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Modernising Investment Treaties: Summary of discussions of the meeting of 31 March 2026

Note by the OECD Secretariat

Delegates from 101 jurisdictions were invited to participate in the 15th meeting of the OECD work programme on *Modernising Investment Treaties* (formerly 'Track 2'). The meeting was held on 31 March 2026 in hybrid format. This note summarises discussions held during the meeting.

This note is made public to ensure transparency of government conversations under the *Modernising Investment Treaties* work. Delegates had an opportunity to comment on this note before its public release. The note does not prejudge the outcomes of discussion under the work programme.

The work on *Modernising Investment Treaties* is documented at https://oe.cd/foit2.

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Table of contents

Context, purpose and structure of this note 2

1. Framing the shared understanding of 'indirect expropriation' for a potential joint interpretation: further examination 3

1.1. The nature and function of 'police powers' on 'indirect expropriation' 5
1.2. The scope of 'police powers' under customary international law 6
1.2.1. The opportunity of additional textual specifications on the scope of 'police powers' 6
1.2.2. The relevance of the proportionality of a measure in the assessment of 'police powers' 7

2. Operationalising a plurilateral joint interpretation: preliminary considerations 9

2.1. Design features of a joint interpretation 9
2.1.1. Preliminary assessment of the respective merits of general and treaty-specific interpretation 9
2.1.2. Management of spill-over effects on the interpretation of other provisions 10
2.1.3. Identification of treaty provisions covered by the interpretation 10
2.2. Legal effects of a joint interpretation 11
2.2.1. Clarification within the limits of the ordinary meaning of the treaty text 11
2.2.2. Legal effectiveness of a joint interpretation before investment tribunals 11
2.2.3. Temporal application of a joint interpretation 11

3. Sequencing and timeline of deliverables and expected outcomes in 2026 12

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 the textual specifications found in more recent drafting approaches designed to guide investment treaty tribunals in their interpretation and application of substantive obligations.

3. Since March 2021, governments have been reflecting on the evolution of their investment treaty practices, whether it would be better if older treaties were more similar to designs that are now universally and consistently used in modern practice, and how

interested jurisdictions could achieve a transition[1] of older treaties to current designs in a pragmatic and efficient manner.

4. One hundred and one jurisdictions are currently invited to participate in this work programme.[2] In the interest of transparency to the public, background documents and summaries of previous meetings are made publicly available on a dedicated OECD webpage.

5. During the meeting scheduled on 31 March 2026, participating jurisdictions pursued the exploration of several matters. Delegates:

- Pursued their exploration of how a shared understanding of 'indirect expropriation' obligations could be textually framed for a potential joint interpretation of older investment treaties among interested jurisdictions (**section 1**);
- Explored potential design options for operationalising a joint interpretation, using the interaction of MFN treatment clauses with dispute settlement arrangements in third-party treaties as an illustration (**section 2**); and
- Discussed the sequencing and timeline of deliverables and expected outcomes under the *Modernising Investment Treaties* work programme over the 2026-2027 biennium (**section 3**).

6. Due to time constraints, discussions on the topic of the 'importation' of substantive provisions from third-party treaties based on MFN treatment provisions (based on the Secretariat background note DAF/INV/TR2/WD(2026)2) have been postponed to the next meeting scheduled on 16 June 2026.

1. Framing the shared understanding of 'indirect expropriation' for a potential joint interpretation: further examination

7. Governments participating in the work programme on *Modernising Investment Treaties* have been exploring how interested jurisdictions may transition substantive provisions in their older investment treaties featuring unspecified framings to language they now use in their recent treaty practice. They had earlier noted that the framings in their

[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 interpretative instrument, a modification, or an amendment of the text of a treaty.

[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.

recent treaties generally reflect their intentions in earlier treaties. They have therefore discussed the opportunities and implications of joint interpretations to clarify obligations in their older treaties.

