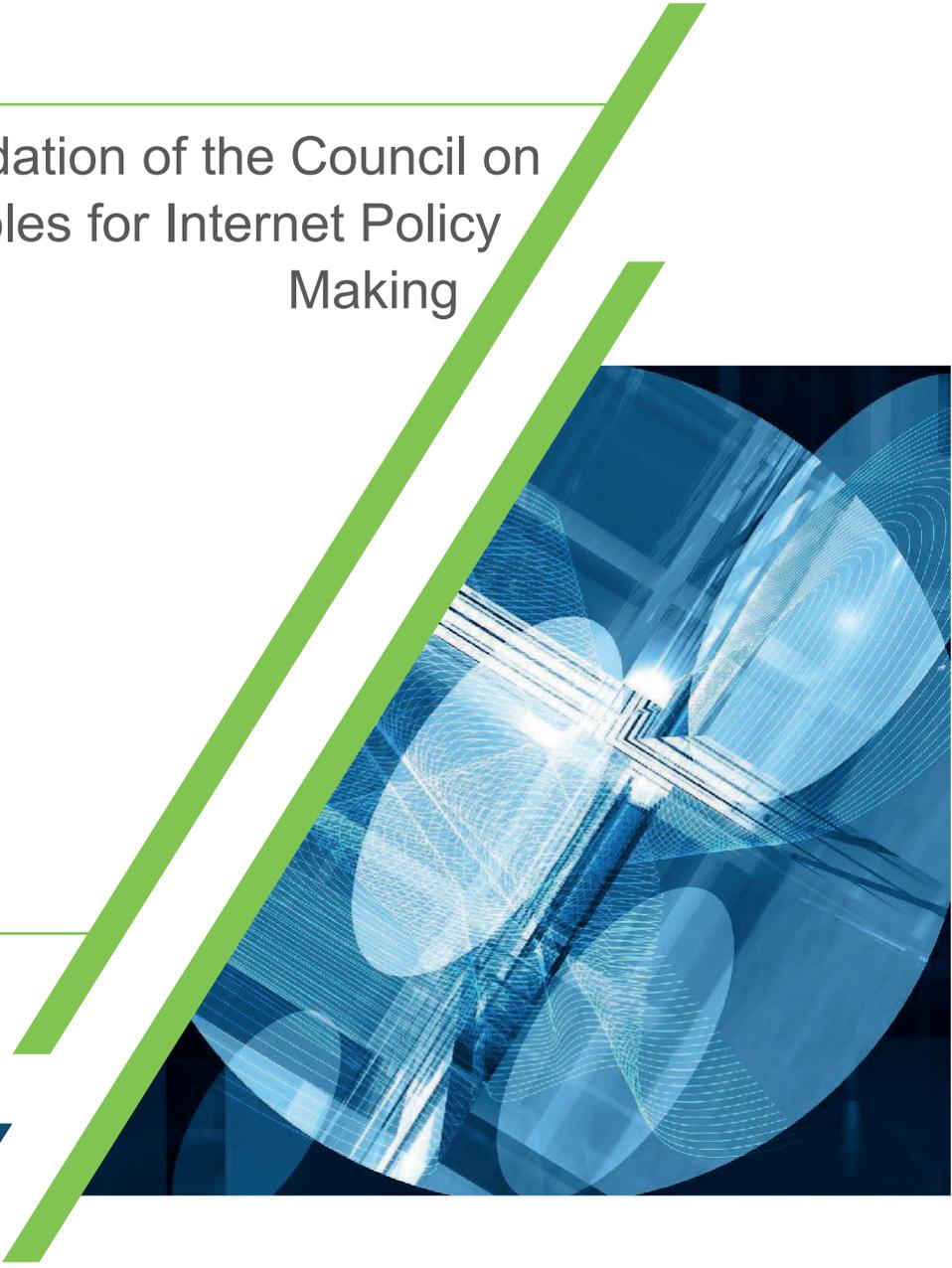




Recommendation of the Council on
Principles for Internet Policy
Making



**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 Principles for Internet Policy Making*, OECD/LEGAL/0387

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 13/11/2011

Background Information

The Recommendation on Principles for Internet Policy Making was adopted by the OECD Council on 13 November 2011 on the proposal of the Committee for Information, Computer and Communications Policy (now called Committee on Digital Economy Policy). The principles are designed to help preserve the fundamental openness of the Internet and the free flow of information, while ensuring that privacy, children and intellectual property are adequately protected. Addressing security challenges and finding ways to enhance trust in the Internet are also key objectives. The principles are not an attempt to harmonise global law, but rather to provide a common framework for companies and governments as they consider new initiatives with respect to access to information, its distribution, portability and the use of platforms and networks.

