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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE****Future of Investment Treaties – Track 2****Priorities and deliverables for the 2026-2027 biennium**

Priorities for work in Track 2 of the programme on the *Future of Investment Treaties* are discussed and set among the jurisdictions that participate in this work on a bi-annual basis. This document prepared by the Secretariat sets out the priorities and deliverables for the 2026-2027 biennium that were agreed among Track 2 participants at the meeting held on 20 October 2025. The workplan sets a roadmap for the sequencing of Track 2 work, although it may potentially be adjusted should participants consider that priorities have changed or if other opportunities arise.

This note is made public to ensure transparency of government work 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* (Track 2) is documented at <https://oe.cd/foit2>.

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### Context, purpose, and structure of this note

1. Work on the *Future of Investment Treaties* was launched in March 2021 to provide an inclusive forum for governments to discuss and develop their investment treaty policies. From the beginning, work was conducted in two interrelated tracks. To ensure that this work is focused, coordinated, and corresponds to governments’ priorities, work programmes for both tracks have been agreed on a bi-annual basis. This note addresses exclusively the work programme for Track 2.

2. The work planned in the [second work programme covering 2024-2025](#) has been delivered to schedule. Delegates have deepened and broadened their reflections on substantive treaty clauses and have explored practical means to transition older treaties to make them more similar to designs that they now consistently use. Delegates have also begun to explore concrete options that interested governments could pursue to transition treaties, notably joint interpretations and plurilateral treaty modifications.

3. As the delivery of the work programme for 2024-2025 draws to a close, governments have set priorities and scheduled work under Track 2 for 2026-2027. At the meetings on 17 June and 20 October 2025 they discussed a proposal by the Secretariat for work for 2026-2027 that built on earlier discussions and expressions of interest in Track 2. At this occasion, Track 2 participants expressed their support for deepening and expanding the scope of exploration of substantive treaty clauses and identified this area of work as a priority. Several jurisdictions expressed an interest in achieving a concrete outcome of this work that would allow them to address their older treaties that no longer reflect their treaty practice. It was also recognised that greater engagement of a greater number of jurisdictions would make the process more meaningful and any outcome more impactful.

4. The present document summarises the agreement among Track 2 participants on priorities and deliverables that was achieved at the meeting on 20 October 2025. In essence, Track 2 participants concurred that work in 2026-2027 will advance on three aspects – without however prejudging any potential outcomes of the Track 2 process:

- **Deepening and expanding the review of substantive investment treaty provisions.** Track 2 participants have prioritised advancement of work on the main

substantive treaty standards that have given rise to interpretations by arbitral tribunals of concern to participating jurisdictions. As described in **Section 1**, these discussions will deepen earlier reflexions on substantive provisions that have already been considered (1.1) and expand to additional substantive clauses (1.2).

- **Developing options for consideration on a procedural means to implement a plurilateral transition among interested jurisdictions.** As described in **Section 2**, Track 2 participants will explore in greater detail the potential of joint interpretations (JI) and plurilateral treaty modifications. Opportunities that a JI present have so far been explored with regard to a few clauses, and further work will be conducted on procedural aspects and the effectiveness of a potential JI (2.1). Track 2 participants will also consider opportunities of plurilateral treaty modifications in greater depth, in particular with regards to substantive provisions that cannot likely be clarified through a JI or as a subsequent step of the Track 2 process (2.2).
- **Engaging jurisdictions.** While 101 jurisdictions are currently invited to participate in the discussions on the *Future of Investment Treaties*, only around 70 jurisdictions attend the discussions regularly, and an even smaller number engages actively. **Section 3** proposes steps that would likely broaden attendance and encourage more active engagement to achieve greater benefits for a greater number of jurisdictions.

## 1. Deepening and expanding the review of substantive investment treaty provisions

5. Since 2021, Track 2 participants have studied the design and content of clauses on substantive treaty obligations whose designs have changed since the early 2000s and where new, more specific designs have emerged and are now used near-consistently by a large number of jurisdictions: FET, FPS, MFN, indirect expropriation (IE), and national treatment (NT). The discussions have reached different degrees of depth and will be continued (1.1). Also, evolutions have been observed in other substantive treaty provisions that have not yet been subject to study by Track 2 participants and will be included in the scope of discussions (1.2).