8. Governments have noted that a joint interpretation on any given substantive clause would require broad consensus on a consistent textual framing of related obligations to avoid fragmentation and achieve more consistency in resulting decisions. Governments are exploring how their shared understanding of obligations could be expressed textually. These discussions have focused so far on 'fair and equitable treatment' (FET),[3] 'full protection and security' (FPS),[4] and 'most-favoured-nation' (MFN) treatment obligations insofar as they relate to dispute settlement provisions.[5]

9. At the 17 June 2025 meeting, participating jurisdictions began discussing how their shared understanding of obligations on 'indirect expropriation' could be textually framed for this purpose. The discussion was based on an initial draft outline that identified four textual elements that most governments have used in their recent investment treaties to delineate the scope of 'indirect expropriation' obligations.[6] Discussions on this initial draft outline are summarised in DAF/INV/TR2/WD(2025)9/REV1.

10. They pursued this discussion at the last meeting of 20 October 2025, based on a revised textual outline set out in DAF/INV/TR2/WD(2025)3/REV1 that reflected the views and suggestions formulated by delegates on the initial draft. The note also provided additional research findings, as requested, on the use and interpretation of 'indirect expropriation' obligations by arbitral tribunals to support governments' reflections on the rationale and potential merits of the textual revisions. Relevant excerpts of case-law and related material on which these findings are based were compiled for ease of reference in the note's Addendum DAF/INV/TR2/WD(2025)3/REV1/ADD.

11. Due to time constraints, only the first three textual components of the revised draft outline were discussed in depth during the 20 October 2025 meeting: the definition of 'indirect expropriation' measures, specifically the threshold for a measure or a series of measures to constitute an 'indirect expropriation (paras. 1 and 2), and the methodology and factors to be considered in an 'indirect expropriation' inquiry (para. 3). Governments' exchanges on these three elements and their revised textual formulations for a potential joint interpretation are summarised in DAF/INV/TR2/WD(2025)11/REV1.

12. During the 31 March 2026 meeting, delegates pursued their reflections on possible consensual language for a potential joint interpretation on 'indirect expropriation,' by focusing specifically on the fourth textual component – as revised – pertaining to governmental 'police powers':

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3 "*Fair and equitable treatment: establishing the breadth of agreement on its contours and contents*", DAF/INV/TR2/WD(2024)6/REV1; and Summary of discussions – November 2024, DAF/INV/TR2/WD(2024)10/REV2.

4 "*Clarifying 'full protection and security' obligations in investment treaties: opportunities for a joint interpretation*" [DAF/INV/TR2/WD(2025)1/ADD/REV1]; and Summary of discussions – February 2025 [DAF/INV/TR2/WD(2025)4/REV1].

5 "*Clarifying the scope of MFN clauses with respect to dispute settlement arrangements: opportunities for a joint interpretation*" [DAF/INV/TR2/WD(2025)2/REV1]; and Summary of discussions – February 2025 [DAF/INV/TR2/WD(2025)4/REV1].

6 "*Scope of likely agreement on 'indirect expropriation': opportunities to clarify earlier treaties using a Joint Interpretation*" [DAF/INV/TR2/WD(2025)3].

4	For greater certainty, [E except in rare circumstances] – such as when the impact of a measure or a series of measures is so severe or disproportionate in light of its purpose that it cannot be reasonably viewed as having been adopted in good faith – A 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.

13. Discussions focused on whether the revised textual framing conveyed accurately the consensus among them on the nature and function of 'police powers' in the context of an 'indirect expropriation' inquiry (**section 1.1**) and the doctrine's scope under customary international law (**section 1.2**).

1.1. The nature and function of 'police powers' on 'indirect expropriation'

14. Participants reiterated their support for the inclusion of guidance in the draft outline of a potential joint interpretation on 'indirect expropriation' relating to government 'police powers'. This specification appears to be a core feature of the design of 'indirect expropriation' provisions in recent investment treaties.[7] Several delegations emphasised the importance of this component in safeguarding governments' right to regulate, noting that tribunals have at times interpreted and applied expropriation obligations in ways that unduly constrained the adoption of measures pursuing legitimate public welfare objectives.

