

DECLARATION  
BY THE GOVERNMENTS OF OECD MEMBER COUNTRIES

and

DECISIONS OF THE OECD COUNCIL

on

GUIDELINES FOR  
MULTINATIONAL ENTERPRISES

NATIONAL TREATMENT

INTERNATIONAL INVESTMENT  
INCENTIVES AND DISINCENTIVES

CONSULTATION PROCEDURES

**ORGANISATION  
FOR ECONOMIC CO-OPERATION  
AND DEVELOPMENT**

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- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development;
- to contribute to the expansion of world trade on a multi-lateral, non-discriminatory basis in accordance with international obligations.

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## FOREWORD

At the Meeting of the OECD Council at Ministerial level which took place on 21st-22nd June, 1976, an important step was taken to extend co-operation among Member countries in the area of international investment and multinational enterprises. The Declaration and Decisions reproduced in this publication are the essential elements of this action. They aim at improving the international investment climate through joint undertakings by the governments of Member countries which should strengthen confidence between multinational enterprises and States; they aim further at encouraging the positive contributions of multinational enterprises to economic and social progress and minimising or resolving difficulties that may result from their activities, through internationally-agreed guidelines, inter-governmental consultations and review mechanisms.

This is a pioneering approach in a highly complex and widely debated subject. Complex, because the issues involved cut across the economic and social spectrum, as they affect, for instance, international trade, balance of payments, finance, technology, competition and market structures, industrial patterns and employment. The debate — particularly on multinational enterprises — has lacked a general framework of understanding or common approach as to how to assess the problems and develop possible solutions, as well as international reference material. This had left governments, politicians, public information media, the business community, labour organisations and other interested parties somewhat without guidance in this important area which, nevertheless, remained in the forefront of public attention.

The step taken in the OECD may fill this vacuum by providing such terms of reference and eliminating some of the uncertainties and misconceptions that too often confuse the debate on these matters both at national and international fora. It is the result of thorough studies and intensive negotiations, as well as consultations with the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) which have publicly welcomed the conclusion of this effort. The consensus thus reached in the OECD represents a joint philosophy and common approach on the part of a group of countries accounting for most international investment. This should have an influence even beyond the OECD area.

In the longer perspective the effectiveness of this action may be increased by the follow-up which the governments of OECD Member countries will give to it in the course of the consultation procedures and the continuing efforts within OECD which may lead to further international arrangements and agreements in this field.

The interest and publicity it has received and the favourable initial reaction of the business community and the labour organisations justify high expectations of their practical impact.

E. van LENNEP  
*Secretary-General*

**DECLARATION  
ON INTERNATIONAL INVESTMENT  
AND MULTINATIONAL ENTERPRISES**

*(21st June 1976)*

**THE GOVERNMENTS OF OÉCD MEMBER COUNTRIES**

**CONSIDERING**

- that international investment has assumed increased importance in the world economy and has considerably contributed to the development of their countries;
- that multinational enterprises play an important role in this investment process;
- that co-operation by Member countries can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic and social progress, and minimise and resolve difficulties which may arise from their various operations;
- that, while continuing endeavours within the OECD may lead to further international arrangements and agreements in this field, it seems appropriate at this stage to intensify their co-operation and consultation on issues relating to international investment and multinational enterprises through inter-related instruments each of which deals with a different aspect of the matter and together constitute a framework within which the OECD will consider these issues:

**DECLARE:**

**Guidelines for  
Multinational  
Enterprises**

- I. that they jointly recommend to multinational enterprises operating in their territories the observance of the Guidelines as set forth in the Annex hereto having regard to the considerations and understandings which introduce the Guidelines and are an integral part of them;

**National  
Treatment**

- II. 1. that Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another Member country (hereinafter

referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. that Member countries will consider applying "National Treatment" in respect of countries other than Member countries;
3. that Member countries will endeavour to ensure that their territorial subdivisions apply "National Treatment";
4. that this Declaration does not deal with the right of Member countries to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

**International  
Investment  
Incentives and  
Disincentives**

- III.
1. that they recognise the need to strengthen their co-operation in the field of international direct investment;
  2. that they thus recognise the need to give due weight to the interests of Member countries affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
  3. that Member countries will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

**Consultation  
Procedures**

- IV.
- that they are prepared to consult one another on the above matters in conformity with the Decisions of the Council relating to Inter-Governmental Consultation Procedures on the Guidelines for Multinational Enterprises, on National Treatment and on International Investment Incentives and Disincentives;

## Review

- V. that they will review the above matters within three years with a view to improving the effectiveness of international economic co-operation among Member countries on issues relating to international investment and multinational enterprises;

NOTE: The Turkish Government did not participate in the Declaration and abstained from the Decisions.

