



Third Revised Decision of the Council concerning National Treatment

**OECD Legal
Instruments**

This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at <http://legalinstruments.oecd.org>.

Please cite this document as:

OECD, *Third Revised Decision of the Council concerning National Treatment* , OECD/LEGAL/0263

Series: OECD Legal Instruments

© OECD 2018

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: "*This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website <http://legalinstruments.oecd.org>*"

Date(s)

Adopted on 12/12/1991
Amended on 12/02/1993
Amended on 09/03/1993
Amended on 10/02/1994
Amended on 14/04/1994
Amended on 15/04/1994
Amended on 15/04/1994
Amended on 02/06/1994
Amended on 03/06/1994
Amended on 22/02/1995
Amended on 19/04/1995
Amended on 02/05/1995
Amended on 19/05/1995
Amended on 24/11/1995
Amended on 12/02/1996
Amended on 28/03/1996
Amended on 24/05/1996
Amended on 05/07/1996
Amended on 11/10/1996
Amended on 24/10/1996
Amended on 28/11/1996
Amended on 23/04/1997
Amended on 24/04/1997
Amended on 26/09/1997
Amended on 23/10/1997
Amended on 26/02/1998
Amended on 23/04/1998
Amended on 10/09/1998
Amended on 12/11/1998
Amended on 28/07/2000
Amended on 28/09/2000
Amended on 28/09/2000
Amended on 21/12/2000
Amended on 26/07/2001
Amended on 26/07/2001
Amended on 29/11/2001
Amended on 20/12/2001
Amended on 11/07/2002
Amended on 25/07/2002
Amended on 23/09/2002
Amended on 12/12/2002
Amended on 28/05/2003
Amended on 18/09/2003
Amended on 09/12/2004
Amended on 16/12/2004
Amended on 14/10/2005
Amended on 11/05/2007
Amended on 17/07/2008
Amended on 16/07/2009
Amended on 26/11/2009
Amended on 15/12/2009
Amended on 10/05/2010
Amended on 10/05/2010
Amended on 10/05/2010
Amended on 22/11/2011
Amended on 16/04/2012
Amended on 30/04/2013
Amended on 11/07/2013

Background Information

The Third Revised Decision concerning National Treatment was adopted by the OECD Council on 12 December 1991 on the proposal of the Committee on International Investment and Multinational Enterprises (succeeded by today's Investment Committee). The Decision is one of the procedural complements to the 1976 Declaration on International Investment and Multinational Enterprises. This Decision relates specifically to the implementation of the section on National Treatment. It provides for a peer-review mechanism in case of the introduction of new exceptions to national treatment.

THE COUNCIL,

HAVING REGARD to the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960 and, in particular, to Articles 2 c), 2 d), 3 and 5 a) thereof;

HAVING REGARD to the Resolution of the Council of 13 December 1984 on the Terms of Reference of the Committee on International Investment and Multinational Enterprises [C(84)171(Final)];

HAVING REGARD to the Section on National Treatment of the Declaration by Governments of OECD Member countries of 21 June 1976 on International Investment and Multinational Enterprises (hereinafter called "the Declaration");

HAVING REGARD to the Second Revised Decision of the Council of 17 May 1984 on National Treatment [C(84)91];

HAVING REGARD to the report on Strengthening Procedures Under the National Treatment Instrument by the Committee on International Investment and Multinational Enterprises [C(91)147 and Corrigendum 1];

CONSIDERING it appropriate to strengthen the procedures established within the Organisation for reviewing laws, regulations and administrative practices (hereinafter called "measures") which depart from National Treatment, as defined in the Declaration (hereinafter called "National Treatment");

On the proposal of the Committee on International Investment and Multinational Enterprises;

DECIDES:

The Second Revised Decision of the Council of 17 May 1984 on National Treatment [C(84)91] is repealed and replaced by the following:

Article 1: Notification

- a) Members¹ shall notify the Organisation, of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment. All exceptions shall be set out in Annex A to this Decision.
- b) Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures covered in paragraph a).
- c) The Organisation shall consider the notifications submitted to it in accordance with the provisions of paragraphs a) and b) with a view to determining whether each Member is meeting its commitments under the Declaration.

Article 2: Examination

- a) The Organisation shall examine each exception lodged by a Member and other measures notified under Article 1 at intervals to be determined by the Organisation. These intervals shall, however, be not more than three years, unless the Council decides otherwise.
- b) Each Member shall notify the Organisation prior to the periodic examination called for in paragraph a), whether it desires to maintain any exception lodged by it under Article 1 and if so, state its reasons therefore.
- c) The examinations provided for in paragraph a) shall be directed at making suitable proposals designed to assist Members to withdraw their exceptions.
- d) The examinations provided for in paragraph a) shall be country reviews in which all of the exceptions lodged by a Member are covered in the same examination.

- e) Notwithstanding paragraph d), the examinations provided for in paragraph a) may focus on specific types or groups of measures of particular concern, as and when determined by the Organisation

Article 3: Reference to the Organisation

- a) If a Member considers that another Member has, contrary to its undertakings with regard to National Treatment, retained, introduced or reintroduced measures and if it considers itself to be prejudiced thereby, it may refer to the Organisation.
- b) The fact that the case is under consideration by the Organisation shall not preclude the Member which has referred to the Organisation from entering into bilateral discussion on the matter with the other Member concerned.

Article 4: Committee on International Investment and Multinational Enterprises: General Tasks

- a) The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall consider all questions concerning the interpretation or implementation of the provisions of the Declaration or of Acts of the Council relating to National Treatment and shall report its conclusions thereon to the Council.
- b) The Committee shall submit to the Council any appropriate proposals in connection with its tasks as defined in paragraph a) and, in particular, with the abolishing of measures constituting exceptions to National Treatment.

Article 5: Committee on International Investment and Multinational Enterprises: Special Tasks

- a) The Committee shall:
 - i) Consider, in conformity with paragraphs a) and b) of Article 2, each exception notified to the Organisation and make, where appropriate, suitable proposals to assist Members to withdraw their exceptions;
 - ii) Consider, in accordance with Article 1, the notifications submitted to the Organisation;
 - iii) Consider references submitted to the Organisation in accordance with the provisions of Article 3;
 - iv) Act as a forum for consultations, at the request of a Member, in respect of any matter related to the Declaration and its implementation.
- b) The Committee may periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters related to National Treatment and shall take account of such views in its reports to the Council.

Article 6: Review of the Decision

This Decision shall be reviewed within three years.

Article 7: Participation by the European Economic Community

The present Decision, as well as any further Decision amending it, shall be open for accession by the European Economic Community. Such accession shall be notified to the Secretary-General of the Organisation.

Annex A

Annex A is a list of exceptions to National Treatment available at <http://www.oecd.org/daf/inv/investment-policy/nationaltreatmentinstrument.htm> in the document

“National Treatment for Foreign Controlled Enterprises – including adhering country exceptions to National Treatment”.

¹ For the purposes of this Decision, "Members" means all parties to the Decision.

Adherents*

OECD Members

Australia
Austria
Belgium
Canada
Chile
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Italy
Japan
Korea
Latvia
Lithuania
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom

United States

Non-Members

Argentina
Brazil
Colombia
Costa Rica
Egypt
Jordan
Kazakhstan
Morocco
Peru
Romania
Tunisia
Ukraine

* Additional information and statements are available in the Compendium of OECD Legal Instruments:
<http://legalinstruments.oecd.org>

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.