15. The first group of revisions to the initial draft outline reflected suggestions by many delegations to further clarify the intent of the provision, notably through the inclusion of phrases such as '*for greater certainty*' and '*except in rare circumstances*'. Governments that have included this specification in their recent treaties have previously confirmed that it is intended to guide tribunals in the assessment of whether a measure amounts to an 'indirect expropriation', rather than to operate as an exception.[8] As such, the provision is meant to be read in conjunction with the general methodology and factors relevant for assessing 'indirect expropriation', as reflected in the draft paragraph 3.[9] In this context, delegations also explained that the formulation reflects a schematic description of the relevant customary international law rules, rather than an attempt to identify precisely the scope and contours of the 'police powers' doctrine.

16. Many delegates welcomed the addition of these textual indicators in the revised draft outline of paragraph 4 to reflect this intent. They noted that these qualifiers may help to convey the degree of deference expected of tribunals with respect to legitimate public policy measures, as well as the exceptional nature of the circumstances in which non-discriminatory public policy measures may amount to indirect expropriation.

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7 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.

8 The 'exception' logic would first require that the measures be deemed expropriatory, before verifying whether they fall under 'police powers'. The formulation of para. 4 does not follow this reasoning: the valid exercise of 'police powers' by a government precludes the characterisation of a measure or a series of measures as being expropriatory.

9 This reading of 'police powers' was reiterated by the International Court of Justice (ICJ) in a recent case, stating that: "It has long been recognized in international law that the *bona fide* non-discriminatory exercise of certain regulatory powers by the government aimed at the protection of legitimate public welfare *is not deemed expropriatory or compensable*". See: *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, 30 March 2023, *I.C.J. Reports 2023*, para. 185, p. 115 (emphasis added).

17. Some delegations commented on the revised textual framing and suggested potential further refinements:

- While recognising the stabilising role that the inclusion of '*except in rare circumstances…*' in the textual framing of paragraph 4 may play, one delegation explained that it has abandoned this qualifier in its latest treaties as it considered the addition futile in light of the additional specifications on the scope of and conditions of governments' 'police powers' (mainly the addition of the *bona fide* character of the measures).
- Another delegation also questioned whether the textual framing, as revised, conveyed accurately the legality presumption that these measures should benefit from in this respect.
- Finally, one delegation proposed further integrating draft paragraph 4 with the other components of the draft interpretation through explicit cross-references. In particular, it suggested clarifying the relationship between 'police powers' and a finding of indirect expropriation by drawing on the language used in previous paragraphs on the definition of 'indirect expropriation' measures.

1.2. The scope of 'police powers' under customary international law

18. Governments broadly endorsed the three core features of 'police powers' identified in the draft outline of paragraph 4: *non-discriminatory* measures *adopted and maintained in good faith* to pursue *legitimate public welfare objectives* do not constitute indirect expropriations and therefore do not require compensation. Delegates noted the broad substantive consensus on these elements, with many emphasising that the *adoption and maintenance of a measure in good faith* was the principal factor in determining whether a measure falls within the scope of governmental 'police powers' under customary international law.

19. While the initial draft outline of paragraph 4 schematically identified the scope of 'police powers' measures by reference to these three core elements, some delegations called for additional textual clarifications for greater certainty. The draft outline of paragraph 4 was subsequently revised to reflect the language most commonly used by governments in recent investment treaties addressing this issue.

20. Delegates exchanged on the opportunity and merits of these revisions of the framing of 'police powers' in a potential joint interpretation on 'indirect expropriation'. The discussion focused on two complementary issues: the value of additional textual specifications of the scope of 'police powers' in light of the purpose and intent of the provision (**section 1.2.1**); and the relevance of the proportionality of a measure as a factor to be considered in the assessment of 'police powers' (**section 1.2.2**).