*Annex to the Declaration of 21st June 1976 by Governments  
of OECD Member Countries on International Investment and  
Multinational Enterprises*

**GUIDELINES FOR MULTINATIONAL ENTERPRISES**

1. Multinational enterprises now play an important part in the economies of Member countries and in international economic relations, which is of increasing interest to governments. Through international direct investment, such enterprises can bring substantial benefits to home and host countries by contributing to the efficient utilisation of capital, technology and human resources between countries and can thus fulfil an important role in the promotion of economic and social welfare. But the advances made by multinational enterprises in organising their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives. In addition, the complexity of these multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern.

2. The common aim of the Member countries is to encourage the positive contributions which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise. In view of the transnational structure of such enterprises, this aim will be furthered by co-operation among the OECD countries where the headquarters of most of the multinational enterprises are established and which are the location of a substantial part of their operations. The guidelines set out hereafter are designed to assist in the achievement of this common aim and to contribute to improving the foreign investment climate.

3. Since the operations of multinational enterprises extend throughout the world, including countries that are not Members of the Organisation, international co-operation in this field should extend to all States. Member countries will give their full support to efforts undertaken in co-operation with non-member countries, and in particular with developing countries, with a view to improving the welfare and living standards of all people both by encouraging the positive contributions which multinational enterprises can make and by minimising and resolving the problems which may arise in connection with their activities.

4. Within the Organisation, the programme of co-operation to attain these ends will be a continuing, pragmatic and balanced one. It comes within the general aims of the Convention on the Organisation for Economic Co-operation and Development (OECD) and makes full use of the various specialised bodies of the Organisation, whose terms of reference already cover many aspects of the role of multinational enterprises, notably in matters of international trade



and payments, competition, taxation, manpower, industrial development, science and technology. In these bodies, work is being carried out on the identification of issues, the improvement of relevant qualitative and statistical information and the elaboration of proposals for action designed to strengthen inter-governmental co-operation. In some of these areas procedures already exist through which issues related to the operations of multinational enterprises can be taken up. This work could result in the conclusion of further and complementary agreements and arrangements between governments.

5. The initial phase of the co-operation programme is composed of a Declaration and three Decisions promulgated simultaneously as they are complementary and inter-connected, in respect of guidelines for multinational enterprises, national treatment for foreign-controlled enterprises and international investment incentives and disincentives.

6. The guidelines set out below are recommendations jointly addressed by Member countries to multinational enterprises operating in their territories. These guidelines, which take into account the problems which can arise because of the international structure of these enterprises, lay down standards for the activities of these enterprises in the different Member countries. Observance of the guidelines is voluntary and not legally enforceable. However, they should help to ensure that the operations of these enterprises are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between enterprises and States.

7. Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of a multinational enterprise located in various countries are subject to the laws of these countries.

8. A precise legal definition of multinational enterprises is not required for the purposes of the guidelines. These usually comprise companies or other entities whose ownership is private, state or mixed, established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with the others. The degree of autonomy of each entity in relation to the others varies widely from one multinational enterprise to another, depending on the nature of the links between such entities and the fields of activity concerned. For these reasons, the guidelines are addressed to the various entities within the multinational enterprise (parent companies and/or local entities) according to the actual distribution of responsibilities among them on the understanding that they will co-operate and provide assistance to one another as necessary to facilitate observance of the guidelines. The word "enterprise" as used in these guidelines refers to these various entities in accordance with their responsibilities.

9. The guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; wherever relevant they reflect good practice for all. Accordingly, multinational

and domestic enterprises are subject to the same expectations in respect of their conduct wherever the guidelines are relevant to both.

10. The use of appropriate international dispute settlement mechanisms, including arbitration, should be encouraged as a means of facilitating the resolution of problems arising between enterprises and Member countries.

11. Member countries have agreed to establish appropriate review and consultation procedures concerning issues arising in respect of the guidelines. When multinational enterprises are made subject to conflicting requirements by Member countries, the governments concerned will co-operate in good faith with a view to resolving such problems either within the Committee on International Investment and Multinational Enterprises established by the OECD Council on 21st January 1975 or through other mutually acceptable arrangements.

