



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

**OECD Legal
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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.

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