### 1.1. Deepening the review of previously assessed substantive treaty provisions

6. Track 2 participants have assessed clarifications used to specify the scope of substantive treaty provisions in current treaty practice to identify a common intent that could form the basis of an agreement on the framing of these clarifications, even though treaties may use slightly different wording to express the parties' intentions. Agreed language for clarifications is a condition for a possible plurilateral joint interpretation that interested jurisdictions could adopt.

7. Track 2 participants have worked on identifying common language that describes their intentions for clauses related to FET, FPS, MFN with respect to dispute settlement arrangements, and provisions related to IE. Discussions on developments of NT clauses have begun in 2025 and will be continued. Further work will also be delivered on the application of the MFN clause to substantive provisions and the substantive treatment of investors and investments.

8. Work on these different clauses has reached various stages. Provisions that have been considered more recently (e.g., NT, MFN beyond its interaction with dispute settlement arrangements) need further work. Where progress towards a common understanding is more advanced, further discussion is needed to address remaining

differences and to develop specific text sample that expresses such understanding. A review of arbitral practice related to these provisions, and more specifically the reception of recent clarifications by arbitral tribunals could inform this work.

## 1.2. Expanding the review to additional substantive treaty provisions

9. With work on FET, FPS, MFN, IE and NT provisions well advanced, some Track 2 participants have expressed an interest in exploring designs of additional treaty clauses, what potential there may be for transitioning such clauses to more recent designs, and which practical means would be available to achieve such transition. Track 2 participants have suggested the following issues:

- Some Track 2 participants have expressed concerns with the use of treaty-based adjudication procedures by **‘mailbox companies’** that do not carry out substantial business activities within their jurisdictions. They have proposed discussions on how such treaty (ab)use could be avoided through treaty design. This could include reviewing the conditions to benefit from treaty-based protections, e.g., how **‘investors’** or **‘investments’** are defined for the purpose of treaties and which role **‘denial of benefits’** provisions could play. This exploration would allow to assess opportunities and means to address this matter in older treaties.
- Some Track 2 participants have expressed an interest in exploring the **definition of ‘investment’** more generally. Various aspects appear to be of interest, such as the criteria to identify a treaty-covered “investment” or compliance with national laws as a condition for treaty protection.

10. Some Track 2 participants have also requested that the interactions between substantive investment treaty obligations and host states’ **‘right to regulate’** be examined, while noting that the ‘right to regulate’ is also being considered in UNCITRAL Working Group III under a procedural angle. A first discussion on the matter has taken place during the last quarter of 2025, and further work on the topic may be warranted in the 2026-2027 cycle.

## 2. Developing options for consideration on a pragmatic means to implement plurilateral treaty interventions among interested jurisdictions

11. Track 2 participants have explored the opportunities of plurilateral joint interpretations and treaty modifications as potential means available to interested jurisdictions to implement transitions of substantive clauses of older investment treaties. While a joint interpretation could clarify provisions (2.1), treaty modifications could address broader issues as well as those that cannot be achieved through clarifications (2.2).<sup>1</sup>

### 2.1. Preparing options for consideration for a plurilateral joint interpretation among interested jurisdictions

12. Track 2 participants have noted that a plurilateral joint interpretation among interested jurisdictions would require convergence on text that reflects their common intention and understanding of their treaties. As described in Section 1, they continue to

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<sup>1</sup> The discussion of these options does not prejudice whether participating governments support these approaches.

explore the substantive scope of agreement on which any possible clarification could be built.

13. Track 2 participants also had initial discussions on practical arrangements for a plurilateral joint interpretation. To support individual governments in their assessment of the merits, likely feasibility, and political opportunity to pursue any such action, several aspects still require discussion, especially:

- The **format** of an instrument, including the implications of a *plurilateral* interpretation; whether a *single* instrument for all substantive provisions or *separate* interpretative instruments for individual provisions are more advantageous;
- The **design** of such an instrument, for example whether or not it would identify individual treaties to which it applies, and implications of possible designs;<sup>2</sup>
- The **potential limitations** of a plurilateral joint interpretation especially with respect to older treaties that interested jurisdictions would wish to clarify but that feature idiosyncratic designs;
- The **design of adherence procedures**, in particular whether and how the instrument could allow for later adherence; and
- The domestic **procedural formalities** which may differ by jurisdiction.