1.2.1. The opportunity of additional textual specifications on the scope of 'police powers'

21. Most delegates welcomed the revisions to draft paragraph 4 introducing additional textual specifications on the exceptional circumstances in which non-discriminatory public policy measures may amount to indirect expropriations. Many delegations explained that these additions could be useful to reflect the appropriate balance between safeguarding governments' right to regulate in the public interest while avoiding an over-extension of regulatory powers or unintended consequences resulting from the potential interpretation.

22. One delegation noted that the scope of governmental 'police powers' is already well established under customary international law and that draft paragraph 4 should not incorporate further elements to identify that scope. It emphasised that the provision is not intended to define exhaustively the contours of 'police powers', but rather to offer a schematic observation of the state of customary international law rules in this respect. The delegation recalled that inquiries into 'indirect expropriation' are inherently fact-intensive and conducted on a case-by-case basis following the methodology in draft paragraph 3. It cautioned that additional textual specifications on 'police powers' risked constraining tribunals' flexibility in conducting such assessments. The delegation considered that a reference to '*except in rare circumstances*' without specifying what these circumstances could entail is sufficient to convey their exceptional nature, while preserving tribunals' flexibility in their inquiries, should they be required in specific instances.

1.2.2. The relevance of the proportionality of a measure in the assessment of 'police powers'

23. During the first meeting in June 2025 on the initial draft outline, delegates noted that investment treaty tribunals have at times considered the *proportionality of a measure* when assessing the application of 'police powers', and questioned how this consideration related to the requirement of the adoption and maintenance of the measure in good faith. Specifically, they questioned whether the proportionality of a measure operates as an independent criterion in the assessment of 'police powers' or as a proxy of the *bona fide* character of the measure.[10]

24. The Secretariat research note found that investment treaty tribunals have considered a combination of factors to assess whether a non-discriminatory measure was adopted and maintained in good faith for the purposes of 'police powers', including whether the measure was *proportionate in light of its objectives* (*i.e.*, whether there is a reasonable nexus between the means employed and the end sought to be achieved), its *genuineness* (*i.e.*, whether it does not pursue other motives than the stated public policy objective), or whether it breaches a *specific commitment* that the treaty party made to an investor, among others.[11]

25. In line with suggestions formulated in the June 2025 meeting, the revised textual outline introduced a reference to the *manifest severity* or *disproportionality* of a measure's impact *in light of its objective* as an indicator that a non-discriminatory public policy measure may not be reasonably viewed as having been adopted and maintained in good faith, and may exceptionally amount to an indirect expropriation (see para. 12 above on the revised draft).

26. During the 31 March meeting, delegates discussed the addition of these textual elements in light of their jurisdiction's understanding of the scope of 'police powers' under customary international law, specifically on the extent to which the proportionality of a measure is a relevant factor to be considered, and the content of this assessment:

To what extent is the proportionality of a measure a relevant factor when assessing 'police powers'?

27. Delegates noted the Secretariat's findings on investment treaty use and interpretation, specifically with respect to the assessment of 'police powers' by tribunals.

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10 See : Summary of discussions – June 2025 [DAF/INV/TR2/WD(2025)9/REV1], p. 6.

11 See: OECD (2025) "*Framing the shared understanding of 'indirect expropriation' for a potential joint interpretation: further examination*", DAF/INV/TR2/WD(2025)3/REV1, p. 16-17.

Governments considered that the proportionality of a measure is not a standalone criterion but may be relevant in determining whether a measure was *adopted or maintained in good faith*. They explained that the *bona fide* adoption and maintenance of the measure is a core feature of 'police powers' that calls for a holistic consideration of several factors, of which the measure's proportionality in light of its objective may be relevant.

28. One delegation noted however that while proportionality may be an indicator of the *bona fide* character of a measure, it is not a necessary criterion and that its relevance depends heavily on case specificities. The delegation thus expressed a concern that the textual formulation of paragraph 4, as revised, may suggest that the proportionality of a measure should be considered systematically by tribunals when assessing 'police powers' despite its relative relevance. The delegation expressed its preference for the draft outline to refer solely to the adoption and maintenance of the measure in good faith so as to avoid any confusion on the scope of 'police powers' under customary international law.

