Council

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: REVIEW 2000

(Procedural Issues: Note by the Secretariat)
1. The package concerning the Guidelines for Multinational Enterprises set out in C(2000)96, consists of the following elements:

   -- modifications of the OECD Declaration on International Investment and Multinational Enterprises;

   -- modifications of the Guidelines for Multinational Enterprises, which are Annex I to the Declaration;

   -- a proposed Decision of the Council on the OECD Guidelines for Multinational Enterprises, setting out procedures concerning National Contact Points, CIME work on the Guidelines, and periodic review. The proposed decision would repeal and replace the Second Revised Decision of the Council of June 1984 [C(84)90, as amended]; and

   -- an annex to the Decision, which sets out “procedural guidance” to be “taken into account” by adhering countries with respect to the NCPs and the CIME.

Of these elements, only the third, the procedural decision, is intended to be legally binding.

2. Declarations are not formally decisions or recommendations of the Organisation within the framework of Article 5 of the Convention. Therefore, they are not subject to the rules for adoption of decisions and recommendations set out in Article 6, in particular the consensus rule. The practice is to adopt them at a high level, generally by Ministers of the participating countries, on the occasion of meetings of the Council or Committees of the OECD at Ministerial level. If an OECD member (or non-member) attending the meeting does not wish to participate in a Declaration, it simply makes that clear on the occasion of its adoption.

3. If a member has difficulties with elements of a proposed Council decision, it has a number of options. The principal ones are:

   -- to participate with reservations or understandings on specific points;¹

   -- to abstain and allow the decision to be adopted without itself being bound by it;

   -- under Rule 20 of the Rules of Procedure, if a member is absent or makes a “reservation with regard to adoption”, the other members may agree to apply the decision provisionally as between them until the said Member has acceded to it. If the latter does not accede after a period specified by Council, Council shall decide (by consensus) whether the decision would remain binding as between those members who have accepted it; or

   -- in extremely rare cases, to oppose the formation of consensus (i.e., exercise a veto).

In the present case, one Member country has indicated that it will veto the Decision. Unless that position were modified, the Second Revised Decision of the Council of June 1984 [C(84)90, as amended, which is in force and binding upon all Member countries, would remain in force, unchanged.

¹ Such reservations or understandings are made known to the other members well in advance, so that they can decide whether they are willing to proceed on that basis.
4. The major results of the current review concerning the procedures are reflected in the procedural guidance set out in an Annex to the proposed decision, rather than the main body of the proposed decision itself (see C(2000)96, Appendix 3). Sections I.1. and II.6. of the proposed decision provide that “due account” will be taken of the “procedural guidance” provided in the annex to the decision, which, accordingly, would not constitute legally binding procedural rules. Aside from this element, the changes are:

-- substituting “adhering country” for “Member country”, throughout the decision;

-- providing for NCPs to meet annually to share experiences and report to the CIME;

-- providing for “other non-governmental organisations” to be invited periodically, along with BIAC and TUAC to “express their views on matters related to the Guidelines”;

-- providing for CIME to consider holding “exchanges of views on matters related to the Guidelines with representatives of non-adhering countries”;

-- providing for CIME to hold “exchanges of views on the activities of National Contact Points”; and

-- providing for the views expressed by “other non-governmental organisations and non-adhering countries as appropriate” to be taken into account in CIME reports to Council.

5. Given the nature of the new elements in the proposed decision and its annex, they could be adopted as a Procedural Declaration by the governments wishing to do so. It would be possible to develop a text which picks up all the “new” elements which were in the proposed Council decision and its procedural annex. This might well be a separate declaration from the substantive Declaration on Multinational Enterprises and the Guidelines for Multinational Enterprises. It could allow a Member to join the substantive declaration revising the Guidelines, continue to be bound by and participate in the NCP and CIME procedures under the Second Revised Decision, yet not share the political commitment of the others to take into account the procedural guidance in the procedural declaration. This would not preclude such a Government from later applying much of that procedural guidance in practice, joining consensus on specific procedural issues which might later arise regarding the work of NCPs and of the CIME or from deciding later to adhere to the procedural declaration, as Turkey did with the substantive 1976 Declaration and procedural decision in 1981.