.

Chapter II: General Policies

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

DIHK: Our key concerns refer to the extension of due diligence expectations to the full downstream part of the value chain, which is not feasible for businesses, in particular small and medium sized companies (SMEs).

SMEs will also be indirectly affected because the companies in the the direct scope of application will transfer due diligence obligations to the companies in their supply chain, regardless of whether they are SMEs or large companies.

Remaining referencing of the Due Diligence Guidance documents, introducing over 600 pages of additional detailed requirements, which in the actual draft may be interpreted as putting the guidances on the same level as the Guidelines. These documents have been developed to provide practical support to companies, recognizing that not every action may be applicable to every situation. Companies should therefore merely be “encouraged” to take into account the documents.

Chapter III: Disclosure

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter IV: Human Rights

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

DIHK: From our point of view, corporate due diligence should be limited to the company's own business operations and to direct suppliers, focusing on the avoidance of human rights violations that can actually be controlled by the companies.

Common industry, product and networking initiatives should be strengthened.

Chapter V: Employment and Industrial Relations

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter VI: Environment

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

DIHK: The significant and material expansion of due diligence to the Environment and Science and Technology chapters and the legal consequences this may have is seen critically. The Guidelines must not transfer liability from laggard states to lawfully operating firms. In cases of environmental emission, lawful conduct of companies must not be assessed as causing or contributing to an adverse impact.

Chapter VII: Combatting Bribery, Bribe Solicitation and Extortion

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter VIII: Consumer Interests

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter IX: Science, Technology and Innovation

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter X: Competition

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter XI: Taxation

Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

WFM/Vogt

To: Chapter XI. Taxation para. 1

To: Commentary on Taxation para 102

DIHK: The passages “... *and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature*” and “... *takes reasonable steps to determine the intention of the legislature*” should be deleted. Each country should clearly and unambiguously define the obligations that citizens and companies must comply with. This is the only way to provide companies with sufficient legal certainty and enable them to comply with the law. Companies should not be required to make assumptions about the possible intentions of the legislature in order to comply with the law. This applies in particular because compliance with tax obligations is regularly subject to sanctions/penalties.

To: Commentary on Taxation para 105

DIHK: Country-by-country Reports under BEEPS Action 13 should be undertaken - as envisaged by the OECD - only for the purpose of tax risk control. CbCR data must not be used as a basis for taxation.

To: Commentary on Taxation para 106

DIHK: The OECD Transfer Pricing Guidelines and commentary provide internationally coordinated rules for determining transfer prices. These rules must be applied by all countries. In the case of differing interpretations by the tax authorities involved, disputes must be clarified and double taxation avoided. For this purpose, all countries should provide appropriate mechanisms and dispute settlement procedures.

Implementation procedures

Please include any comments you wish to make on this specific part of the consultation draft (max. 4000 characters)