

**THE OECD DECLARATION AND DECISIONS ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES**

BASIC TEXTS

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris

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FOREWORD

The OECD has long been a focal point for co-operation among Member countries in the area of international direct investment and multinational enterprises. This co-operation is based on the 1976 Declaration on International Investment and Multinational Enterprises and its procedural Decisions which have been strengthened in various ways over the past twenty years. These instruments contain four inter-related elements:

-- **The National Treatment instrument** sets out Member countries' commitment to accord to foreign-controlled enterprises operating in their territories treatment no less favourable than that accorded to domestic enterprises in like situations;

-- **The Guidelines for Multinational Enterprises** represent a voluntary code of conduct of corporate behaviour addressed to the multinational enterprises themselves;

-- An instrument on **International Investment Incentives and Disincentives** provides for efforts among Member countries to improve co-operation on measures affecting international direct investment; and

-- An instrument on **Conflicting Requirements** calls on Member countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries.

These instruments reflect a consensus based on a shared philosophy and a common approach among twenty-nine countries accounting for the bulk of international investment. Their influence extends well beyond the OECD area.

The OECD Declaration and Decisions have periodically been reviewed, and following the most recent review, completed in 1991, a number of improvements have been made. First, Members agreed to more stringent obligations concerning the notification and the examination of exceptions to National Treatment on a country by country basis so as to reinforce the thrust towards liberalisation. Second, in recognition of growing concerns with the environment and the role that can be played both by governments and by multinational enterprises in ensuring greater environmental protection, a new chapter on the Environment was added to the Guidelines on Multinational Enterprises. Third, the Declaration was amended to include an agreement reached in 1984 on general considerations and practical approaches to avoid or minimise the imposition of conflicting requirements on multinational enterprises by governments.

All five new Members - Mexico (1994), Czech Republic (1995), Hungary (1996), Poland (1996) and Korea (1996) - have undertaken the necessary commitments to become full partners in the Declaration and related Decisions. In addition, several non-Members countries have expressed interest in joining the Declaration, Argentina being expected to do so in the first half of 1997. On matters following within its competences, the European Economic Community is associated with the sections of the Declaration on National Treatment.

The effectiveness of the Declaration and its constituent elements depends on the follow-up which OECD Member countries will give to it, both nationally and within the procedures set up at the level of OECD. It also benefits from the continuing support by business, represented by the Business and Industry Advisory Committee (BIAC) and labour, represented by the Trade Union Advisory Committee (TUAC).

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**I. DECLARATION ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES**

21 June 1976

THE GOVERNMENTS OF OECD MEMBER COUNTRIES¹

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 issue 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:

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|--|--|
| 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 Annex 1 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;
- Conflicting Requirements III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto;
- International Enterprises
Incentives and Disincentives IV.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 V. That they are prepared to consult one another on the above matters in conformity with the Decisions of the Council on the Guidelines for Multinational Enterprises, on National Treatment and on International Investment Incentives and Disincentives;
- Review VI. 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 enterprises².

Annex 1

GUIDELINES FOR MULTINATIONAL ENTERPRISES ³

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 degrees 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 and consumer interests, the creation of employment opportunities, the promotion of innovation and the transfer of technology⁴;
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 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:

- a)* 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;
- b)* The geographical areas⁵ where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;
- c)* The operating results and sales by geographical area and the sales in the major line of business for the enterprise as a whole;
- d)* Significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;
- e)* A statement of the sources and uses of funds by the enterprise as a whole;
- f)* The average number of employees in each geographical area;
- g)* Research and development expenditure for the enterprise as a whole;
- h)* The policies followed in respect of intra-group pricing;
- i)* 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. Provisions 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 negotiations⁶ 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 nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise;⁷

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.