**Having regard** to the foregoing considerations, the Member countries set forth the following guidelines for multinational enterprises with the understanding that Member countries will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and international agreements, as well as contractual obligations to which they have subscribed:

## **General policies**

### **Enterprises should**

1. take fully into account established general policy objectives of the Member countries in which they operate;
2. in particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities, the promotion of innovation and the transfer of technology;
3. while observing their legal obligations concerning information, supply their entities with supplementary information the latter may need in order to meet requests by the authorities of the countries in which those entities are located for information relevant to the activities of those entities, taking into account legitimate requirements of business confidentiality;
4. favour close co-operation with the local community and business interests;
5. allow their component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialisation and sound commercial practice;

6. when filling responsible posts in each country of operation, take due account of individual qualifications without discrimination as to nationality, subject to particular national requirements in this respect;
7. not render—and they should not be solicited or expected to render—any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office;
8. unless legally permissible, not make contributions to candidates for public office or to political parties or other political organisations;
9. abstain from any improper involvement in local political activities.

### **Disclosure of information**

Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improve public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, in so far as necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular:

- i)* the structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including shareholdings between them;
- ii)* the geographical areas\* where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;
- iii)* the operating results and sales by geographical area and the sales in the major lines of business for the enterprise as a whole;
- iv)* significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;

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\* For the purposes of the guideline on disclosure of information the term “geographical area” means groups of countries or individual countries as each enterprise determines is appropriate in its particular circumstances. While no single method of grouping is appropriate for all enterprises or for all purposes, the factors to be considered by an enterprise would include the significance of operations carried out in individual countries or areas as well as the effects on its competitiveness, geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprises’ operations in the various countries.

- v) a statement of the sources and uses of funds by the enterprise as a whole;
- vi) the average number of employees in each geographical area;
- vii) research and development expenditure for the enterprise as a whole;
- viii) the policies followed in respect of intra-group pricing;
- ix) the accounting policies, including those on consolidation, observed in compiling the published information.

## **Competition**

Enterprises should, while conforming to official competition rules and established policies of the countries in which they operate,

1. refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example,
  - a) anti-competitive acquisitions,
  - b) predatory behaviour toward competitors,
  - c) unreasonable refusal to deal,
  - d) anti-competitive abuse of industrial property rights,
  - e) discriminatory (i.e. unreasonably differentiated) pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises;
2. allow purchasers, distributors and licensees freedom to resell, export, purchase and develop their operations consistent with law, trade conditions, the need for specialisation and sound commercial practice;
3. refrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation;
4. be ready to consult and co-operate, including the provision of information, with competent authorities of countries whose interests are directly affected in regard to competition issues or investigations. Provision of information should be in accordance with safeguards normally applicable in this field.

## **Financing**

Enterprises should, in managing the financial and commercial operations of their activities, and especially their liquid foreign assets and liabilities, take into consideration the established objectives of the countries in which they operate regarding balance of payments and credit policies.

## **Taxation**

Enterprises should

1. upon request of the taxation authorities of the countries in which they operate, provide, in accordance with the safeguards and relevant procedures of the national laws of these countries, the information necessary to determine correctly the taxes to be assessed in connection with their operations, including relevant information concerning their operations in other countries;
2. refrain from making use of the particular facilities available to them, such as transfer pricing which does not conform to an arm's length standard, for modifying in ways contrary to national laws the tax base on which members of the group are assessed.

## **Employment and industrial relations**

Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate,

1. respect the right of their employees, to be represented by trade unions and other bona fide organisations of employees, and engage in constructive negotiations, either individually or through employers' associations, with such employee organisations with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities;
2. *a)* provide such facilities to representatives of the employees as may be necessary to assist in the development of effective collective agreements,  
*b)* provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment;
3. provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole;
4. observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
5. in their operations, to the greatest extent practicable, utilise, train and prepare for upgrading members of the local labour force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities;

6. in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects;
7. implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectivity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity;
8. in the context of bona fide negotiations\* with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to utilise a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of a right to organise;
9. enable authorised representatives of their employees to conduct negotiations on collective bargaining or labour management relations issues with representatives of management who are authorised to take decisions on the matters under negotiation.

## **Science and Technology**

### **Enterprises should**

1. endeavour to ensure that their activities fit satisfactorily into the scientific and technological policies and plans of the countries in which they operate, and contribute to the development of national scientific and technological capacities, including as far as appropriate the establishment and improvement in host countries of their capacity to innovate;
2. to the fullest extent practicable, adopt in the course of their business activities practices which permit the rapid diffusion of technologies with due regard to the protection of industrial and intellectual property rights;
3. when granting licences for the use of industrial property rights or when otherwise transferring technology do so on reasonable terms and conditions.

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\* Bona fide negotiations may include labour disputes as part of the process of negotiation. Whether or not labour disputes are so included will be determined by the law and prevailing employment practices of particular countries.

