



Third Revised Decision of the Council concerning National Treatment

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The Second Revised Decision of the Council of 17 May 1984 on National Treatment [C(84)91] is repealed and replaced by the following: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

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