ENVIRONMENTAL PROTECTION⁸

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and recalling the provisions of paragraph 9 of the Introduction to the Guidelines that, inter alia, multinational and domestic enterprises are subject to the same expectations in respect of their conduct whenever the Guidelines are relevant to both, take due account of the need to protect the environment and avoid creating environmentally related health problems. In particular, enterprises, whether multinational or domestic, should:

1. Assess, and take into account in decision making, foreseeable environmental and environmentally related health consequences of their activities, including siting decisions, impact on indigenous natural resources and foreseeable environmental and environmentally related health risks of products as well as from the generation, transport and disposal of waste;
2. Co-operate with competent authorities, inter alia, by providing adequate and timely information regarding the potential impacts on the environment and environmentally related health aspects of all their activities and by providing the relevant expertise available in the enterprise as a whole;
3. Take appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular:
 - a) by selecting and adopting those technologies and practices which are compatible with these objectives;
 - b) by introducing a system of environmental protection at the level of the enterprise as a whole including, where appropriate, the use of environmental auditing;
 - c) by enabling their component entities to be adequately equipped, especially by providing them with adequate knowledge and assistance;
 - d) by implementing education and training programmes for their employees;
 - e) by preparing contingency plans; and
 - f) by supporting, in an appropriate manner, public information and community awareness programmes.

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 licenses for the use of industrial property rights or when otherwise transferring technology, do so on reasonable terms and conditions.

Annex 2

**GENERAL CONSIDERATIONS AND PRACTICAL APPROACHES CONCERNING
CONFLICTING REQUIREMENTS IMPOSED ON MULTINATIONAL ENTERPRISES⁹**

GENERAL CONSIDERATIONS

1. In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member country and lead to conflicting requirements being imposed on multinational enterprises, the Member countries concerned should:
 - a) Have regard to relevant principles of international law;
 - b) Endeavour to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries¹⁰;
 - c) Take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries;
 - d) Bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.
2. Member countries should endeavour to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavour to arrive at mutually acceptable solutions to such problems.

PRACTICAL APPROACHES

3. Member countries recognised that in the majority of circumstances, effective co-operation may best be pursued on a bilateral basis. On the other hand, there may be cases where the multilateral approach could be more effective.
4. Member countries should therefore be prepared to:
 - a) Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other Member countries;

- b)* Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis made by any Member country which considers that its interests may be affected by a measure of the type referred to under paragraph 1 above, taken by another Member country with which it does not have such bilateral arrangements;
- c)* Inform the other concerned Member countries as soon as practicable of new legislation or regulations proposed by their Governments for adoption which have significant potential for conflict with the legal requirements or established policies of other Member countries and for giving rise to conflicting requirements being imposed on multinational enterprises;
- d)* Give prompt and sympathetic consideration to requests by other Member countries for consultation in the Committee on International Investment and Multinational Enterprises or through other mutually acceptable arrangements. Such consultations would be facilitated by notification at the earliest stage practicable;
- e)* Give prompt and full consideration to proposals which may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

These procedures do not apply to those aspects of restrictive business practices or other matters which are the subject of existing OECD arrangements.

NOTES AND REFERENCES

- ¹ On matters falling within its competence, the European Economic Community is associated with the section on National Treatment.
- ² The Declaration was reviewed in 1979, 1984 and 1991. Section III on Conflicting Requirements was added following the 1991 Review.
- ³ The Guidelines were reviewed in 1979, 1984 and 1991. These reviews resulted in modification of the General Policies chapter (paragraph 2); the Disclosure of Information chapter [sub-paragraph *b*]; a clarification and modification of the Employment and Industrial Relations chapter (paragraph 8); and the addition of a new chapter on the Environment.
- ⁴ This paragraph includes the additional provision concerning consumer interests, adopted by the OECD Governments at the meeting of the OECD Council at Ministerial level on 17 and 18 May 1984.
- ⁵ * *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 geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprises’ operations in the various countries.*
- ⁶ * 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.
- ⁷ This paragraph includes the additional provision, concerning transfer of employees, adopted by OECD Governments at the meeting of the OECD Council at Ministerial level on 13 and 14 June 1979.
- ⁸ This chapter was added at the meeting of the OECD Council at Ministerial level on 4 and 5 June 1991.
- ⁹ The General Considerations and Practical Approaches were endorsed by the Ministers in May 1984. They were annexed to the 1976 Declaration as a result of the 1991 Review exercise.
- ¹⁰ * *Applying the principle of comity, as it is understood in some Member countries, includes following an approach of this nature in exercising one's jurisdiction.*

* These texts are integral parts of the negotiated instruments.