THE COUNCIL,

HAVING REGARD to article 5 b) of the Convention on the Organisation for Economic Cooperation and Development of 14th December 1960;

HAVING REGARD to Rule 18 b) of the Rules of Procedure;

HAVING REGARD to the Declaration for the Future of the Internet Economy (The “Seoul Declaration”) of 18 June 2008 [C(2008)99], which recognises that the Internet provides an open, decentralised platform for communication, collaboration, innovation, creativity, productivity improvement and economic growth;

HAVING REGARD to the Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data [C(80)58/FINAL], the Recommendation of the Council concerning Guidelines for the Security of Information Systems and Networks – Towards a Culture of Security [C(2002)131/FINAL], the Recommendation of the Council on Broadband Development [C(2003)259/FINAL], the Recommendation of the Council on the Protection of Critical Information Infrastructures [C(2008)35];

RECOGNISING that, at the OECD’s High Level Meeting on The Internet Economy: Generating Innovation and Growth held in June 2011, representatives of OECD Members, Egypt, the Business Industry Advisory Committee to the OECD (BIAC) and the Internet Technical Advisory Committee (ITAC), agreed to the Communiqué on Principles for Internet Policy-Making (the “Communiqué”);

RECOGNISING that this Communiqué, building on the Seoul Declaration, highlighted that the strength and dynamism of the Internet depend on its ease of access through high speed networks, on openness, and on user confidence; that the Internet allows people to give voice to their democratic aspirations and that any policy-making associated with it must promote openness and be grounded in respect for human rights and the rule of law;

On the proposal of the Committee for Information, Computer and Communication Policy:

I. RECOMMENDS that, in developing or revising their policies for the Internet Economy, Members, in co-operation with all stakeholders, take account of the following high level principles as explained in the Communiqué:

1. Promote and protect the global free flow of information;
2. Promote the open, distributed and interconnected nature of the Internet;
3. Promote investment and competition in high speed networks and services;
4. Promote and enable the cross-border delivery of services;
5. Encourage multi-stakeholder co-operation in policy development processes;
6. Foster voluntarily developed codes of conduct;
7. Develop capacities to bring publicly available, reliable data into the policy-making process;
8. Ensure transparency, fair process, and accountability;
9. Strengthen consistency and effectiveness in privacy protection at a global level;
10. Maximise individual empowerment;
11. Promote creativity and innovation;
12. Limit Internet intermediary liability;
13. Encourage co-operation to promote Internet security;
14. Give appropriate priority to enforcement efforts.

II. RECALLS that the Communiqué on Principles for Internet Policy Making, which is attached for information purposes, provides context and support to Members and stakeholders in their effort to implement effective and compatible approaches for Internet policy making, both at the national and international levels;

III. INVITES

Members to:

- Disseminate this Recommendation throughout their government and to all partner stakeholders, including business, civil society, the Internet technical community and other international forums, and;
- Consult, co-ordinate and co-operate at national and international levels, through multi-stakeholder processes, towards the effective implementation of the Recommendation;

Non-Members to take account of and adhere to this Recommendation and collaborate with Members in its implementation;

IV. INSTRUCTS the Committee for Information, Computer and Communications Policy to:

- Promote the dissemination of this Recommendation;
- Assist Members and non-Members in its implementation through a multi-stakeholder process.

ANNEX

COMMUNIQUE ON PRINCIPLES FOR INTERNET POLICY-MAKING

[adopted at the High Level Meeting on The Internet Economy: Generating Innovation and Growth on 28-29 June 2011]

The Seoul Declaration on the Future of the Internet Economy adopted at the 2008 OECD Ministerial on the Future of the Internet Economy recognised that the Internet provides an open, decentralised platform for communication, collaboration, innovation, creativity, productivity improvement and economic growth. Building on the Seoul Declaration, the OECD's High-Level Meeting on The Internet Economy: Generating Innovation and Growth, held in June 2011, highlighted that the strength and dynamism of the Internet depends on its ease of access to high-speed networks, openness, and on user confidence.

In the context of this High-Level Meeting, we, the representatives of OECD Members, Egypt and of stakeholders including the Business and Industry Advisory Committee to the OECD (BIAC), and the Internet Technical Community (ITAC), agreed on a number of basic principles for Internet policy making as an important step in ensuring that the Internet remains open and dynamic.

