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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****The Future of Investment Treaties – Track 2: Summary of discussions of the meeting of 17 June 2025****Note by the OECD Secretariat**

Delegates from 101 jurisdictions were invited to participate in the 13th Track 2 meeting of the OECD work programme on the *Future of Investment Treaties*. The meeting was held on 17 June 2025 in virtual format. This note summarises discussions held during the meeting.

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. The note does not prejudge the outcomes of discussion 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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Future of Investment Treaties (Track 2)
Summary of discussions of the meeting of 17 June 2025

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Context, purpose and structure of this note

1. The OECD has hosted intergovernmental discussions on international investment policies for over six decades. At present, over a hundred jurisdictions from all continents are invited to participate in these conversations, which the OECD Secretariat supports through research. Governments set the agenda and priorities for these conversations.

2. Since 2011, the OECD-hosted investment policy community has intensified its focus on investment treaties, their design and interpretation by treaty users, associated institutional arrangements, and the implications for policymaking. Public attention to these implications has increased in recent years, and many treaties, especially older ones, do not contain more recent drafting approaches.

3. In March 2021, governments decided to set their discussions on investment treaties and treaty policy on a new footing and called on the OECD to host these conversations on the *Future of Investment Treaties* in an inclusive format in two interrelated tracks.

- Track 1 discussions consider the challenges that investment treaties should address in the future as well as desirable changes to current approaches. This track has to date focused on investment treaties and climate change.
- Track 2 is a government-led effort to consider among peers the merits and options for the transition¹ of substantive clauses with outdated design in existing treaties in a pragmatic manner.

¹ The notion of “transition” is used in this note as an umbrella term for any kind of action that seeks to bring older treaty designs more in line with current approaches or improve the outcomes of certain treaty clauses in other ways. A “transition” could for instance be achieved through an interpretive instrument, a modification, or an amendment of the text of a treaty.

4. One hundred and one jurisdictions are currently invited to participate in this work programme.² In the interest of transparency to the public, the main traits and outcomes of substantial discussions are made publicly available on a dedicated [OECD webpage](#).
5. In 2023, France granted a financial contribution to the work of Track 2 for two years and provided a further voluntary contribution for this work at the end of 2024. This contribution has enabled an expeditious delivery and the production of further analytical material for the Track 2 Project and has helped to facilitate the participation of representatives from developing countries in this work.
6. Since the start of the work in 2021, discussions in Track 2 have shown how several substantive clauses commonly found in investment treaties have evolved, carried by a shared intention to frame the contours of substantive treaty obligations more clearly. Most jurisdictions apply the new approaches to key clauses with a high degree of consistency.
7. Meetings between 2021 and end-2024 provided fora to analyse and discuss the evolution of treaty practice with respect to three substantive clauses – fair and equitable treatment (FET), ‘indirect expropriation’, and ‘most-favoured-nation’ (MFN) treatment obligations. Governments have explained their respective motivations underlying new treaty text for these clauses in past Track 2 meetings. Documents and discussion of substantive issues in the Track 2 discussions do not, by themselves, necessarily constitute all participating governments’ official interpretations of provisions and should not be cited as such.
8. Track 2 participants have also discussed procedural means to address unspecific framings in older agreements without prejudice on future direction. They have in particular discussed the potential of Joint Interpretations to clarify the intention in older treaties; and, in the meeting of 5 November 2024, of plurilateral treaty modifications, using the FET clause to illustrate possible design options.³ At the meeting in February 2025, they expanded the reflections to MFN clauses with respect to their interaction with dispute settlement provisions and FPS clauses and explored the breadth of consensus on these provisions to inform the framing of a potential joint interpretation for interested jurisdictions.

² Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czechia, Denmark, Democratic Republic of Congo, 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, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, European Union.

* 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.

³ See Secretariat research notes: “*Treaty modification: legal framework and opportunities for investment treaties*” [[DAF/INV/TR2/WD\(2024\)8/REV2](#)] and “*Design options for a plurilateral agreement to modify ‘fair and equitable treatment’ provisions in investment treaties*” [[DAF/INV/TR2/WD\(2024\)9/REV2](#)]; and the Summary of discussions of the meeting of 5 November 2024 [[DAF/INV/TR2/WD\(2024\)10/REV2](#)].

9. On 31 March 2025, the OECD held its 10th Annual Investment Treaty Conference. The event, for the first time organised as a joint effort with UNCITRAL and UNCTAD, was dedicated to the modernisation of investment treaties.⁴ During this conference, government representatives from over 100 jurisdictions, international organisations and non-governmental stakeholders – including business, civil-society organisations and academia – exchanged on new trends in treaty designs and practical avenues to modernise the large stock of investment treaties that do not feature recent treaty specifications and innovations.