II. PROCEDURAL DECISIONS OF THE OECD COUNCIL

1. NATIONAL TREATMENT: THIRD REVISED DECISION OF THE COUNCIL

December 1991

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 (c), 2 (d), 3 and 5 (a) thereof;

Having regard to the Resolution of the Council of 13th December 1984 on the Terms of Reference of the Committee on International Investment and Multinational Enterprises [C(84)171(Final)];

Having regard to the Section on National Treatment of the Declaration by Governments of OECD Member countries of 21st June 1976 on International Investment and Multinational Enterprises (hereinafter called "the Declaration");

Having regard to the Second Revised Decision of the Council of 17th May 1984 on National Treatment [C(84)91];

Having regard to the report on the National Treatment Instrument by the Committee on International Investment and Multinational Enterprises [C(91)147 and Corrigendum 1];

Considering it appropriate to strengthen the procedures established within the Organisation for reviewing laws, regulations and administrative practices (hereinafter called "measures") which depart from National Treatment, as defined in the Declaration (hereinafter called "National Treatment");

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

DECIDES:

The Second Revised Decision of the Council of 17th May 1984 on National Treatment [C(84)91] is repealed and replaced by the following:

Article 1

NOTIFICATION

- a.* Members¹ shall notify the Organisation, of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment. All exceptions shall be set out in Annex A to this Decision².
- b.* Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures covered in paragraph *a*.
- c.* The Organisation shall consider the notifications submitted to it in accordance with the provisions of paragraphs *a* and *b* with a view to determining whether each Member is meeting its commitments under the Declaration.

Article 2

EXAMINATION

- a.* The Organisation shall examine each exception lodged by a Member and other measures notified under Article 1 at intervals to be determined by the Organisation. These intervals shall, however, be not more than three years, unless the Council decides otherwise.
- b.* Each Member shall notify the Organisation prior to the periodic examination called for in paragraph *a*, whether it desires to maintain any exception lodged by it under Article 1 and if so, state its reasons therefore.
- c.* The examinations provided for in paragraph *a* shall be directed at making suitable proposals designed to assist Members to withdraw their exceptions.
- d.* The examinations provided for in paragraph *a* shall be country reviews in which all of the exceptions lodged by a Member are covered in the same examination.
- e.* Notwithstanding paragraph *d*, the examinations provided for in paragraph *a* may focus on specific types or groups of measures of particular concern, as and when determined by the Organisation.

Article 3

REFERENCE TO THE ORGANISATION

- a.* If a Member considers that another Member has, contrary to its undertakings with regard to National Treatment, retained, introduced or reintroduced measures and if it considers itself to be prejudiced thereby, it may refer to the Organisation.
- b.* The fact that the case is under consideration by the Organisation shall not preclude the Member which has referred to the Organisation from entering into bilateral discussion on the matter with the other Member concerned.

Article 4

COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES: GENERAL TASKS

- a.* The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall consider all questions concerning the interpretation or implementation of the provisions of the Declaration or of Acts of the Council relating to National Treatment and shall report its conclusions thereon to the Council.
- b.* The Committee shall submit to the Council any appropriate proposals in connection with its tasks as defined in paragraph *a* and, in particular, with the abolishing of measures constituting exceptions to National Treatment.

Article 5

COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES: SPECIAL TASKS

- a.* The Committee shall:
 - i)* consider, in conformity with paragraphs (*a*) and (*b*) of Article 2, each exception notified to the Organisation and make, where appropriate, suitable proposals to assist Members to withdraw their exceptions;
 - ii)* consider, in accordance with Article 1, the notifications submitted to the Organisation;
 - iii)* consider references submitted to the Organisation in accordance with the provisions of Article 3;

- iv)* act as a forum for consultations, at the request of a Member, in respect of any matter related to the Declaration and its implementation.
- b.* The Committee may periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters related to National Treatment and shall take account of such views in its reports to the Council.

Article 6

REVIEW OF THE DECISION

This Decision shall be reviewed within three years.

Article 7

PARTICIPATION BY THE EUROPEAN ECONOMIC COMMUNITY

The present Decision, as well as any further Decision amending it, shall be open for accession by the European Economic Community. Such accession shall be notified to the Secretary-General of the Organisation.

