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## **WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on Competition
Subject:	Presentation by the European Commission: OECD Recommendations for possible Council adherence (agenda item 8.) Working Party on Competition meeting on 10 April 2025

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Delegations will find in annex a presentation (agenda item 8.) given by the European Commission during the Working Party on Competition meeting on 10 April 2025.



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# Proposal for EU's adherence to OECD Council Recommendations in the area of Competition Policy

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**Meeting of Council Working Party on Competition – 10 April 2025**

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  - b) Recommendation on Competitive Neutrality (adopted in 2021)
  - c) Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement (adopted in 2021)



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# Introduction: cooperation between DG Competition and the OECD

# OECD's goals and membership

- A forum for international cooperation on economic and social issues
- Gathering data, setting international standards and recommending policies to its members
- 22/38 members of the OECD are EU Member States
- 3 EU MS are candidates for accession
- The European Union has a Participant status (in equal footing with OECD members, except for voting rights)

# OECD work on competition

- **Competition Committee and its Working Parties (WP 2 & 3)**
  - **WP 2 on Competition and Regulation**
  - **WP 3 on Cooperation and Enforcement**
- The **Global Forum on Competition** takes place in December and provides an opportunity for cooperation between OECD Members and non-Members
- Competition-related topics are often discussed in **roundtable discussions**, which may lead to the identification of best practices and **recommendations**

# EU's participation in OECD competition work

- **DG COMP, for the European Commission, represents the EU at the OECD Competition Committee and its WP:**
  - **As one of the most regular contributors to the roundtable discussions (advocacy, convergence)**
  - **In the process of drafting of OECD Recommendations on competition policy**



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# Background on the proposal for EU's adherence to OECD Recommendations on competition policy

# On EU adherence to OECD Recommendations

- Only OECD members are automatically committed by the adoption of a Recommendation of the OECD Council. The European Union is not.
- However, non-Members may politically commit to the principles and policy recommendations by adhering to the Recommendations
- The EU has already adhered to 2 Recommendations of 2023:
  - Recommendation on Fighting Bid Rigging in Public Procurement
  - Recommendation on IPR and Competition

# Why should the EU adhere to the Recommendations?

- The Recommendations are **highly relevant for EU competition policy**
- Recommendations **do not create rights or obligations** under international or domestic law
- The EU **already observes** the Recommendations' key principles
- The EU has **actively participated** in their drafting in close coordination with EU Member States which are OECD members
- The Commission intends to declare the adherence of the European Union to these Recommendations, **seeking prior Council endorsement of that declaration of adherence.**

# Proposal for EU's adherence to 7 Recommendations

**Having screened OECD Recommendations adopted before 2023, the EU should adhere to 7 Recommendations:**

- Recommendation for cooperation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies (1986)
- Recommendation concerning Structural Separation in Regulated Industries (2001, amended 2016)
- Recommendation on Merger Review (2005)
- Recommendation concerning Effective Action against Hard Core Cartels (2019)
- Recommendation on Competition Assessment (2019)
- Recommendation on Competitive Neutrality (2021)
- Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement (2021)

- **Overview for the 7 Recommendations**
- **Presentation of first package of 4:**
  - *Recommendation for cooperation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies* (1986)
  - *Recommendation concerning Structural Separation in Regulated Industries* (2001, amended in 2016)
  - *Recommendation on Merger Review* (2005)
  - *Recommendation concerning Effective Action against Hard Core Cartels* (2019)

**17 February 2025**  
WP Competition meeting

**10 April 2025**  
WP Competition meeting

- **Endorsement of first package**
- **Presentation of second package of 3:**
  - *Recommendation on Competition Assessment* (2019)
  - *Recommendation on Competitive Neutrality* (2021)
  - *Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement* (2021)

- **Endorsement of second package**

**16 June 2025**  
WP Competition meeting



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# OECD Council Recommendation on Competition Assessment

# Key components

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1. Calls for Adherents to **identify existing or proposed public policies that unduly restrict competition** and to **revise them by adopting more pro-competitive alternatives**.
2. It recommends that Adherents **establish institutional mechanisms** for undertaking such reviews, **involving competition** authorities in the process.

# On EU's adherence to the Recommendation

- **Highly relevant for EU competition policy**
- **Strengthens the EU's position to continue influencing the development of global competition standards, promoting convergence toward best practices**
- **No change necessary in Commission's policy/enforcement of competition law, as the Commission already:**
  - **ensures that competition policy considerations are taken into account in the formulation and implementation of EU's policies in other areas;**
  - **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.**



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# OECD Council Recommendation on Competitive Neutrality

# Key components

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Adherents should ensure:

1. A **level-playing field** between state-owned and privately-owned enterprises, and between different privately-owned enterprises
2. Rules applied to enterprises are **neutral**
3. Competing activities are subject to the **same regulatory environment**
4. Enterprises are **not responsible for regulating the markets in which they compete**
5. Competitive **neutrality when designing measures** that may enhance an enterprise's market performance and distort competition

# On EU's adherence to the Recommendation

- **Highly relevant for EU competition policy**
- **Strengthens the EU's position to continue influencing the development of global competition standards by demonstrating its commitment to fair market conditions, promoting convergence toward best practices**
- **No change necessary as the Commission's policy/enforcement of competition law is already aligned:**
  - 1. No undue advantages**
  - 2. Strict conditions apply to exceptions for public policy objectives**
  - 3. Limited compensation for public service obligations**
  - 4. EU competition law applies equally to private companies and SOEs (e.g., merger control)**



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# OECD Council Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement

# Key components

1. Establishes **common standards for transparent and fair competition law enforcement.**
2. Supports **impartial and reasonable treatment of investigated parties** and the exercise of their **rights of defence.**
3. It aims to **strengthen the accuracy and effectiveness of enforcement decisions.**
4. Establishes **principles based on which Adherents can design and evaluate their competition law enforcement system** and undertake policy reforms (e.g. transparency, predictability, proportionality, protection of confidential information, judicial review).

# On EU adherence to the Recommendation

- **Highly relevant for EU competition policy**
- **Strengthens the EU's position to continue influencing the development of global competition standards in the enforcement of competition law, promoting convergence toward best practices, and facilitates cooperation with other jurisdictions**
- **No change necessary, as EU legal framework already aligned: e.g., transparent and predictable; independent and impartial; non-discriminatory and proportional; allows meaningful engagement; protecting confidential information; and ensuring judicial review**



*Questions?*