

ANNEX F

Summary of the Main Provisions of the OECD Declaration on International Investment and Multinational Enterprises

Adherence to the OECD Declaration on International Investment and Multinational Enterprises implies acceptance of all its components as well as the related Decisions and Recommendations. The OECD Declaration on International Investment and Multinational Enterprises is a political agreement among adherent countries for co-operation on a wide range of investment issues. The Declaration contains four related elements: the National Treatment instrument, the Guidelines for Multinational Enterprises, an instrument on Incentives and Disincentives to international investment, and an instrument on Conflicting Requirements. It is supplemented by legally binding Council Decisions on implementation procedures and by Recommendations to adherents to encourage pursuit of its objectives, notably with regard to National Treatment instrument.

National Treatment

The National Treatment instrument provides that adherents 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 by nationals of another Member country 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.

Under the Third Revised Decision of the Council on National Treatment, adherents to the Declaration must notify the Organisation of all measures constituting exceptions to the National Treatment principle within 60 days of their adoption and of any other measures which have a bearing on this

principle (the so-called “transparency measures”). These measures are periodically reviewed by the Investment Committee, the goal being the gradual removal of measures that do not conform to this principle.

Exceptions to National Treatment fall into five categories: investments by established foreign-controlled companies, official aids and subsidies, tax obligations, access to local bank credit and the capital market, and government procurement.

Transparency measures include measures based on public order and national security interests, restrictions on activities in areas covered by monopolies, public aids and subsidies granted to government-owned enterprises by the state as a share.

The National Treatment instrument is solely concerned with discriminatory measures that apply to established foreign-controlled enterprises.

Areas of existing public, private or mixed monopolies are to be recorded for the purpose of transparency since foreign-controlled and domestic private enterprises are subject to the same restrictions. The undertaking to apply National Treatment instrument comes into force as and when areas previously under monopoly are opened up. In such cases, access to these areas should be provided on a non-discriminatory basis. If restrictions prohibit or impede in any way the participation of foreign-controlled enterprises *vis-à-vis* their domestic counterparts, then these restrictions are to be reported as exceptions to National Treatment instrument. The objective is to ensure access to formerly closed sectors on an equal basis.

The 1991 Review confirmed the understanding reached in 1988 by the Committee on a standstill on National Treatment measures. This understanding provides that adherents should avoid the introduction of new measures and practices, which constitute exceptions to the present National Treatment instrument. Particular attention is to be given to this question in the Committee’s work.

A number of Recommendations of the Council have also been addressed to adherents in the context of earlier horizontal examinations. Most of these recommendations were made to individual countries, but a number of them were of a general character. Concerning investment by established foreign-controlled enterprises, adherents should give priority in removing exceptions where most adherents do not find it necessary to maintain restrictions. In introducing new regulations in the services sectors, adherents should ensure that these measures do not result in the introduction of new exceptions to National Treatment instrument. Adherents should also give particular attention to ensuring that moves towards privatisation result in increasing the investment opportunities of both domestic and foreign-controlled enterprises so as to extend the application of the National Treatment instrument.

In the area of official aids and subsidies, adherents should give priority attention to limiting the scope and application of measures which may have important distorting effects or which may significantly jeopardise the ability of foreign-controlled enterprises to compete on an equal footing with their domestic counterparts.

Finally, with regard to measures motivated by based on public order and essential security interests, adherents are encouraged to practice restraint and to circumscribe them to the areas where public order and essential considerations are predominant. Where motivations are mixed (*e.g.* partly commercial, partly national security), the measures concerned should be covered by exceptions rather than merely recorded for transparency purposes.

Guidelines for Multinational Enterprises

The Guidelines constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context. NCPs in different countries shall co-operate if such need arises, on any matter covered by the Guidelines relevant to their activities. NCPs shall also meet annually to share experiences and report to the Investment Committee.

The Investment Committee is responsible for periodically or at the request of an adhering country hold exchange of views on matters covered by the Guidelines and periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), the Trade Union Advisory Committee to the OECD (TUAC) ("the advisory bodies"), other non-governmental organisations to express their views as well as representatives of non-adhering countries on matters covered by the Guidelines.

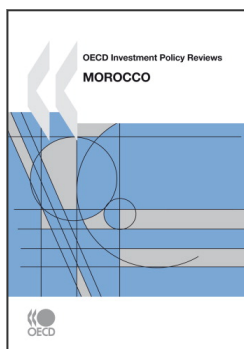
The Committee shall also be responsible for clarifications of the Guidelines and for exchanging views on the activities of National Contact Points and shall periodically report to the Council on matters related to the Guidelines.

Incentives and Disincentives

The instrument on Investment Incentives and Disincentives recognises that adherents may be affected by this type of measure and stresses the need to strengthen international co-operation in this area. It first encourages them to make such measures as transparent as possible so that their scale and purpose can be easily determined. The instrument also provides for consultations and review procedures to make co-operation between adherents more effective. A considerable part of the work undertaken in this area is analytical, two studies being undertaken in the 1980s. Adherents may therefore be called upon to participate in studies on trends in and effects of incentives and disincentives on FDI and to provide information on their policies.

Conflicting Requirements

The instrument on Conflicting Requirements provides that adherents should co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises. In doing so, they shall take into account the general considerations and practical approaches recently annexed to the Declaration. This co-operative approach includes consultations on potential problems and giving due consideration to other country's interests in regulating their own economic affairs.



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