We recognised that the Internet allows people to give voice to their democratic aspirations, and any policy-making associated with it must promote openness and be grounded in respect for human rights and the rule of law.

We recognised the essential contribution of stakeholders, including business, civil society, the Internet technical community and academic institutions, to the ongoing development of the Internet and the enrichment of society using the Internet.

We stressed that more ubiquitous access to and use of broadband Internet networks, which are available in a competitive market and at affordable prices, will help foster innovation and drive the growth of the Internet Economy and of the economy in general.

We emphasised that, in certain cases, public support and investment may be needed to ensure the greatest practical availability of these networks in our countries, in particular in rural and remote areas, and that such public intervention should support market competition and promote private investment initiatives.

We underlined the importance of generating demand and the significant role that governments can play in this regard by stimulating the use of broadband Internet networks in areas such as science, education, health, transportation and smart electricity grids as well as promoting the use of Internet for an ageing society.

We recognised that new and evolving technologies and protocols, with their enabling effect on broader opportunities and innovation such as IPv6, the Semantic Web and cloud computing, are emerging as a general engine for economic and social development. In the context of recent natural disasters we recognised that a resilient network can play a crucial role in ensuring information sharing and facilitating rapid aid distribution.

The Internet has grown and diffused extremely rapidly across the globe, and continues to bring significant benefits to economies and societies. Individual innovators, and a co-operative multi-stakeholder environment, have played significant roles in this process. Enhancing access and participation in the Internet economy through the deployment of high-speed broadband Internet networks can also help in increasing the availability of legitimate content, in addition to supporting the free flow of information and knowledge, the freedom of expression, association and assembly, the protection of individual liberties, as critical components of a democratic society and cultural diversity.

The policy-making principles in this communiqué are designed to help preserve the fundamental openness of the Internet while concomitantly meeting certain public policy objectives, such as the protection of privacy, security, children online, and intellectual property, as well as the reinforcement of trust in the Internet. Effective protection of intellectual property rights plays a vital role in spurring innovation and furthers the development of the Internet economy. Internet policy making principles need to take into account the unique social, technical and economic aspects of the Internet environment. It is clear that the open and accessible nature of the Internet needs to be supported for the benefit of freedom of expression, and to facilitate the legitimate sharing of information, knowledge and exchange of views by users, including research and development, that has brought about widespread innovation to our economies.

Recognising the reliance of our economies on the Internet, the global nature of the Internet, and the various approaches implemented to stimulate the Internet economy, including innovative governance strategies in convening diverse groups of stakeholders to forge consensus-based policies, we agreed as governments, private sector stakeholders and civil society to the following basic principles for Internet policy making:

- **Promote and protect the global free flow of information:**

The Internet Economy, as well as individuals' ability to learn, share information and knowledge, express themselves, assemble and form associations, depend on the global free flow of information. To encourage the free flow of information online, it is important to work together to advance better global compatibility across a diverse set of laws and regulations. While promoting the free flow of information, it is also essential for governments to work towards better protection of personal data, children online, consumers, intellectual property rights, and to address cybersecurity. In promoting the free flow of information governments should also respect fundamental rights.

- **Promote the open, distributed and interconnected nature of the Internet:**

As a decentralised network of networks, the Internet has achieved global interconnection without the development of any international regulatory regime. The development of such a formal regulatory regime could risk undermining its growth. The Internet's openness to new devices, applications and services has played an important role in its success in fostering innovation, creativity and economic growth. This openness stems from the continuously evolving interaction and independence among the Internet's various technical components, enabling collaboration and innovation while continuing to operate independently from one another. This independence permits policy and regulatory changes in some components without requiring changes in others or impacting on innovation and collaboration. The Internet's openness also stems from globally accepted, consensus driven technical standards that support global product markets and communications. The roles, openness, and competencies of the global multi-stakeholder institutions that govern standards for different layers of Internet components should be recognised and their contribution should be sought on the different technical elements of

public policy objectives. Maintaining technology neutrality and appropriate quality for all Internet services is also important to ensure an open and dynamic Internet environment. Provision of open Internet access services is critical for the Internet economy.

