The attached contribution from Belgium, is circulated for information.
BELGIUM’S COMMENTS ON THE SECRETARIAT’S PROPOSAL FOR PARTICIPATION IN CIME OF NON-MEMBERS ADHERING TO THE DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (CIME.RD 2/REV1 of 20 September 2000)

1. The Belgian Delegation has noted with utmost interest the Secretariat’s proposal in the aforementioned Room Document. The Delegation is fully aware that non-Member countries wishing to adhere to the Declaration on International Investment and Multinational Enterprises should be afforded a satisfactory way of taking part in CIME activities involving the Declaration and its related instruments, including the Guidelines for Multinational Enterprises. Moreover, since a right to observer status has been granted in the past to non-Member countries that adhered to the Declaration before the Guidelines were revised, it would not be right to institute discrimination between new and old adherents.

2. Nevertheless, Belgium considers that the proposed solution raises a number of issues that warrant full discussion. We subscribe to the idea that CIME was not the ideal forum for such a discussion, which, in view of its implications, rightfully takes place in the Council. Accordingly, and as the Belgian Delegation to CIME had suggested, we are submitting this note so that it can be forwarded to the Council along with the Secretariat’s proposal in order to contribute to the discussion. We should like to make clear that this note does not express a formal reservation vis-à-vis the Secretariat’s proposal, but rather constitutes a critical analysis thereof. It in no way prejudices the attitude that Belgium will ultimately adopt after the Council’s discussions – discussions that cannot, however, be dispensed with.

Critical analysis of the proposal

1. **Consequences in terms of the facts**

3. CIME would exist in two separate configurations:

   - An extended configuration (members + fully fledged participants), which would deal with the instruments related to the Declaration, and to which an ad hoc working party, having the same make-up, would be assigned in order to negotiate revision of the Guidelines, and which would be maintained until further notice in order to oversee implementation. *Inter alia*, this extended configuration would perform all of the functions assigned to CIME in the Decision of the Council concerning procedures for implementing the Guidelines.

   - A “normal” configuration (members + observers), which would deal with “the rest”.

4. The extended configuration would soon encompass roughly 40 delegations (30 MCs + European Commission + the 3 current observers + 5 declared adhering prospective participants + 1 potential candidate in the very short term), not counting the traditional invited participants BIAC, TUAC and, as have now become a fixture of CIME, NGOs.
2. **Consequences in terms of effects**

2.1 **Internal effects within CIME**

5. The extended CIME would be a very cumbersome body, in which the inevitable growth in the number of participants would make it increasingly difficult to reach conclusions. The Committee’s role, as laid down in the Decision of the Council, of clarifying and interpreting the Guidelines, and of monitoring National Contact Points (NCPs), could become increasingly difficult, especially if the NCPs were to hold sharply defined divergent viewpoints.

6. An even more serious problem stems from the fact that the Guidelines are intended to be dynamic and evolve: they have already been revised three times since 1976. The latest revision, while clearly the most extensive, was by far the most difficult to achieve in principle, and subsequently to negotiate. What would it be like in the future if a decision in principle to launch a revision, and then the negotiations themselves, had to be handled by a 40- or 50-member CIME? Paralysis would seem inevitable: the 2000 version of the Guidelines may well be the last. *(In this respect, the problem at hand is fairly different from that of the Convention Against Bribery, which in any event entails an elaborate adherence process that includes ratification, and which is not intended to be revised and adjusted on a regular basis.)*

2.2 **Effects at OECD level**

7. At the broader level of the OECD as a whole, we feel that this proposal anticipates the outcome of the deliberations the Council should be starting on future expansion of the Organisation, and on operating and decision-making mechanisms in an expanded OECD. While this is clearly one specific instance, it would nonetheless tend to set a precedent for an OECD “à la carte”. Since outreach to non-Member countries is a major thrust of current OECD policy, the arrangements might be used again to reach out in other areas as well, without waiting for the matter of the Organisation’s goals and future operations to be settled first.

8. The analogy with the Convention Against Bribery would in this case be absolutely not relevant, because the Convention has a legal existence that is independent of the OECD, which acted only as a framework and initial forum for its negotiations, and it is only logical that all of the signatories be fully fledged members of the Convention’s administrative bodies, which are not bodies of the OECD but are merely housed and furnished logistical assistance by the Organisation. In contrast, the Declaration and its related instruments fall under the legal framework of acts of the Council, and are thus internal to the OECD.

*Suggested solution?*

9. It would obviously be impossible to deny new adhering countries some form of participation in CIME’s work.

10. One possible solution might be to make permanent the *ad hoc* Working Party, which would no longer be known as a “negotiating group” and would very officially become the *Working Party on Monitoring and Implementation of the Guidelines*. This working party would be expanded almost automatically, according to the mechanism suggested by the Secretariat.

11. CIME would remain unchanged (with selected observers), although some of the tasks assigned to the Committee under the Decision of the Council could be delegated to the Working Party on Monitoring.
But in any event, the decision in principle as to whether the Guidelines needed to be revised, along with any decisions regarding negotiating procedures, would be taken by CIME alone (and the Council), after (non-binding) consultation with the Working Party, as the case may be.

12. Naturally, other options, such as abandoning the absolute principle of consensus within an expanded CIME, should not be ruled out from the start; however, a solution like that is perhaps harder to separate from the overall context of an examination of decision-making within the Organisation. Clearly, what is needed here is a short-term solution to the problem at hand.