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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	EU's adherence to OECD Council Recommendations in the area of Competition Policy – OECD Recommendation of 23 October 1986 for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies

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Delegations will find attached a note from the Commission on the above-mentioned subject with a view to the meeting of the Working Party on Competition on 17 February 2025.

The OECD gathers 38 countries as Members, 22 of which are EU Member States<sup>1</sup>. The European Union has a Participant status, which allows it to engage, participate and contribute to the work of the OECD on an equal footing with OECD Members, except for voting rights.

The OECD has developed over the years a comprehensive set of standards in the area of Competition Policy, reflected in a number of Recommendations adopted by the OECD Council.

EU Member States that are OECD Members have already expressed their political support for the OECD Recommendations at the OECD Ministerial Council meetings where the Recommendations have been discussed. Furthermore, when an EU Member State has become an OECD Member after the date of adoption of an OECD Recommendation, its political support has been expressed in the process of its accession to the OECD.

As the European Union is not a member of the OECD, it is not automatically committed to the provisions of a Recommendation adopted by the OECD Council. However, non-Members may adhere to OECD Recommendations. Adherence to an OECD Recommendation represents a political commitment by the Adherent to the principles and policy recommendations set out in the legal instrument. It does not constitute a certification of the implementation of the provisions of the Recommendation.

To date, the European Union has adhered to two OECD Recommendations in the area of Competition Policy, namely the Recommendation on Fighting Bid Rigging in Public Procurement of 17 December 2012, as amended on 8 June 2023 [[OECD/LEGAL/0396](#)], and the Recommendation on Intellectual Property Rights and Competition of 8 June 2023 [[OECD/LEGAL/0495](#)]. There are other OECD Recommendations in the area of Competition Policy that are in force and for which the Commission did not seek adherence by the EU at the time of their adoption by the OECD Council. The Commission has now screened those Recommendations and considers that the European Union should also adhere, inter alia, to the Recommendation of the Council for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies of 23 October 1986 [[OECD/LEGAL/0228](#)].

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<sup>1</sup> Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Bulgaria, Croatia and Romania are currently candidates for accession to the OECD.

This Recommendation was adopted by the OECD Council on 23 October 1986 on a proposal from the OECD Committee of Experts on Restrictive Business Practices (now the OECD Competition Committee), which gathers delegates of OECD Members including representatives of the respective competition authorities. The Recommendation advises Adherents to evaluate the international competition and trade implications of their trade and competition policies, setting policy principles to strengthen competition in national and international markets, advising Adherents to consider the impact of proposed trade measures on competition. It also outlines procedural arrangements to avoid or minimise conflicts between trade and competition policies.

The European Union, represented by the Commission (and by the rotating presidency prior to the entry into force of the Lisbon Treaty), has actively participated in the drafting of this Recommendation in close coordination with the EU Member States that were members of the OECD at the time they were adopted. The Recommendation, which does not create rights or obligations under international or domestic law, is highly relevant for the EU competition policy. Adherence to this Recommendation positions the EU as a model for addressing relevant pro-competitive aspects into trade policies, encouraging others to adopt similar best practices.

Moreover, in practice, the European Union already observes the key principles and guidance outlined in this Recommendation. The EU decision-making process ensures that competition policy considerations are taken into account in the formulation and implementation of the EU's trade policies and that any legislation does not lead to unnecessary or disproportionate restrictions of competition, through the mechanism of Inter-Service Consultations (ISCs), which allows DG Competition, as the competition body of the EU, to provide comments on proposed new legislation and its impact on competition.

Against this background, the Commission intends to declare the adherence of the European Union to this Recommendation. To that end, the Commission seeks the prior Council endorsement of that declaration of adherence.

