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**COUNCIL**

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**PARTICIPATION OF NON-MEMBERS IN THE ACTIVITIES OF THE  
ORGANISATION: LEGAL ASPECTS OF THE ISSUE**

**(Note by the Secretary-General)**

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1. The aim of this note, prepared at the request of the Chairman of the CCN, is to confirm the Council's interpretation of the provisions of the Convention on the Organisation for Economic Co-operation and Development concerning the participation of non-members in the OECD's activities.
2. In particular, it makes clear that participation in the activities of the Organisation is not restricted solely to sovereign States, but is also open to non-State entities.

### **The text of the Convention and the powers of the Council**

3. The OECD Convention contains no provisions that might be interpreted as restricting the participation of non-members in the activities of the Organisation solely to sovereign States.
4. More specifically, in Article 12 the Convention lays down that:  
  
"Upon such terms and conditions as the Council may determine, the Organisation may :  
  
(...)  
  
c) invite non-member Governments or organisations to participate in activities of the Organisation".
5. Furthermore, Article 9 a) of the Rules of Procedure states that the Council may invite "a non-member Government (...) to be represented by an observer at meetings, or parts of meetings, of all or certain bodies of the Organisation".
6. Consequently, both the provisions of the Convention and the Rules of Procedure leave the Council considerable latitude.
7. It should be noted that it is not necessary that the constituent instrument of an intergovernmental organisation contain a specific provision in this regard for its Member countries to exercise the right of inviting natural or legal persons to attend meetings of the bodies of this organisation, to speak when invited to do so by the session chair or to participate in other activities. In fact, the provisions of Article 12 are not an indispensable justification, nor the sole justification, for the participation of outside parties in the work of the Organisation. For example, Article 10 b) of the Rules of Procedure provides for the invitation of individuals in an expert capacity to meetings of subsidiary bodies of the Organisation.
8. This means that the Council is free to decide which natural or legal persons may participate in the activities of the Organisation, as well as to determine the conditions on which they may do so.

### **Interpretation and application of the Convention**

9. The Vienna Convention on the Law of Treaties lays down in Article 31 (entitled "General rule of interpretation"), Paragraph 1, that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
10. As has been shown above, the interpretation in accordance with the ordinary meaning of the terms of the OECD Convention does not justify the conclusion that Article 12 applies solely to non-member sovereign States or that this article is exhaustive or restrictive with respect to the persons

invited to participate in the activities of the Organisation. This being established, it is now necessary to examine whether the context of the treaty or subsequent practice may have modified this interpretation.

11. Under the Vienna Convention on the Law of Treaties, when interpreting a treaty it is necessary to consider both the “context” (Article 31.2) as well as other elements (Article 31.3) pertaining to the treaty. One of these other elements that must be taken into account is “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions”.

12. The International Law Commission specifies that “an agreement as to the interpretation of a provision reached after the conclusion of the treaty represents an authentic interpretation by the parties which must be read into the treaty for purposes of its interpretation”.<sup>1</sup> Such an interpretation, which may only be called in question by agreement among the parties themselves, is also binding on third States, which have no particular rights under a treaty to which they are not signatories.

13. In this regard, it must be pointed out that by adopting Resolution C(96)64/REV1/FINAL *concerning the participation of non-member economies in the work of the subsidiary bodies of the Organisation*, the Council confirmed the interpretation by which the participation of non-members in activities -- and in particular in subsidiary bodies -- is not restricted solely to sovereign States.

14. This is borne out by the fact that:

- the title of the Resolution refers specifically to non-member economies (while the title of the previous Resolution C(92)65/FINAL simply referred to non-member countries);
- the Resolution refers specifically to Article 12 of the Convention;
- the preamble mentions the fact that “the participation of a non-member country **or** economy in the activities of a subsidiary body of the Organisation may arise at the initiative of the non-member or of the Organisation”.

15. The Council has therefore recognised the possibility that entities other than sovereign States may participate as observers without any implied bearing as to the legal or political status of the entities concerned.<sup>2</sup>

16. Under Article 31.3 of the Vienna Convention on the Law of Treaties, Resolution C(96)64/REV1/FINAL constitutes an authentic interpretation that is binding on all Members of the Organisation as well as on non-member States.

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1. Yearbook of the International Law Commission, 1966. Vol. II, p. 41, Paragraph 14, as presented at the United Nations Conference on the Law of Treaties, first and second sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969.

2. Moreover, it should be pointed out that the OECD is not an isolated case, for as an eminent specialist of international law has pointed out, “the granting of observer status is yet another way of allowing the representation of non-State interests, for this status commonly allows a non-State entity to submit documents or speak in debate, though without the right to vote.” (D.W. Bowett, *The Law of International Institutions*, fourth edition, Stevens and Son, 1982, p. 397).

**Conclusion**

17. The OECD Convention contains no provisions that may be interpreted as restricting the participation of non-members in the activities of the Organisation solely to sovereign States.

18. With regard more specifically to the participation of non-members in the subsidiary bodies of the Organisation, Resolution C(96)64/REV1/FINAL explicitly encompasses the possible participation of non-member countries or economies. Observer status may be granted to a non-member economy without any implied bearing as to the legal and political status of the entity concerned.

19. Resolution C(96)64/REV1/FINAL, which is to be considered as an authentic interpretation by the Parties to the OECD Convention, is therefore binding on all concerned.

20. Consequently, the Secretary-General invites the Council to adopt the following draft entry in its summary record:

**THE COUNCIL**

- a) noted document C(98)211;
- b) confirmed that the OECD Convention does not restrict the participation of non-members in the activities of the Organisation solely to sovereign States and that in particular Resolution C(96)64/REV1/FINAL -- which constitutes an authentic interpretation of the relevant provisions of the Convention -- explicitly encompasses the participation of non-member countries or economies in the subsidiary bodies of the Organisation without any implied bearing as to the legal and political status of the economy concerned.