2. THE GUIDELINES FOR MULTINATIONAL ENTERPRISES: SECOND REVISED DECISION OF THE COUNCIL

Amended, June 1991

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 28th November 1979, on the Terms of Reference of the Committee on International Investment and Multinational Enterprises and, in particular, to paragraph 2 thereof [C(79)210(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;

Having regard to the Revised Decision of the Council of 13th June 1979 on Inter-Governmental Consultation Procedures on the Guidelines for Multinational Enterprises [C(79)143(Final)];

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

Recognising that, while bilateral and multilateral co-operation should be strengthened when multinational enterprises are made subject to conflicting requirements, effective co-operation on problems arising therefrom may best be pursued in most circumstances on a bilateral level, although there may be cases where the multilateral approach would be more effective;

Considering the Report on the Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C(79)102(Final)] and the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C/MIN(84)5(Final)], including the particular endorsement of the section in the Second Review Report relating to conflicting requirements;

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

DECIDES:

1. Member Governments shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters related to the Guidelines so that they can contribute to the solution of problems which may arise in this connection. The business community, employee organisations and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. 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 be responsible for clarification of the Guidelines. Clarification will be provided as required. The Committee shall periodically report to the Council on these matters.
4. 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. In addition, exchanges of views with the advisory bodies on these matters may be held upon request by the latter. The Committee shall take account of such views in its reports to the Council.
5. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests.
6. The Committee shall not reach conclusions on the conduct of individual enterprises.
7. This Decision shall be reviewed at the latest in six years. The Committee shall make proposals for this purpose as appropriate.
8. This Decision shall replace Decision [C(79)143].

3. INTERNATIONAL INVESTMENT INCENTIVES AND DISINCENTIVES: SECOND REVISED DECISION OF THE COUNCIL

May 1984

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 28th November 1979 on the Terms of Reference of the Committee on International Investment and Multinational Enterprises [C(79)210(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June 1976 on International Investment Incentives and Disincentives;

Having regard to the Revised Decision of the Council of 13th June 1979 on International Investment Incentives and Disincentives [C(79)145];

Considering the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C/MIN(84)5(Final)];

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 which provide significant official incentives and disincentives to 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. The Committee may 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 relating to international investment incentives and disincentives and shall take account of these views in its periodic reports to the Council.
4. This Decision shall be reviewed at the latest in six years. The Committee on International Investment and Multinational Enterprises shall make proposals for this purpose as appropriate.
5. This Decision shall replace Decision [C(79)145].

4. CONFLICTING REQUIREMENTS: DECISION OF THE COUNCIL

June 1991

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 28th November 1979, on the Terms of Reference of the Committee on International Investment and Multinational Enterprises and, in particular, to paragraph 2 thereof [C(79)210(Final)];

Recalling that the Council at Ministerial level endorsed the Conclusions and Recommendations of the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C/MIN(84)5(Final)], and in particular the section in that Report on conflicting requirements;

Taking note of the Declaration by the Governments of OECD Member countries of 21st June 1976 (Revised 4-5 June 1991) in which they jointly recommend to Member countries to co-operate with a view of avoiding or minimising conflicting requirements being imposed on multinational enterprises;

Recognising the desirability of maintaining procedures by which consultations may take place on matters related to conflicting requirements;

Recognising that, while bilateral and multilateral co-operation should be strengthened when multinational enterprises are made subject to conflicting requirements, effective co-operation on problems arising therefrom may best be pursued in most circumstances on a bilateral level, although there may be cases where the multilateral approach would be more effective;

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

DECIDES:

1. 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. The Member countries concerned shall give prompt and sympathetic consideration to requests by Member countries for consultations in the Committee or through other mutually acceptable arrangements, it being understood that such consultations would be facilitated by notification at the earliest stage practicable. Member countries concerned will co-operate in good faith with a view to resolving such problems, either within the Committee or through other mutually acceptable arrangements.

2. The Committee will continue to serve as a forum for consideration of the question of conflicting requirements, including, as appropriate, the national and international legal principles involved.
3. Member countries shall assist the Committee in its periodic reviews of experience on matters relating to conflicting requirements.
4. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters relating to conflicting requirements.
5. This Decision shall be reviewed at the latest in 1997. The Committee shall make proposals for this purpose as appropriate.
6. Paragraphs 7 to 10 of the Decision on the Guidelines for Multinational Enterprises [C(84)90] are repealed.

NOTES AND REFERENCES

¹ * *For the purposes of this Decision, "Members" means all parties to the Decision.*

² In the interests of brevity, Annex A to the Decision is not reproduced herein. A forthcoming publication on National Treatment for Established Foreign-Controlled Enterprises will reproduce the list of country exceptions in its entirety.

* This text is an integral part of the negotiated instrument.