



Recommendation of the Council on
Member Country Exceptions to
National Treatment and National
Treatment related Measures
concerning the Services
Sector

**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, *Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector*, OECD/LEGAL/0247

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 22/02/1989

Background Information

The Recommendation on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector was adopted by the OECD Council on 22 February 1989 on the proposal of the Committee on International Investment and Multinational Enterprises (succeeded by today's Investment Committee). The Recommendation is one of five OECD instruments that sought to encourage the levy of restrictions on national treatment in specific areas where a wider use of exceptions had been diagnosed at the time. In addition to stating general principles, the instrument contains country-specific recommendations to lift certain exceptions.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises of the Governments of OECD Member countries of 21 June 1976;

HAVING REGARD to the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises of 1984 [C/MIN(84)5(Final)];

HAVING REGARD to the Second Revised Decision of the Council of 17 May 1984 on National Treatment [C(84)91] and in particular its paragraph 4;

HAVING REGARD to the Recommendation of the Council of 16 July 1986 on Member country measures concerning National Treatment of foreign-controlled enterprises in OECD Member countries and based on considerations of public order and essential security interests [C(86)55(Final)];

HAVING REGARD to the Recommendation of the Council of 10 July 1987 on Member country exceptions to National Treatment and National Treatment related measures concerning investment by established foreign-controlled enterprises and, in particular, its paragraph a) [C(87)76(Final)];

HAVING REGARD to the number of exceptions and National Treatment related measures maintained by Member countries in the services sector and covered either in the present Recommendation or in the Recommendations referred to in the above paragraph and the importance attached by the OECD to the liberalisation of international services operations and in particular to the principle of National Treatment in that context;

HAVING REGARD to the fact that while some countries may have reported few or no such exceptions to National Treatment or National Treatment related measures concerning particular services sectors or subsectors, there may nevertheless be areas covered by measures motivated by public order and essential security interests and/or areas covered by public monopolies which prevent or restrict investment by foreign-controlled enterprises in those sectors or subsectors;

HAVING REGARD to the fact that the measures addressed in this examination may have differing degrees of restrictiveness in relation to National Treatment and that the number of measures maintained by a specific Member country may not by itself provide an adequate indication of the degree of restrictiveness of that Member country's policies concerning the services sector;

HAVING REGARD to the fact that while this examination has contributed to an improved transparency of measures maintained by Member countries in the category under examination, there is still a need for further improvement in this regard, particularly with respect to greater clarity and predictability of the scope and application of measures as they apply to the services sector, and to the motivations for the measures addressed in this examination, in particular with respect to related measures in certain services sectors such as computers and information services or transportation;

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

RECOMMENDS that Member Countries:

a) Reconsider the totality of their exceptions to National Treatment and National Treatment related measures which apply to the services sector, including both trans-sectoral and sector-specific measures, with a view to examining the possibility of removing or relaxing such measures, possibly by adopting alternative means of achieving their objectives in a manner which would be consistent with the principle of National Treatment; in so doing, Member countries should give priority attention:

- To limiting the scope and application of exceptions to National Treatment affecting the services sector strictly to areas of essential concern and interest;

- To exceptions which exclude, totally or substantially, foreign-controlled enterprises from particular sectors or activities, or which have significant restrictive effects on a number of sectors;
- And to areas where most Member countries do not find it necessary to maintain National Treatment related measures;

b) Take full account, in the context of possible reviews of or changes to existing measures, or in considering the introduction of new measures relating to the services sector, of the objectives of the National Treatment instrument and seek to ensure that such changes do not result in the introduction of new exceptions to National Treatment; in so doing Member countries should give particular attention to ensuring that moves towards privatisation of services sector activities result in increasing the opportunities for both domestic and foreign-controlled enterprises to invest in these activities, and in an extension of the application of National Treatment;

c) Give particular attention to the application of the above recommendations in relation to the measures listed below:

i) In the Sector of Banking, Insurance and Finance and Related Activities:

- **Canada (Alberta)**, with respect to its measure giving priority to enterprises owned and operated by Canadian citizens resident in the province, in providing loans and assistance;
- **New Zealand**, with respect to its measure involving discriminatory treatment of branches of foreign enterprises in the assessment of taxable income in the insurance area;

ii) In the Transportation Sector:

- **New Zealand**, with respect to its measure involving discriminatory treatment of established foreign-controlled enterprises with respect to the assessment of taxable income in the areas of shipping;

iii) In the Sector of Media, Broadcasting, Films and Related Activities:

- **Canada (Quebec)**, with respect to its measure limiting subsidies for publication or distribution of books to companies 50 per cent Canadian-owned or domiciled in Quebec;
- **Italy**, with respect to its measure limiting aids and subsidies for Italian film production or co-production to enterprises from countries with co-production agreements, and the limitation of subsidies for the processing and distribution of films to Italian-owned companies;
- **New Zealand**, with respect to its measure limiting special treatment of the assessment of taxable income in the area of films to locally owned enterprises;
- **Switzerland**, with respect to its measure limiting subsidies for production of films to Swiss companies or, based on considerations of reciprocity, where foreign ownership is less than 50 per cent;

iv) In the Computer Services and Communications Sector:

- **Norway**, with respect to the preferential placement of the telecommunication administration's R&D contracts with Norwegian companies or research institutions;

v) In the Sector of Tourism, Recreation, Land, and Related Activities:

- **Iceland** with respect to its measures concerning the provision of financial assistance and/or guarantees in the tourism sector;

- **New Zealand** with respect to its measures concerning the provision of financial assistance and/or guarantees in the tourism sector;
- **Canada**, with respect to its measures levying land transfer duties only on non-residents (Quebec) and imposing a higher land transfer tax on acquisitions by non-residents (Ontario);

vi) In the Sector of Consultancy or other Services:

- **Canada**, with respect to its measures concerning the provision of consultancy contracts of the Canadian International Development Agency to enterprises at least 51 per cent beneficially owned by Canadians, and the award of advertising contracts (Ontario) to wholly owned Canadian companies;
- the **United Kingdom**, with respect to its measure restricting the appointment of consultants under the Overseas Aid Programme; and
- the **United States**, with respect to its measure concerning ownership and other eligibility requirements for the financing of technical services contracts under the US Agency for International Development;

d) Give attention to the application of the foregoing observations and recommendations by their territorial subdivisions.

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
Costa Rica
Egypt
Jordan
Kazakhstan
Morocco
Peru
Romania
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.