- **Promote investment and competition in high-speed networks and services:**

High-speed networks and services are essential for future economic growth, job creation, greater competitiveness and for people to enjoy a better life. Public policies should promote robust competition in the provision of high-speed broadband Internet that is available to users at affordable prices and promote investment also to attain the greatest geographic coverage of broadband Internet. They should also promote an optimal level of investment by creating demand for high-speed broadband networks and services, in particularly in areas where governments play a key role such as in education, health, energy distribution and transport. Public policies should help foster a diversity of content, platforms, applications, online services, and other user communication tools that will create demand for networks and services, as well as to allow users to fully benefit from those networks and services and to access a diversity of content, on non-discriminatory terms, including the cultural and linguistic content of their choice.

- **Promote and enable the cross-border delivery of services:**

Suppliers should have the ability to supply services over the Internet on a cross-border and technologically neutral basis in a manner that promotes interoperability of services and technologies, where appropriate. Users should have the ability to access and generate lawful content and run applications of their choice. To ensure cost effectiveness and other efficiencies, other barriers to the location, access and use of cross-border data facilities and functions should be minimised, providing that appropriate data protection and security measures are implemented in a manner consistent with the relevant OECD Guidelines and reflecting the necessary balance among all fundamental rights, freedoms and principles.

- **Encourage multi-stakeholder co-operation in policy development processes:**

The Internet's complexity, global reach, and constant evolution require timely, scalable, and innovation-enabling policies. Due to the rapidly changing technological, economic and social environment within which new policy challenges emerge, multi-stakeholder processes have been shown to provide the flexibility and global scalability required to address Internet policy challenges. These multi-stakeholder processes should involve the participation of all interested stakeholders and occur in a transparent manner. In particular, continued support is needed for the multi-stakeholder environment, which has underpinned the process of Internet governance and the management of critical Internet resources (such as naming and numbering resources) and these various stakeholders should continue to fully play a role in this framework. Governments should also work in multi-stakeholder environments to achieve international public policy goals and strengthen international co-operation in Internet governance.

- **Foster voluntarily developed codes of conduct:**

Governments may be able to achieve certain policy goals through flexible, adaptive means by encouraging, facilitating and supporting the development of codes of conduct that are supported by effective accountability mechanisms. These codes would be developed by voluntary participants in a multi-stakeholder process and, if appropriate, enforceable under appropriate governmental authority. Such codes of conduct should encourage and facilitate voluntary co-operative efforts by the private sector to respect the freedoms of expression, association and assembly online, and to address illegal activity, including fraudulent, malicious, misleading and unfair practices taking place over the Internet. Such co-operative efforts should be balanced and consistent with the applicable legal framework and where those co-operative efforts are not forthcoming, other policy options consistent with these principles should be considered in consultation with relevant stakeholders.

- **Develop capacities to bring publicly available, reliable data into the policy-making process:**

Publicly available data can increase the quality of all stakeholders' participation in Internet policy making as well as governments' ultimate policy decisions. The collection, validation and public dissemination of objective data to inform Internet policy decisions should be reinforced and used to augment the combined research capacities of governments, other competent authorities and other stakeholders. International comparable metrics will help to quantify the ongoing economic developments and assess the proportionality and effectiveness of any policy solutions created in multi-stakeholder processes. Data gathering should be undertaken so as to avoid administrative burdens and data analysis should be done carefully to enable sound policy making.

- **Ensure transparency, fair process, and accountability:**

In order to build public trust in the Internet environment, policy-making processes and substantive policies that ensure transparency, fair process, and accountability should be encouraged. Transparency ensures that Internet users have timely, accessible, and actionable information that is relevant to their rights and interests. Fair process provides predictable decision-making procedures to govern the definition, assertion, and defence of rights. Accountability is achieved through policies that make parties answerable, where appropriate, for their actions on the Internet.

- **Strengthen consistency and effectiveness in privacy protection at a global level:**

Strong privacy protection is critical to ensuring that the Internet fulfils its social and economic potential. Current privacy challenges are likely to become more acute as the economy and society depends more heavily on broadened and innovative uses of personal information that can be more easily gathered, stored, and analysed. As individuals increasingly engage via the Internet in their public and private lives, they should be empowered to better understand how their personal data may be used, exercise greater control over those uses, and be confident that it will be handled fairly. Privacy rules should be based on globally recognised principles, such as the OECD privacy guidelines, and governments should work to achieve global interoperability by extending mutual recognition of laws that achieve the same objectives. Cross-border enforcement co-operation will further protect privacy and promote innovation. Privacy rules should also consider the fundamental rights of others in society including rights to freedom of speech, freedom of the press, and an open and transparent government.