**DECISION OF THE COUNCIL**  
**ON INTER-GOVERNMENTAL CONSULTATION**  
**PROCEDURES ON THE GUIDELINES**  
**FOR MULTINATIONAL ENTERPRISES**

**The Council,**

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960 and, in particular, to Articles 2(d), 3 and 5(a) thereof;

Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, to paragraph 2 thereof [C(74)247(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June, 1976 in which they jointly recommend to multinational enterprises the observance of guidelines for multinational enterprises;

Recognising the desirability of setting forth procedures by which consultations may take place on matters related to these guidelines;

On the proposal of the Committee on International Investment and Multinational Enterprises;

**Decides:**

1. The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall periodically or at the request of a Member country hold an exchange of views on matters related to the guidelines and the experience gained in their application. The Committee shall periodically report to the Council on these matters.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to OECD (BIAC) and the Trade Union Advisory Committee to OECD (TUAC) to express their views on matters related to the guidelines and shall take account of such views in its reports to the Council.
3. On the proposal of a Member country the Committee may decide whether individual enterprises should be given the opportunity, if they so wish, to express their views concerning the application of the guidelines. The Committee shall not reach conclusions on the conduct of individual enterprises.
4. Member countries may request that consultations be held in the Committee on any problem arising from the fact that multinational enterprises are made subject to conflicting requirements. Governments concerned will co-operate in good faith with a view to

resolving such problems, either within the Committee or through other mutually acceptable arrangements.

5. This Decision shall be reviewed within a period of three years. The Committee shall make proposals for this purpose as appropriate.



# DECISION OF THE COUNCIL ON NATIONAL TREATMENT

## **The Council,**

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960 and, in particular, Articles 2(c), 2(d), 3 and 5(a) thereof;

Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, paragraph 2 thereof [C(74)247(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June, 1976 on national treatment;

Considering that it is appropriate to establish within the Organisation suitable procedures for reviewing laws, regulations and administrative practices (hereinafter referred to as "measures") which depart from "National Treatment";

On the proposal of the Committee on International Investment and Multinational Enterprises;

## **Decides:**

1. Measures taken by a Member country constituting exceptions to "National Treatment" (including measures restricting new investment by "Foreign-Controlled Enterprises" already established in their territory) which are in effect on the date of this Decision shall be notified to the Organisation within 60 days after the date of this Decision.

2. Measures taken by a Member country constituting new exceptions to "National Treatment" (including measures restricting new investment by "Foreign-Controlled Enterprises" already established in their territory) taken after the date of this Decision shall be notified to the Organisation within 30 days of their introduction together with the specific reasons therefore and the proposed duration thereof.

3. Measures introduced by a territorial subdivision of a Member country, pursuant to its independent powers, which constitute exceptions to "National Treatment", shall be notified to the Organisation by the Member country concerned, insofar as it has knowledge thereof, within 30 days of the responsible officials of the Member country obtaining such knowledge.

4. The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall periodically review the application of "National Treatment" (including exceptions thereto) with a view to extending such application of

**“National Treatment”. The Committee shall make proposals as and when necessary in this connection.**

**5. The Committee shall act as a forum for consultations, at the request of a Member country, in respect of any matter related to this instrument and its implementation, including exceptions to “National Treatment” and their application.**

**6. Member countries shall provide to the Committee, upon its request, all relevant information concerning measures pertaining to the application of “National Treatment” and exceptions thereto.**

**7. This Decision shall be reviewed within a period of three years. The Committee shall make proposals for this purpose as appropriate.**

## **DECISION OF THE COUNCIL ON INTERNATIONAL INVESTMENT INCENTIVES AND DISINCENTIVES**

### **The Council,**

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960 and, in particular, Articles 2(c), 2(d), 2(e), 3 and 5(a) thereof;

Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, paragraph 2 thereof [C(74)247(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June, 1976 on international investment incentives and disincentives;

On the proposal of the Committee on International Investment and Multinational Enterprises;

### **Decides:**

1. Consultations will take place in the framework of the Committee on International Investment and Multinational Enterprises at the request of a Member country which considers that its interests may be adversely affected by the impact on its flow of international direct investments of measures taken by another Member country specifically designed to provide incentives or disincentives for international direct investment. Having full regard to the national economic objectives of the measures and without prejudice to policies designed to redress regional imbalances, the purpose of the consultations will be to examine the possibility of reducing such effects to a minimum.
2. Member countries shall supply, under the consultation procedures, all permissible information relating to any measures being the subject of the consultation.
3. This Decision shall be reviewed within a period of three years. The Committee on International Investment and Multinational Enterprises shall make proposals for this purpose as appropriate.

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