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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: EU's adherence to OECD Council Recommendations in the area of  
Competition Policy – OECD Recommendation of 11 December 2019 on  
Competition Assessment

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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 10 April 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 on Competition Assessment of 11 December 2019 [[OECD/LEGAL/0455](#)].

This Recommendation was adopted by the OECD Council on 11 December 2019 on the proposal of the Competition Committee, which gathers delegates of OECD Members including representatives of the respective competition authorities. It revises, consolidates and replaces the 1979

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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.

Recommendation on Competition Policy and Exempted or Regulated Sectors

[[OECD/LEGAL/0181](#)] and the 2009 Recommendation on Competition

Assessment [[OECD/LEGAL/0376](#)]. The Recommendation calls for Adherents to identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives. It also recommends that Adherents establish institutional mechanisms for undertaking such reviews, involving competition authorities in the process.

The European Union, represented by the Commission, 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 it was 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 strengthens the EU's position to continue influencing the development of global competition standards, promoting convergence toward best practices, and facilitates cooperation with other jurisdictions.

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 public policies and that any legislation does not lead to unnecessary or disproportionate restrictions of competition, through the mechanism of Inter-Service Consultations, which allows the Directorate-General for Competition ("DG Competition"), as the competition body of the EU, to provide comments on proposed new legislation and its impact on competition. The Commission also regularly evaluates existing EU legislation, with DG Competition involved, as member of Inter-Service Steering Groups, to provide comments on how existing legislation impacts 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.

## ANNEX

### **Recommendation of the Council on Competition Assessment**

**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 agreement reached at the 1997 Meeting of the Council at Ministerial level that restrictions on competition are often costly and ineffective in promoting public interests and should be avoided [C/MIN(97)10];

**HAVING REGARD** to the Recommendations of the Council on Competition Policy and Exempted or Regulated Sectors [[OECD/LEGAL/0181](#)] and on Competition Assessment [[OECD/LEGAL/0376](#)], which this Recommendation replaces;

**HAVING REGARD** to the Recommendation of the Council on Regulatory Policy and Governance [C(2012)37], which call for governments to review proposals for new regulations, as well as existing regulations, with reference to competition;

**RECOGNISING** that competition promotes efficiency, helping to ensure that goods and services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, improved quality, increased innovation and higher productivity;

**RECOGNISING** that higher productivity is essential to economic growth and increased employment;

**RECOGNISING** that public policies serve a variety of commercial, social, health, safety, security environmental and other objectives;

**RECOGNISING** that, at times, public policies unduly restrict competition;

**RECOGNISING** that such undue restrictions can occur unintentionally even when the public policies in question are not focused on economic regulation and not intended to affect competition in any way;

**RECOGNISING** that public policies that unduly restrict competition often may be reformed in a way that promotes market competition while achieving the public policy objectives;

**RECOGNISING** that regulation and reform of regulated industries usually require detailed competition assessment of likely effects;

**RECOGNISING** that, other things being equal, public policies with lesser harm to competition should be preferred over those with greater harm to competition, provided they achieve the identified public policy objectives;

**NOTING** that a number of countries already perform competition assessment; and

**NOTING** that the OECD and a number of OECD Member countries have developed competition assessment toolkits;

**I. AGREES** that for the purposes of this Recommendation, the following definitions are used:

- “Public policies” means regulations, rules or legislation.
- “Unduly restricts competition” means that restrictions on competition needed for achieving public interest objectives are greater than is necessary, when taking into account feasible alternatives and their cost.
- “Market participants” means businesses, individuals or government enterprises engaged in supplying or purchasing goods or services.
- “Competition bodies” means public institutions, including a national competition authority, charged with advocating, promoting and enhancing market competition.
- “Competition-for-the-market processes” refers to the bidding processes organised by government for allocating the right to supply a given market or for using a scarce government resource for a distinct period of time.
- “Competition assessment” means a review of the competitive effects of public policies including consideration of alternative and less anti-competitive policies. The principles of competition assessment are relevant to all levels of government.

**II. RECOMMENDS** as follows to Members and non-Members having adhered to the Recommendation (hereafter the “Adherents”):

***A. Identification of existing or proposed public policies that unduly restrict competition***

1. Governments should introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment, including the preparation of screening devices.

2. In performing competition assessment, governments should give particular attention to policies that limit:

i) The number or range of market participants;

ii) The actions that market participants can take;

iii) The incentives of market participants to behave in a competitive manner;

iv) The choices and information available to consumers;

3. Governments should ensure that exceptions from competition law are no broader than necessary to achieve their public interest objectives and that these exceptions are interpreted narrowly.

Exceptions should only apply to those business activities that are required to achieve the stated policy objective. This principle also implies that any new exception should be defined for a limited period of time, typically by including a sunset date, so that no exception would persist when it is no longer necessary to achieve the identified policy objective.

4. Public policies should be subject to competition assessment even when they pursue the objective of promoting competitive outcomes and especially when they:

i) Set up or revise a regulatory body or regime (e.g., the assessment could make sure that, among other things, the regulator is appropriately separated from the regulated industry);

ii) Introduce a price or entry regulation scheme (e.g., the assessment could make sure that there are no reasonable, less anticompetitive ways to intervene);

iii) Restructure incumbent monopolies (e.g., the assessment could make sure that the restructuring measures actually achieve their pro-competitive objectives);

iv) Introduce competition-for-the-market processes (e.g., the assessment could make sure that the bidding process provides incentives to operate efficiently to the benefit of consumers);

v) Provide an exception from competition law for any specified objective (e.g., the assessment could make sure that any exception is absolutely necessary to achieve the stated policy objectives).

## ***B. Revision of public policies that unduly restrict competition***

1. Governments should introduce an appropriate process for revision of existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for evaluating suitable alternatives.
2. Governments should adopt the more pro-competitive alternative consistent with the public interest objectives pursued and taking into account the benefits and costs of implementation.

## ***C. Institutional Setting***

1. Competition assessment should be incorporated in the review of public policies in the most efficient and effective manner consistent with institutional and resource constraints.
2. Competition bodies or officials with expertise in competition should be associated with the process of competition assessment.
3. Competition assessment of proposed public policies should be integrated in the policy making process at an early stage.

**III. INVITES** the Secretary-General and Adherents to disseminate this Recommendation, in particular within the competition community and other relevant policy communities.

**IV. INVITES** non-Adherents to take due account of, and adhere to, this Recommendation.

**V. INSTRUCTS** the Competition Committee to:

- a) serve as a forum for sharing experience under this Recommendation;
- b) report to Council no later than five years following its adoption and at least every ten years thereafter.