**Recommendation of the Council for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies**

**THE COUNCIL,**

**Having regard** to Article 5 b) of the Convention of the Organisation for Economic Co-operation and Development of 14 December 1960;

**Having regard** to the Decision of the Council of 10 and 11 May 1982 requesting the Committee of Experts on Restrictive Business Practices:

"to examine, in particular, possible longer-term approaches to developing an improved international framework for dealing with problems arising at the frontier of competition and trade policies. After consultation with the Trade Committee, the results of the study should be reported to the Council as soon as possible." [C(82)58(Final)];

**Having regard** to the Revised Recommendation of the Council concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade [C(86)44(Final)];

**Having regard** to the Report of the Committee of Experts on Restrictive Business Practices on Competition Policy and International Trade: Their Interaction, derestricted by Council Decision of 7 June 1984 and in particular the conclusions contained in Part I of this Report;

**Having regard** to the Joint Report of the Committee of Experts on Restrictive Business Practices and the Committee on Consumer Policy proposing an Indicative Checklist for the Assessment of Trade Policy Measures [C(85)32] and the Resolution of the Council of 30 April 1985 calling upon Member governments to undertake, on the basis of the checklist, as systematic and comprehensive an evaluation as possible of proposed trade and trade-related measures as well as of existing measures when the latter are subject to review;

**Recognising** that government actions or policies which limit or distort trade, in particular, through mechanisms or import restrictions of a discriminatory nature, as well as other trade-related measures, may affect competition in domestic and international markets;

**Recognising** that the 1984 Communiqué of the Council meeting at Ministerial level on 17 and 18 May 1984 acknowledged the importance of issues arising in relation to both competition and trade policies, such as cartels and voluntary export restraints, which have the effect of inhibiting competition and the proper functioning of markets and called for continued work and improved international co-operation in this area;

**Considering** that the effective application of competition policy plays a vital role in promoting world trade by ensuring dynamic national markets and encouraging the lowering or reducing of entry barriers to imports;

**Considering** the need for increased co-operation between competition and trade authorities at the national and international levels to avoid or minimise conflicts between laws, regulations and policies in the field of trade and competition;

**On the proposal of the Committee of Experts on Restrictive Business Practices, after consultation with the Trade Committee;**

**I. RECOMMENDS** to the Governments of Member countries:

**A. Policy Principles to Strengthen Competition in National and International Markets**

***a) Trade Policy Measures Affecting Competition***

1. Member governments should undertake, on the basis of the attached checklist, as systematic and comprehensive an evaluation as possible of proposed trade and trade-related measures as well as of existing measures when the latter are subject to review.
2. In the course of negotiations or discussions concerning export limitation arrangements, governments should take into account the interests of their trading partners and give consideration to the effects of such arrangements on competition in the markets concerned, as well as to the applicability of competition laws.

3. They should respond as positively as possible to requests for consultations by other Member countries which express concern about the impact on competition in their markets of measures referred to in paragraphs 1 and 2 above.

4. Because of the potential effects on competition, governments, when supplying or purchasing goods or services or providing subsidies to enterprises, whether privately owned or under government control, should make these practices and policies as transparent as possible.

5. Care should be exercised that proceedings under laws dealing with unfair trade practices, especially proceedings initiated by enterprises, are not misused for anti-competitive purposes;

***b) Application of Competition Laws to Restrictive Practices by Enterprises Affecting International Trade***

6. When considering action to approve or otherwise exempt export cartels, export limitation arrangements or import cartels from the application of their competition laws, governments should, as far as possible, within existing national laws, take into account the impact of such practices on competition in domestic and foreign markets. Member countries which have not yet done so should consider the possibility of requiring the notification of export cartels, export limitation arrangements and import cartels to competition authorities or similar procedures to obtain more information about the nature and extent of these practices.

7. While recognising that policies designed to allow interfirm co-operation in export trade can stimulate trade flows, governments in general should not encourage the exercise of market power in foreign markets through the use of export cartels. Nor should they encourage other restrictive business practices in export or import markets, e.g., export limitation arrangements and import cartels, which restrain competition in these markets.