To the extent that the proportionality of a measure may be relevant, what does this assessment entail?

29. Delegates also exchanged views on the textual formulation in draft paragraph 4 to accurately convey the relevance of the proportionality of a measure for assessing 'police powers'. Many delegations highlighted that the textual formulation of 'police powers' in a potential joint interpretation should accurately reflect the deference required from tribunals to governments' regulatory space. They recalled that tribunals are not expected to second-guess governmental measures pursuing legitimate public welfare objectives.

30. Many governments supported the reference in the revised draft paragraph 4 to the manifest severity or disproportionality of a measure in light of its objective as an indicator that it may not reasonably be viewed as having been adopted and maintained in good faith. They noted the use of similar formulations in their recent investment treaties and considered the additions useful to specify the circumstances in which such measures may exceptionally amount to indirect expropriation.

31. One delegation, while not opposing the revised formulation of draft paragraph 4, expressed a preference for referring to the *manifestly excessive nature* of the measure, rather than to the proportionality of its impact in light of its objectives (as reflected in the draft outline), considering that this formulation, in its view, would reflect a higher and more appropriate threshold for triggering such exceptional findings. Others questioned whether this was substantially different and that the manifestly excessive nature of the measure would have to be considered in light of the public welfare objective being pursued.

32. Another delegation cautioned that the draft paragraph 4, as revised, could be misconstrued as allowing tribunals to assess alternative regulatory measures or to determine whether less impactful measures could have been adopted, thereby extending the scope of their assessment beyond what is envisaged under the 'police powers' doctrine and disregarding the deference required with respect to governments' powers to regulate in the public interest. In the jurisdiction's view, where relevant, the proportionality assessment in the context of 'police powers' should be limited to determining whether the measure was adopted and maintained in good faith, *i.e.,* whether there is a reasonable nexus between the measure and the public policy objective sought to be achieved.

2. Operationalising a plurilateral joint interpretation: preliminary considerations

33. Since the launch of the work programme on *Modernising Investment Treaties* in 2021, participating governments have been considering practical means available to interested jurisdictions to transition their older investment treaties so as to reflect the designs now used in their more recent investment treaties. They have considered joint interpretations, and treaty modifying agreements[12] as possible instruments for this purpose.

34. Previous discussions on joint interpretations have mostly focused on the general legal framework of joint interpretations[13]. Participating governments have agreed to pursue their exploration of joint interpretative instruments and to reflect on the format and design options to operationalise these instruments and ensure their effectiveness, based on a preliminary Secretariat note[14] [DAF/INV/TR2/WD(2026)1]. The note illustrates the format and possible design options that interested jurisdictions may wish to consider for a potential joint interpretation, using the clarification of the scope of MFN treatment obligations in older treaties with respect to dispute settlement provisions as an example to spearhead these reflections.

35. The discussions focused on two core issues related to the operationalisation of a joint interpretation of older investment treaties, namely: its potential design features (**section 2.1**) and legal effects (**section 2.2**).

2.1. Design features of a joint interpretation

36. Delegates exchanged on several design features that a joint interpretation could have. In particular, they preliminarily assessed the respective merits of a general declaration on one hand, and of an interpretation targeted to specific treaties on the other hand (**section 2.1.1**). They also discussed about the merits of managing spill-over effects on the interpretation of other substantive provisions (**section 2.1.2**) and the means to identify specific treaty provisions covered by the interpretation (**section 2.1.3**).

