



Recommendation of the Council on
Member Country Measures
concerning National Treatment
of Foreign-Controlled
Enterprises in OECD Member
Countries and Based on
Considerations of
Public Order and
Essential Security
Interest

**OECD Legal
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Background Information

The Recommendation on Member Country Measures concerning National Treatment of Foreign-Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order and Essential Security Interest was adopted by the OECD Council on 16 July 1986 on the proposal of the Committee on International Investment and Multinational Enterprises (succeeded by today's Investment Committee). The Recommendation is one of five OECD instruments that sought to encourage the levy of restrictions on national treatment in specific areas where a wider use of exceptions had been diagnosed at the time. In addition to stating general principles, the instrument contains country-specific recommendations to lift certain exceptions.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises of the Governments of OECD Member countries of 21 June 1976;

HAVING REGARD to the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises of 1984 [C/MIN(84)5(Final)];

HAVING REGARD to the Second Revised Decision of the Council on National Treatment [C(84)91] and in particular its paragraph 4;

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

RECOMMENDS to Member countries:

a) That, in view of the heightened transparency of National Treatment measures related to public order and essential security interests as a result of this examination, Member countries, in their notification to the Organisation of measures, provide as much detail as possible of the measures notified, including, in particular, measures concerning aids and subsidies;

b) That, in the context of possible changes to or reviews of existing measures, or in considering the introduction of new measures, they practice restraint in their use of the limitation to accord National Treatment afforded by the provisions of the instrument concerning public order and essential security interests, aiming at circumscribing their measures related to public order and essential security interests to areas where such concerns are predominant;

c) That they examine the possibility of amending measures based on public order and essential security interests in a manner which allows the reduction or avoidance of the direct or indirect impact of this discrimination against the activities of foreign-controlled enterprises outside the area where public order and essential security interests concerns are prevalent;

d) That, in areas of preferential treatment of locally-owned enterprises such as, in particular, government procurement practices, they consider the possibility of narrowing the breadth of such preferential treatment to expand the areas in which foreign-controlled enterprises have non-discriminatory access to the markets concerned;

e) That, in areas where restrictions are placed on the operations of foreign-controlled enterprises for reasons of public order and essential security interests, and in particular in areas where such enterprises are excluded in their entirety, they study the possibility of alternative regulations which would allow them to fulfill their objectives concerning public order and essential security interests and also permit foreign-controlled enterprises to operate in the countries concerned.

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