

# International Trade Alert

**Akin Gump**  
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## OECD Launches Public Consultation on Updates to its Guidelines for Multinational Enterprises

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### Key Points

- On January 13, 2023, the OECD launched a public consultation process to gather comments from stakeholders regarding potential changes to its Guidelines for Multinational Enterprises. Stakeholders wishing to provide comments must do so by **February 10, 2023**.
- The Guidelines serve as an influential international benchmark for businesses on how they can ensure responsible business conduct across a variety of areas, including human rights, labor rights, the environment, bribery, consumer interests, technology and more. The Guidelines and the update discussions will likely play a key role in future domestic legislation and regulation for OECD members on the issue of business conduct in these areas.
- Non-observance of the Guidelines can expose enterprises to complaints filed before national contact points and eventual remediation obligations. The number of complaints has been increasing over the years.
- We can assist clients in understanding the implications of the proposed changes, in crafting thoughtful and impactful responses to public consultations, and in tracking the update process.

### The OECD's Proposed Changes to its Guidelines

The Guidelines for Multinational Enterprises (the "Guidelines") set out recommendations to businesses for ensuring responsible business conduct in all areas where business interacts with society, including human rights, labor rights, the environment, bribery, and consumer interests, as well as disclosure, science and technology, competition and taxation. The Guidelines are adhered to by 50 governments, including all Organisation for Economic Cooperation and Development (OECD) members and several non-OECD economies (such as Argentina, Brazil, Egypt, Kazakhstan, Morocco and Uruguay), which together represent two-thirds of global trade.

The Guidelines were adopted in 1976 and have been revised several times. The most recent revision was in 2011. The proposed updates were prompted by a stock-taking

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exercise conducted in 2021-2022 that found the Guidelines needed to be strengthened in certain areas, including:

- The environmental impacts of business activities, including on climate change, biodiversity and animal welfare.
- The risks of digitalization and technology.
- The protection of human rights defenders, trade union representatives and environmental activists.
- The right of association and collective bargaining.

To aid the consultations, the OECD has released a draft revision of the Guidelines. The draft changes are wide-ranging and include proposed revisions to every chapter, as well as to the Guidelines' implementation procedures. To illustrate, some of the changes being proposed include recommendations that businesses:

### The Environment

- Carry out “risk-based due diligence . . . to identify, prevent and mitigate the adverse environmental, health, and safety impacts of their operations.” Those impacts include climate change; biodiversity loss; air, water and soil pollution; deforestation; harm to animal welfare; and more.
- Contribute to “environmental remediation” to address the adverse environmental impacts their operations have caused.
- Incorporate into their decision-making means to avoid or mitigate environmental harm; enhance the positive environmental effects of their operations; and advance sustainable production and consumption patterns.

### Human Rights

- Provide for or cooperate in the remediation of adverse human rights impacts identified through an enterprise's human rights due diligence process or other means.

### Employment and Industrial Relations

- Avoid interfering with workers' choice to establish or join a trade union or representative organization of their own choosing.
- Provide a safe and healthy working environment and recognize occupational safety and health as an International Labour Organization (ILO) Fundamental Principle and Right at Work. The promotion of these objectives should include the prevention of accidents and injury to health arising out of, linked with or occurring in the course of work by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

### Disclosure

- Disclose material information on remuneration levels or amounts to key executives and members of their board.

### Technology

- When granting licenses for the use of intellectual property rights or when otherwise voluntarily transferring technology, do so on mutually agreed terms and conditions,

with appropriate safeguards to prevent and mitigate adverse impacts, and in a manner that contributes to the long-term sustainable development prospects of the host country and respects export control regulations.

- Carry out “risk-based due diligence . . . in the context of development, financing, licensing, sale, trade, and/or use of technology.”
- Adopt practices that permit the “voluntary, safe, secure, and efficient transfer and rapid diffusion of technology . . . with due regard to the protection of intellectual property rights, confidentiality obligations and privacy, personal data protection, and non-discrimination principles.”
- Enhance the transparency of data access and sharing when collecting and using data, as well as encourage the adoption of responsible data governance practices.
- Address the “ethical, legal, and social challenges” posed by “novel technology” while promoting responsible innovation.

## Implications

The revised Guidelines could have significant implications for businesses engaging in multinational operations. For instance, members of the public may file complaints (known as “specific instances”) with their “national contact points” when they consider that a multinational enterprise is not complying with the Guidelines. According to the OECD, over 575 complaints had been filed across 100 countries through 2020. The rate of complaints has increased over the years, with 54 complaints filed in 2022 alone. The highest number of complaints have related to employment and industrial relations, the environment and human rights. These complaints have been directed at enterprises in almost all industries.

Moreover, OECD guidance is often used as the benchmark for the domestic legislation and regulation of its members and beyond. The Guidelines in practice may serve as the benchmark that members seek to meet when drafting their own laws concerning business and its relationship to human rights, labor rights, consumer interests, the environment, technology and more. The OECD has also been traditionally a peer-pressure international organization. Member governments strive to comply to avoid criticism, and “key partner” countries strive to consider recommendations and guidelines to retain access and status. The Guidelines will also be used as a reference point for international negotiations and agreements on these topics.

Ensuring that those Guidelines’ changes reflect a reasonable, effective and well-thought through approach is thus of paramount importance. Comments submitted through the public consultations will help shape those final provisions.

Akin Gump is skilled at helping clients navigate the process and craft thoughtful and impactful responses to public consultations. Clients interested in engaging on the proposed Guidelines are encouraged to contact the authors of this alert.

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