- **Maximise individual empowerment:**

The Internet offers potential for individuals to exercise control over the information that they receive as well as the personal data that is disclosed about them. To maximise this potential governments, the private-sector, the Internet technical community and civil society should all work together to provide the capacity for appropriate and effective individual control over the receipt of information and disclosure of personal data, which should include user education and digital literacy initiatives.

- **Promote creativity and innovation:**

Numerous factors account for the extraordinary creativity and innovation found on the Internet, including intellectual property protection for creative endeavours and low barriers to entry which have enabled creation and deployment of new technologies, products and services. The Seoul Declaration of the OECD on the Future of the Internet Economy highlighted some of these factors including an open environment that supports the free flow of information, research, innovation, entrepreneurship, the wide accessibility to public sector information and content, the encouragement of basic and applied research on the Internet and of collaborative knowledge and innovation networks involving universities, governments, and public research. Low barriers to entry enabled by the open platform nature of the Internet environment have been crucial to online creativity and innovation. Policies and practices should continue to encourage and promote an Internet environment which is conducive to launching creative and innovative technologies, businesses, and other endeavours that respect recognised legal rights without having to obtain permission or affirmative co-operation from established service providers. Intellectual property protection is a fundamental tool for the advancement of innovation and creativity on the Internet. New and complementary approaches balanced to ensure effective protection of intellectual property should also be encouraged where necessary, and should also ensure protection of legitimate competition and fundamental principles such as freedom of expression, access to lawful content and Internet services and technologies, fair process, and privacy. Sound Internet policy should encompass norms of responsibility that enable

private sector voluntary co-operation for the protection of intellectual property. Appropriate measures include lawful steps to address and deter infringement, and accord full respect to user and stakeholder rights and fair process. In keeping with the multi-stakeholder processes set out in this document, all parties have a role to play, including individuals, providers, intermediaries, and judicial authorities.

- **Limit Internet intermediary liability:**

Appropriate limitations of liability for Internet intermediaries have, and continue to play, a fundamental role, in particular with regard to third party content. Internet intermediaries, like other stakeholders, can and do play an important role by addressing and deterring illegal activity, fraud and misleading and unfair practices conducted over their networks and services as well as advancing economic growth. Limitations play an important role in promoting innovation and creativity, the free flow of information, and in providing the incentives for co-operation between stakeholders. Within this context governments may choose to convene stakeholders in a transparent, multi-stakeholder process to identify the appropriate circumstances under which Internet intermediaries could take steps to educate users, assist rights holders in enforcing their rights or reduce illegal content, while minimising burdens on intermediaries and ensuring legal certainty for them, respecting fair process, and more generally employing the principles identified in this document. In achieving these current objectives the social and economic costs and benefits, including impacts on Internet access, use, security and development of the policy options should be assessed as part of their development process as should also be their compatibility with the protection of all relevant fundamental rights and freedoms and their proportionality in view of the seriousness of the concerns at stake.

- **Encourage co-operation to promote Internet security:**

Policies to address security threats and reduce vulnerabilities are important to the continued vitality of the Internet. The implementation of internationally recognised, market-driven security standards and best practices to promote online security should be encouraged. In addition, breakthrough R&D on novel security systems capable of dealing with the high complexity of ICT networks, information systems and applications should be encouraged. Policies to enhance online security should not disrupt the framework conditions that enable the Internet to operate as a global open platform for innovation, economic growth, and social progress and should not be used as pretence for protectionism. Policies should also aim to enhance individual and collective efforts for self-protection and promote trust and confidence. Their consistency with, and potential impact on, other economic and social dimensions of the Internet should be carefully assessed through a multi-stakeholder process prior to adoption and implementation.

- **Give appropriate priority to enforcement efforts:**

Encouraging investment and innovation in the Internet marketplace requires clearly defined legal rights and a robust and fair process to protect those rights, including users' rights, consistent with the need of governments to enforce applicable law. It is important in this regard that governments, industry and civil society work together to foster respect for the law and protect fundamental rights. Sufficient government enforcement resources and industry co-operation should also be available to ensure that Internet-based activities comply with law. Current legislative and regulatory provisions could be reviewed to ensure that they can be effectively enforced and are consistent with fundamental rights. Finally, co-operation on cross-border investigations and enforcement actions should be improved.

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
Bulgaria
Colombia
Costa Rica
Kazakhstan
Morocco
Peru
Romania

* 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.