2.1.1. Preliminary assessment of the respective merits of general and treaty-specific interpretation

37. The Secretariat note explores the option of adopting a separate instrument for each substantive obligation, rather than a single instrument covering all provisions. It also proposes that each interested jurisdiction identify, through unilateral notifications of adherence, the investment treaties to which the interpretation would apply. Against this background, the Chair invited participants to exchange views, on the one hand, on the merits of this provision-by-provision approach covering a list of investment treaties and, on the other hand, on the potential advantages of a general statement of interpretation covering all investment treaties concluded by adhering jurisdictions, unless expressly

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12 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 – November 2024 [DAF/INV/TR2/WD(2024)10/REV2].

13 See: "*Approaches available under international law to transition from older to more recent designs in investment treaties – "subsequent agreements": the role of interpretive statements*", Note by the Secretariat, 12 March 2024 [DAF/INV/TR2/WD(2024)4/REV1].

14 See "*Future of Investment Treaties – Track 2: Priorities and deliverables for the 2026-2027 biennium*", DAF/INV/TR2/WD(2025)8/REV3.

provided otherwise in the treaty text. Delegates exchanged views on the respective merits of both approaches.

38. Many delegates expressed interest in a provision-by-provision approach, noting that the adoption of a separate instrument for each substantive obligation, rather than a single instrument encompassing all provisions, would allow for greater flexibility while enabling incremental progress by accepting an interpretation on additional provisions over time. At the same time, a delegation underlined the potential risks of fragmentation associated with a clear identification of treaties covered, for example by creating situations in which only some investment treaties concluded by a jurisdiction would be covered by the interpretation while others would not. While fragmentation was acknowledged as a potential cost of such an approach, some delegates noted that this cost could be outweighed by the benefits of this approach in terms of increased clarity and predictability of the outcomes of the interpretation.

39. Delegates also assessed the merits and limitations of a general declaration regarding the interpretation of the treaty clauses. In particular, concerns were expressed about the effectiveness of such an approach, drawing on past experience in which general interpretative statements had not been taken into consideration by investment treaty tribunals. In this context, delegates suggested that the Secretariat undertake further work on the potential legal status and effectiveness of such general statements.

40. One delegation expressed a preference for the adoption of a single consolidated document encompassing all interpreted provisions.

2.1.2. Management of spill-over effects on the interpretation of other provisions

41. Delegates were of the view that, as reflected in the provision-by-provision approach suggested in the note, acceptance of a given interpretation on a substantive obligation should not be construed as implying an absence of agreement on other treaty provisions.

42. In this regard, one of the participants recalled that investment treaties are intended to be interpreted as a coherent whole rather than through isolated readings of individual provisions and therefore considered it could be useful to further assess how an interpretation on a specific treaty provision may affect the interpretation of other treaty provisions that are not being interpreted.

2.1.3. Identification of treaty provisions covered by the interpretation

43. With regard to the identification of covered treaty provisions, the note proposed the inclusion of a definition of MFN clauses as a possible means of maximising the compatibility of the interpretation with the widest range of investment treaties, including older treaties containing MFN provisions that are either unlabelled or tied to other substantive obligations. This proposal prompted questions and discussion among delegations regarding the merit and challenge of such an approach and the risks in introducing a new definition of MFN.

44. In response, the Secretariat explained that the inclusion of a definition could help address the risk of ambiguity, as the absence of an explicit mapping of the specific clauses intended to be interpreted could give rise to uncertainty as to the identification of the relevant provision within a treaty. The Secretariat acknowledged that this challenge arises irrespective of whether the approach adopted involves joint interpretations or treaty amendments. As an alternative, it was suggested that jurisdictions could list, for each treaty, the provision(s) to which the interpretation would apply.

45. In this context, a delegation expressed a preference in expressly identifying the provision(s) to which the interpretation would apply in order to enhance legal certainty.

2.2. Legal effects of a joint interpretation

46. Delegations exchanged views on the expected legal effects of a joint interpretation, covering several issues such as the limitation of the clarification to the ordinary meaning of the treaty text (**section 2.2.1**), its legal effectiveness before investment tribunals (**section 2.2.2**) and its temporal application (**section 2.2.3**).