10. During the meeting of 17 June 2025, Track 2 participants:

- Discussed the scope of consensus on ‘indirect expropriation’ to inform the content and textual framing of a potential joint interpretation to clarify obligations under their older treaties (**section 1**);
- Examined preliminarily the national treatment standard (NT) – specifically its design in recent investment treaties, to assess the merits of clarifying NT obligations in older treaties (**section 2**); and
- Exchanged views on priorities for future work under Track 2 for the 2026-2027 biennium based the preferences expressed by participating jurisdictions at the previous meeting of 1 April 2025 (**section 3**).

1. Scope of likely consensus on ‘indirect expropriation’: opportunities to clarify obligations in earlier treaties using a joint interpretation

11. At the previous Track 2 meeting of 1 April 2025, delegates began discussing the scope of likely consensus on indirect expropriation for a potential joint interpretation. Many Track 2 participants have included clarifications with respect to IE in their recent investment treaty practices that present strong structural similarities.⁵ The Secretariat’s research note DAF/INV/TR2/WD(2025)3 identified four core elements for a potential consensus on indirect expropriation, and proposed textual framings for each element based on participants’ recent treaty practices.

12. Several delegations highlighted the merits of clarifying indirect expropriation obligations in older treaties, considering that some arbitral tribunals have at times interpreted treaties that lacked specifications on the content of related obligations in ways that did not correspond to treaty parties’ intent or that in their view unduly limited their regulatory leeway to adopt measures pursuing legitimate public policy objectives.

13. Delegates generally expressed the view that the four core elements put forward in the Secretariat’s note broadly reflected their recent treaty practices with respect to indirect expropriation and exchanged views on the specific textual framings illustrated in the note, specifically on the definition and criteria of indirect expropriation (section 1.1), on the methodology to assess whether a measure constitutes indirect expropriation (section 1.2), and on guidance with respect to certain non-discriminatory public policy measures that do not constitute expropriation (section 1.3).

⁴ The video-recordings of the conference remain available for replay at <https://www.oecd-events.org/investment-treaty-conference/sessions>.

⁵ See OECD (2021), “*The notion of ‘indirect expropriation’ in investment treaties concluded by 88 jurisdictions: a large sample survey of treaty provisions*”, Secretariat research note.

1.1. Definition and criteria of indirect expropriation (paras. 1 and 2)

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| 1 | An indirect expropriation is an action or a series of actions by a Party that has an effect equivalent to a direct expropriation. |
| 2 | An action or a series of actions cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment. |

14. Some delegations expressed a preference to refer to ‘**measures**’ – as referred to in elements 3 and 4 below – rather than ‘actions’ (as featured in paragraphs 1 and 2) throughout the textual proposal, for consistency purposes. One delegation opined that the former terminology would also provide more predictability to treaty users.

15. Delegates discussed whether these two paragraphs captured sufficiently all the criteria and threshold for a measure to qualify as an indirect expropriation. Several delegations expressed a preference to refer to the **degree of interference** of a measure with the tangible or intangible property rights or interests in an investment, by adding a reference to the threshold of a ‘**substantial**’ or ‘**radical**’ **deprivation of the fundamental attributes of property** in an investment in this respect. Other delegations observed that the addition of this element could appear as redundant considering that the definition of indirect expropriation in paragraph 1 as an action or a series of actions that has an ‘effect equivalent’ to direct expropriation already implies this high threshold.

1.2. Methodology to assess whether a measure constitutes an indirect expropriation (para. 3)

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| 3 | <p>The determination of whether a measure constitutes an indirect expropriation requires a case-by-case and fact-based inquiry, that considers, among other factors:</p> <ol style="list-style-type: none"> i. the economic impact of the measure; ii. the character of the measure; iii. the extent to which the measure interferes with distinct, reasonable investment-backed expectations. |
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16. Delegates broadly supported the merits of having general methodological guidance on the assessment of whether a measure constitutes indirect expropriation, as well as of an illustrative list of factors that may be relevant to the inquiry. Delegates commented specifically on the illustrative list of factors included in the proposed framing:

- Delegates indicated that the factors listed in paragraph 3 were the most common in their recent treaties. Several delegates suggested adding the ‘**duration of the measure**’ as an additional factor that may be considered by tribunals to assess whether a measure constitutes indirect expropriation.
- Some delegations also suggested to add an additional specification on the **economic impact of the measure**, to clarify that the fact that the measure or series of measures has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred.
- Some delegates reflected on the inclusion of **the extent to which the measure interferes with distinct, reasonable investment-backed expectations** as a factor to be considered. One delegation questioned how such addition relates to the concept of ‘legitimate expectations’ under the FET standard and the implications of its addition in a joint interpretation on indirect expropriation.

1.3. Guidance on non-discriminatory measures pursuing legitimate public welfare objectives (para. 4)

4 [Except in rare circumstances] A non-discriminatory measure of a Party that is adopted and maintained in good faith to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.

