

Unclassified

English - Or. English

1 April 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE****Track 2 of the Future of Investment Treaties – Frequently asked Questions****Note by the Secretariat**

The investment policy community at the OECD launched a work programme on the *Future of Investment Treaties* in March 2021. In the Track 2 of this work programme, governments from over 100 jurisdictions consider how to transition substantive provisions featured in older-generation treaties to designs that are now consistently used in treaty practice. This note prepared by the OECD Secretariat summarises the context, underlying rationale, and logistical information for this work. It reflects information as of 20 March 2025.

This note is made public to ensure transparency of government conversations under Track 2. Delegates had an opportunity to comment on this note before its public release. It does not prejudge the outcomes of discussions under the Track 2 work programme.

The work on the *Future of Investment Treaties* is documented at <https://oe.cd/foit2>.

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*This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Member countries of the OECD.*

**JT03563408**

## 1. What is the purpose of work under Track 2 of the programme on the *Future of Investment Treaties*?

Investment treaties have been a key component of many countries' international investment policies for the past half century. Over the past two decades, however, doubt has emerged about the design of certain provisions contained in these treaties, as they have been applied and interpreted in unintended ways that threaten to obstruct legitimate regulatory policy. The necessity for governments to respond to new challenges, in particular the climate crisis, pandemics and other emergencies, has shed new light on the interpretation of treaty provisions.

Governments participating in the Track 2 of the work programme on the *Future of Investment Treaties* explore whether it would be better if substantive provisions featured in older-generation treaties were more similar to recent designs and how interested governments could achieve a transition in a pragmatic way.

## 2. Why is this work taking place at the OECD and how does it relate to efforts at UNCITRAL and in other fora?

Building on the international investment policy community that the OECD has served for decades, the *Future of Investment Treaties* now brings together treaty policymakers from over a hundred jurisdictions. Carrying out this work at the OECD ensures that:

- Policy communities of experts in their respective policy fields can discuss and exchange views, supported by evidence, analysis, and expertise of the Secretariat;
- Governments determine priorities and orientation of the work; and
- Governments enhance their relationships with peers around the globe.

This work does not compete with, duplicate, or substitute efforts undertaken in other organisations on similar matters. On the contrary, their respective material scope of action is complementary. In particular, the UNCITRAL Working Group III has been tasked to work on possible reforms of investor-state dispute settlement (ISDS), while work on the *Future of Investment Treaties* at the OECD considers the opportunities for substantive treaty provisions reform. Work undertaken at UNCTAD provides technical assistance to jurisdictions on reform implementation.

All three organisations have been cooperating for years and, in March 2025, convened a [joint Conference](#) to explore the various synergies between these initiatives and to advance governments' reflections on merits, opportunities and practical avenues for the reform of investment treaties.

## 3. Who is participating in this process?

Work on Track 2 is conceived as an inclusive process to which government representatives from over a hundred jurisdictions from all continents are invited. They currently include Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Democratic Republic of Congo, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guinea, Hungary, Iceland, India, Indonesia,

Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo\*, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Paraguay, People’s Republic of China, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam and the European Union,

The work is in principle open for participation of government officials from other interested jurisdictions.

#### 4. What does the Track 2 work programme involve?

Since the start of the work on the *Future of Investment Treaties* in 2021, discussions have documented that most governments have changed the design of several substantive clauses commonly found in investment treaties, a move carried by a shared intention to frame the contours of substantive treaty obligations more clearly. Most jurisdictions have consistently applied their new approaches to substantive provisions consistently.

Participating jurisdictions have analysed and discussed the evolution of treaty practice with regards to provisions that were identified as priorities by Track 2 participants, such as ‘fair and equitable’ treatment, ‘indirect expropriation’ provisions, ‘most-favoured-nation’ treatment and ‘full protection and security’ clauses. Some governments have confirmed the intention underlying their new treaty practice and observed that their understanding of the contours of the obligations under these clauses is substantially similar.

Track 2 participants have also begun to discuss potential means to transition older treaties with unspecific framings of substantive obligations to the approaches that they now consistently use. They have in particular considered the potential for Joint Interpretations to clarify the intention of treaties that do not contain explicit textual specifications when relevant convergence permits; and the merits of plurilateral treaty modifications as a means to transition provisions contained in older treaties to designs that are now consistently used, when insufficient convergence exists to make joint interpretations feasible.

Governments are exploring what can be achieved under these different approaches for their existing treaties. They have so far developed a collective understanding on the initial scope of agreement of three provisions – FET, FPS and the interaction of MFN with dispute settlement arrangements – to inform the framing of a potential Joint Interpretation that interested and applicable jurisdictions could agree on. They also discussed the feasibility of a plurilateral modifying treaty, and specifically what such a treaty might achieve with regards to FET provisions.

The information gained on new designs of individual clauses through this effort has been valuable and can inform bilateral negotiations among Track 2 participants and beyond. The engagement and pace of progress so far suggests some potential of the Track 2 process for meaningful and pragmatic treaty reform through the development of concrete solutions to specifically identified issues that would benefit from a collective approach.

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\* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo’s declaration of independence.

## 5. How are meetings conducted?

The OECD has convened intergovernmental government exchanges since its creation in 1961. It is conceived as a forum where governments' experts in their respective fields exchange among peers. Meetings under Track 2 are held in principle in private among governments unless non-governmental participation is explicitly sought.

This format encourages and results in frank exchanges on a technical level in a cordial and collegial atmosphere. Governments contribute their expertise freely and informally.

A Chair guides the discussions in an impartial manner. Ms Sylvie Tabet has been designated for this role for the Track 2 process.<sup>1</sup> Ms Tabet is an investment lawyer in the Canadian Government. In her role as the Chair of this process, she does not represent the Canadian government or Canadian interests.

Meetings are held in a hybrid manner to allow broad participation from governments around the world. Since early 2024, the frequency of meetings has increased to around four to five meetings a year.

The meeting languages are English and French. Simultaneous translation is being provided and documentation is also be made available in both languages.

## 6. How long is the Track 2 work programme scheduled to run?

Governments decide on the topics and priorities of the work carried out under Track 2. These decisions are made at two-year intervals. The first meeting under Track 2 was held in October 2021 under the initial work-programme running until end-2023, and the current work programme covers 2024 and 2025.

## 7. Is it possible for other colleagues from my government to participate?

Individual governments can participate with several delegates. Please contact the Secretariat ([investment@oecd.org](mailto:investment@oecd.org)) with contact details so that our distribution list can be updated and information shared in a timely manner.

## 8. What are the costs of participating?

Participation in the Track 2 is free of charge for governments and their representatives. The work of the OECD is funded by contributions by the Organisation's 38 Members. Voluntary contributions can complement this source of funding. France has been supporting the work under Track 2 since 2022.

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<sup>1</sup> Earlier meetings had been chaired by Ms Maureen Klar from Australia until her resignation from the role.

## 9. How do I receive documentation and logistical information?

The OECD distributes documents through a secure document server called [O.N.E.](#) Sign-up is personal and may take a while to be processed. The Secretariat also circulates documents systematically via e-mail.

The Secretariat invites delegates to consult the Track 2 webpage (<https://oe.cd/foit2>). This page features documents prepared in the context of the work programme, including meetings' Summaries of Discussions and background documents produced by the Secretariat to support discussions on substantive clauses.

The Secretariat ([investment@oecd.org](mailto:investment@oecd.org)) stands ready to provide answers and assistance.