8. The government of the country where such cartels or export arrangements exist, should, without prejudice to each government's full freedom of action and according to the procedures of the Revised Council Recommendation concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade, be ready to co-operate within existing national laws with the authorities of other countries in any investigation into possible anti-competitive effects of arrangements located in their countries, recognising the jurisdictional difficulties that sometimes arise when information is sought from abroad or where the parties to a restrictive agreement are located abroad.

9. When assessing restrictive business practices of enterprises within relevant markets, the role of imports and the existence of trade barriers should be taken into account.

## **B. Procedural Arrangements to Avoid or Minimise Conflicts between Trade and Competition Policies**

### ***a) At the National Level***

10. Governments should seek to ensure that competition policy considerations are taken into account in the formulation and implementation of trade policies, including laws dealing with unfair trade practices;

### ***b) At the International Level***

11. Where a Member country considers that the implementation of a trade measure by another Member country of which it has notice from any source would or may significantly affect the application of its competition laws or policies, the Government of the first mentioned Member country may communicate its concerns to the Government of the other Member country;

12. Where a Member country implements or proposes to implement a trade measure which may lead to the application of competition laws in or by another Member country, the first mentioned Member country may notify the other Member country;

13. Member countries should respond as positively as possible to requests they may receive for consultations in relation to such measures and their implications for their competition laws or policies, without prejudice to each government's full freedom of action;

14. Where the governments of the Member countries concerned agree, the consultations could be a matter for report and discussion within the Committee of Experts on Restrictive Business Practices, in close co-operation with the Trade Committee.

**II. INSTRUCTS** the Committee of Experts on Restrictive Business Practices, in relation to its continuing work in analysing the role of competition policy in strengthening the international trading system and in close co-operation with the Trade Committee on all matters relating to trade policy issues,

1. To examine periodically developments in the implementation of the provisions set out in this Recommendation;

2. To report to the Council as appropriate on the implementation of the present Recommendation.

### Annex

#### **Indicative Checklist for the Assessment of Trade Policy Measures<sup>2</sup>**

- a) Is the measure in conformity with the country's international obligations and commitments?
- b) What is the expected effect of the measure on the domestic price of the goods or services concerned and on the general price level?
- c) What are the expected direct economic gains to the domestic sector, industry or firms in question (technically, the increase in producer's surplus)?
- d) What types of jobs are expected to be affected by the measures? What are the net employment effects of the measure in the short and long term?
- e) What are the expected (direct) gains to government revenues (e.g. from tariffs, import licences, tax receipts) and/or increased government costs (e.g. export promotion, government subsidies, lost tax revenues)?
- f) What are the direct costs of the measure to consumers due to the resulting higher prices they must pay for the product in question and the reduction in the level of consumption of the product (technically, the reduction in consumers' surplus)? Are there specific groups of consumers which are particularly affected by the measure?
- g) What is the likely impact of the measure on the availability, choice, quality and safety of goods and services?
- h) What is the likely impact of the measure on the structure of the relevant markets and the competitive process within those markets?
- i) In the medium and longer term perspective, will the measure, on balance, encourage or permit structural adaptation of domestic industry leading over time to increased productivity and international competitiveness or will it further weaken and delay pressures for such adaptation? Is

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<sup>2</sup> This checklist applies to all trade policy measures other than laws relating to unfair trade practices.



the measure of a temporary nature? Is it contingent on, or linked to, other policy measures designed to bring about the desired structural adjustment?

j) What will be the expected effect on investment by domestic firms in the affected sector, by potential new entrants and by foreign investors?

k) What could be the expected economic effects of the measure on other sectors of the economy, in particular, on firms purchasing products from, and selling products to, the industry in question?

l) What are the likely effects of the measure on other countries? How can prejudice to trading partners be minimised?

m) How are other governments and foreign firms likely to react to the measure and what would be the expected effect on the economy of such actions? Is the measure a response to unfair practices in other countries?

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