17. Delegates generally supported the addition of guidance on whether non-discriminatory measures pursuing legitimate public welfare objectives may constitute indirect expropriation, and expressed diverse views on its textual description:

- Some delegates explained that this specification in their recent treaties is meant as guidance and reflects the state of customary international law rules, rather than as an exception and should be read together with the preceding paragraph containing the criteria for assessing whether a measure constitutes indirect expropriation. As such, they argued that maintaining the **‘except in rare circumstances’** language would be useful to convey the guiding intent of the component and would provide tribunals some flexibility in their case-specific fact-intensive assessment. Similarly, some delegations argued that paragraph 4 could benefit from the addition of **‘for greater certainty’** in its wording, to reinforce the intent of the specification. Other delegates highlighted however that the inclusion of ‘except in rare circumstances’ would not appear necessary as it would be implied by the inclusion of a good faith test. Other delegates similarly considered that an identification of the circumstances in which a non-discriminatory public policy measure could exceptionally constitute indirect expropriation (*e.g.*, *‘unless the measure is so severe...’*) made the addition of ‘except in rare circumstances’ redundant.
- While some delegates noted the Secretariat’s finding that good faith appears to be the most cited condition for these rules – as reflected in the proposed wording, they explained their reference to other criteria in some of their recent treaties, such as the **proportionality** (or reference to manifestly disproportionate), and **‘severity’** of the measures in light of the objectives. Delegates questioned how these alternative formulations relate to good faith – whether these criteria express the good faith condition, or whether they reflect different understandings of customary international law rules in this respect.

18. Participants convened to pursue their reflections on the implications of these different textual framings of governmental police powers and indirect expropriation in a future meeting, to assess whether broadly consensual language for a joint interpretation could be reached on this fourth component.

2. ‘National treatment’ (NT) provisions in investment treaties: preliminary examination of recent treaty language

19. Following requests made in previous Track 2 meetings, delegates began exploring new designs of NT provisions in their recent treaties, to assess whether a clarification of older treaties based on new treaty text could be worth pursuing. The discussion was based on the Secretariat’s note [DAF/INV/TR2/WD(2025)7] that attempts to identify some areas of convergence in participating jurisdictions’ recent investment treaty practices with respect to NT, specifically on the inclusion of clarifications of treatment ‘in like circumstances’. Many Track 2 participants have included general methodological guidance

for the assessment of treatment ‘in like circumstances’, as well as indications on the factors that may be relevant to the assessment in their recent investment treaties.

20. The discussion focused on three aspects:

- *First*, delegates shared **general considerations on the designs of NT provisions** in investment treaties. Many delegates noted the importance of ensuring that non-discrimination was not interpreted in a way that did not undermine the right to regulate in the public interest.
- *Second*, participants explained the **rationale for the inclusion of clarifications on treatment ‘in like circumstances’** in their recent investment treaties. The inclusion of methodological guidance – calling for a holistic appreciation of all relevant factors to assess whether treatment ‘in like circumstances’ was accorded – supports a flexible approach rather than narrow comparisons and ensures that legitimate differential treatment not based on nationality does not automatically amount to a breach of NT obligations. Delegates also highlighted the role of **exceptions** in configuring of NT obligations to ensure that parties preserve legitimate policy space.
- *Third*, delegates began considering whether their consistent use of specified language on NT in their recent treaties could create **opportunities for a clarification of older treaties**. Several delegates supported the idea of a potential joint interpretation in this respect. Delegates suggested furthering their reflections on the matter, focusing specifically on the diversity of NT designs in their older treaties to assess whether a joint interpretation could be appropriate or whether some older treaties that feature idiosyncratic language would potentially require a modification to reflect newer designs.

3. Priorities for Track 2 work in the 2026-2027 biennium

21. 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. To ensure that the work is focused, coordinated, and corresponds to governments’ priorities, delegates set the work programme on a bi-annual basis.

22. As the planned work programme covering 2024-2025 is being delivered to schedule, delegates discussed options for work under Track 2 for 2026-2027, based on an initial Secretariat draft [DAF/INV/TR2/WD(2025)8]. The proposed workplan built on what has been accomplished so far in Track 2 and draws on expressions of interest from Track 2 participants - most recently during the OECD 10th Annual Conference on Investment Treaties, jointly organised with UNCITRAL and UNCTAD on 31 March 2025, and the Track 2 meeting that followed on 1 April 2025.

23. During the meeting, Track 2 participants expressed their support for deepening and expanding the scope of exploration of substantive treaty clauses and broadly identified this area of work as a priority. Jurisdictions have expressed diverse preferences on whether to develop procedural means to implement a plurilateral treaty reform. The Secretariat will prepare a revised version of the workplan for 2026-2027 to integrate the feedback that will be proposed for adoption at the next Track 2 meeting tentatively scheduled in 2025Q3.