14. Work in 2026-2027 will seek to provide answers to these issues.

## 2.2. Exploring the opportunities of a possible plurilateral treaty-modifying agreement

15. Some Track 2 participants have expressed an interest in a deeper exploration of a plurilateral modifying agreement that could allow for a more comprehensive modernisation of older investment treaties and include clauses and treaties that cannot be transitioned through a joint interpretation. A treaty modification has different legal effects<sup>3</sup> and could go further than any joint interpretation that interested jurisdictions may conclude in the context of Track 2.

16. In some of the areas of work suggested in Section 1, an interpretation or a clarification may not be sufficient or available to implement a transition. In those cases, interested participants could consider using a treaty modification to alter substantive rights and obligations provided for in the treaty.

17. Work on the opportunities of a plurilateral modifying agreement in Track 2 has explored general aspects of its legal functioning and the application to FET to illustrate a

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<sup>2</sup> Similar discussions were initiated in 2024 with respect to design options of a plurilateral modification of FET provisions in older treaties.

<sup>3</sup> Legal frameworks of joint interpretations and treaty modifications have been explored in previous Track 2 meetings with the support of the following research notes: “*Approaches available under international law to transition from older to more recent designs in investment treaties – “subsequent agreements”*: the role of interpretive statements” [DAF/INV/TR2/WD(2024)4/REV1], Note by the Secretariat, 12 March 2024; “*Treaty modification: legal framework and opportunities for investment treaties*” [DAF/INV/TR2/WD(2024)8/REV2], Note by the Secretariat, 5 November 2024.

possible implementation.<sup>4</sup> Track 2 participants could deepen this consideration and take inspiration from the Draft multilateral instrument on ISDS reform currently being negotiated at the UNCITRAL Working Group III. A plurilateral modifying agreement could also be brought under the framework convention developed at UNCITRAL as an optional protocol.<sup>5</sup>

### 3. Strengthening engagement

18. Several jurisdictions that participate in the work under Track 2 have expressed a strong interest in achieving a tangible outcome in the near-to-medium term. Currently, around 70 jurisdictions regularly attend Track 2 meetings, but most do not participate actively nor express their positions and expectations openly. At the 10<sup>th</sup> Annual Investment Treaty Conference on 31 March 2025, over 100 jurisdictions were represented in the context of Track 2 work for the first time.

19. Several factors likely contribute to the limited engagement or absence of jurisdictions. Contact information available to the Secretariat may be lacking or outdated and invitations may not reach relevant officials; capacity constraints may lead officials to deprioritise Track 2 meetings; governments may have developed a position on the subject matter of Track 2; or governments of these jurisdictions may not have sufficient information that would lead them to conclude that any outcome of Track 2 work would be beneficial to them.

20. The reach and benefits of work under Track 2 depend on the engagement of jurisdictions that have concluded treaties in earlier decades and may be interested in transitioning these treaties. The more jurisdictions participate and engage, the more old treaties could possibly be transitioned under any potential agreement. Also, greater engagement spreads knowledge about current treaty practices more widely, thus facilitating the implementation of modern treaty practices when new investment treaties are concluded or older treaties renegotiated bilaterally.

21. Discussions on the opportunities and implications of the work under Track 2 in smaller settings with fewer jurisdictions<sup>6</sup> have suggested broader and deeper engagement of jurisdictions in attendance. These smaller settings also suggest greater interest in the effort and its potential outcome than seen in plenary meetings under Track 2. Budget constraints for this work have so far limited the possibilities to organise such events.

22. Budget permitting, the Secretariat and interested Track 2 participants will seek to outreach to potentially interested jurisdictions in smaller formats and regional settings to

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<sup>4</sup> “Treaty modification: legal framework and opportunities for investment treaties” [DAF/INV/TR2/WD(2024)8/REV2], Note by the Secretariat, 5 November 2024; “Design options for a plurilateral agreement to modify “fair and equitable treatment” provisions in investment treaties” [DAF/INV/TR2/WD(2024)9/REV2], Note by the Secretariat, 5 November 2024.

<sup>5</sup> On the operationalisation of the Draft multilateral instrument on ISDS reform, see UNCITRAL, *Possible reform of investor-State dispute Settlement (ISDS): Draft multilateral instrument on ISDS reform*, Note by the Secretariat, 8 July 2024, [A/CN.9/WD.III/WP.246](#).

<sup>6</sup> Such discussions have taken place with EU Members in October 2023 upon an initiative of the Government of Spain and with MENA governments in November 2024 at the occasion of a meeting under the OECD-MENA programme.

encourage greater and more active participation in work and outcomes of work under Track 2. Efforts undertaken by regional organisations could be leveraged in this context.