2.2.1. Clarification within the limits of the ordinary meaning of the treaty text

47. Delegates noted that joint interpretations are necessarily circumscribed by the terms of the treaty being interpreted and may not contradict the ordinary meaning of its terms, as doing so would amount to an amendment.

48. In this context, a delegation referred to the ILC Draft Conclusions on subsequent agreements and subsequent practice as providing useful guidance in assessing whether an instrument constitutes a genuine interpretation or instead crosses the line into an amendment. It was suggested that further work be undertaken on the extent to which an interpretation may circumscribe or limit the meaning of a general term without crossing the line into an amendment.

2.2.2. *Legal effectiveness of a joint interpretation before investment tribunals*

49. Delegates expressed broad interest in obtaining further clarification on the effectiveness of joint interpretations, in particular with respect to their legal status and the weight attached to them by investment treaty tribunals.

50. In this context, several delegations stressed that, in order to achieve the objective of reducing legal uncertainty and preventing divergent interpretations, it is essential that joint interpretations be followed by tribunals. One delegation noted that additional elements could be useful to support the effective operationalisation of such interpretations, including a clear and explicit indication of their intended legal effect. In particular, this delegation inquired which elements such interpretation should contain in order to be given meaningful weight by tribunals when interpreting treaty obligations.

51. The Secretariat further acknowledged, in response to questions raised by delegates, that for a joint interpretation to be legally effective, it should be drafted in sufficiently precise terms so as to avoid unintended effects in investment treaty litigation. By contrast, it was noted that more general statements subscribed to by the parties may be given less weight by investment treaty tribunals.

52. Finally, delegates inquired whether there is evidence of interpretations being adopted several decades after the conclusion of the original treaty, and how such delayed interpretations have been viewed by arbitral tribunals in practice.

2.2.3. Temporal application of a joint interpretation

53. Delegates discussed the temporal application of a joint interpretation and noted that it would operate *ex tunc*. Several delegations considered the application of the interpretation from the outset of the treaty to be of value, while one delegate emphasized that such application should not unduly undermine legal predictability for investors.

54. During the discussion, reference was made to the extensive body of disputed cases concerning the importation of dispute settlement provisions. Delegates observed that,

where a tribunal has already interpreted a given clause, questions arise as to how a subsequent interpretation by the parties would interact with that jurisprudence. Such an interpretation could either align with or diverge from the tribunal's prior interpretation. In the latter case, delegates questioned which interpretation would prevail, noting the absence of clear precedent regarding the hierarchy of treaty-interpretation methods. More broadly, delegates sought clarification on how past arbitral jurisprudence would interact with an interpretative instrument adopted by the treaty parties.

55. Some delegates also raised the issue of the interaction between joint interpretations and pending disputes. In response, the Secretariat indicated that one possible design option would be the explicit exclusion of pending and/or settled cases from the scope of the interpretation, an approach that has been adopted in other interpretative instruments.

3. Sequencing and timeline of deliverables and expected outcomes in 2026

56. The Secretariat presented an outlook for implementation in 2026 of the workplan for 2026-2027 as agreed in DAF/INV/TR2/WD(2025)8/REV3. Under the suggested timeline, two additional meetings would take place in 2026 in virtual format, in June and October. The June meeting would be dedicated to a continuation of the discussion on the operationalisation of a joint interpretation based on a revised version of the Secretariat note DAF/INV/TR2/WD(2026)1. In addition, a revised version of the Secretariat note DAF/INV/TR2/WD(2026)2 that contains additional investment treaties would be issued to support a preliminary exploration of the 'importation' of substantive provisions contained in third-party investment treaties using the MFN clause. Delegates that wish to raise additional issues from March discussions on "indirect expropriation" will have an opportunity to do so. The agenda for the October meeting would be determined based on the items covered in June.

57. Delegates expressed satisfaction with the adjusted proposed sequencing and deliverables in 2026. One jurisdiction suggested that the exploration of the evolution in the design of substantive provisions and practical means to transition investment treaties continue to be conducted in parallel.