

Unclassified

English - Or. English

8 October 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****Modernising investment treaties: Summary of discussions at the meeting of
16 June 2026****Note by the Secretariat**

Delegates from 143 jurisdictions were invited to participate in the 16th meeting of the OECD work programme on *Modernising investment treaties* (formerly “Track 2”). The meeting was held on 16 June 2026 in virtual format. This note summarises discussions held during the meeting.

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

The work on *Modernising investment treaties* is documented at <https://oe.cd/foit2>.

investment@oecd.org

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

JT03594549

Modernising Investment Treaties: Summary of discussions at the meeting of 16 June 2026

Table of contents

Context, purpose and structure of this note	2
1. The ‘importation’ of substantive provisions from third-party treaties using MFN clauses	3
1.1. Recent treaty policies with respect to MFN clauses and their use for ‘importation’	4
1.1.1. Participants’ shifts in treaty design with respect to MFN clauses	4
1.1.2. The rationale for the inclusion of explicit limitations on MFN ‘importation’ in recent treaties	5
1.2. Clarifying MFN clauses with respect to ‘importation’ in older treaties: preliminary considerations	5
2. Operationalising a joint interpretative instrument to clarify obligations in older investment treaties: further examination of design options	6
2.1. Structure and scope of the interpretation	6
2.2. Labelling of the interpretative instrument	7
2.3. Temporal application of the interpretation	7
2.4. Acceptance of the interpretation and institutional considerations	8
3. Priorities for continuation of work and sequencing of deliverables.....	8

Context, purpose and structure of this note

1. The OECD has hosted intergovernmental discussions on international investment policies for over six decades. At present, 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 transition¹ of older treaties to current designs in a pragmatic and efficient 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 interpretative instrument, a modification, or an amendment of the text of a treaty.

4. To date, one hundred and forty-three jurisdictions have been 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 (<https://oe.cd/foit2>).

5. During the meeting held on 16 June 2026, participating jurisdictions pursued the exploration of several matters. Delegates:

- Discussed their recent treaty policies and practices on the design of ‘most-favoured-nation’ (MFN) provisions with respect to the ‘importation’ of substantive provisions from third-party treaties, and explored preliminarily whether a clarification of their older treaties’ MFN clauses would be desirable (**section 1**);
- Pursued their exploration of design options to operationalise joint interpretations among them and ensure their effectiveness in the clarification of older investment treaty obligations (**section 2**).

1. The ‘importation’ of substantive provisions from third-party treaties using MFN clauses

6. Jurisdictions participating in the work programme on *Modernising investment treaties* have previously reviewed developments in the design of ‘most-favoured-nation’ (MFN) provisions in their investment treaties with regard to their interaction with dispute settlement arrangements in third-party treaties,³ and are considering the practical means to intervene on their older treaties in this respect.⁴ They also examined preliminarily how MFN clauses configure the interaction of investment treaties, and discussed the

² Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Chad, Chile, China (People's Republic of), Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, European Union, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo*, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Türkiye, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, Yemen, Zambia, Zimbabwe.

* 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 These discussions took place on 30 November 2022, supported by a research note by the Secretariat issued as [DAF/INV/TR2/WD\(2022\)2](https://oe.cd/foit2). The documents are also available on the dedicated webpage <https://oe.cd/foit2>. See Summary of discussions – [November 2022](#).

⁴ “Clarifying the scope of MFN clauses with respect to dispute settlement arrangements: opportunities for a joint interpretation”, [DAF/INV/TR2/WD\(2025\)2/REV1](https://oe.cd/foit2); Summary of discussions – February 2025 [[DAF/INV/TR2/WD\(2025\)4/REV1](https://oe.cd/foit2)].

“importation” of substantive provisions from third-party treaties.⁵ While this practice has been accepted by some tribunals, more recent tribunals have refused the importation of substantive provisions through the basic treaties’ MFN clauses, stating that the practice misconstrues the scope and intent of MFN treatment obligations.

7. In parallel, language aimed at limiting explicitly the importation of substantive provisions through MFN emerged in recent investment treaties, especially since the mid-2010s, and is featured with increasing frequency in governments’ recent treaty practices. The Secretariat research note [DAF/INV/TR2/WD\(2026\)2/REV1](#) documents empirically this shift in treaty policies and practices with respect to the design of MFN clauses based on a large sample survey of over 2,700 investment treaties concluded between 1959 and 2025 by the 143 jurisdictions invited to participate in the work.

8. Participants shared their experience and treaty practices and policies with respect to ‘importation’ of substantive provisions in third-party treaties through MFN clauses (section 1.1) and discussed preliminarily whether and how a clarification of MFN treatment obligations under their investment treaties that do not contain specifications on ‘importation’ could be achieved (section 1.2).

1.1. Recent treaty policies with respect to MFN clauses and their use for ‘importation’

9. Governments exchanged views on the change of designs of MFN clauses in their recent investment treaties – specifically on the ways that they limit the use of MFN clauses to ‘import’ substantive provisions from third-party treaties (section 1.1.1) and the considerations underpinning the evolution of their investment treaty policies in this respect (section 1.1.2).

1.1.1. Participants’ shifts in treaty design with respect to MFN clauses

10. Participants explained the evolution of their treaty practices with respect to the design of MFN clauses and the ‘importation’ of substantive provisions from third-party treaties. Several participants highlighted that their treaty practice now includes express provisions designed to exclude ‘importation’ through MFN.

11. Governments that have addressed importation explicitly in their recent treaties have mostly achieved this by clarifying what is meant by ‘treatment’ for the purposes of MFN treatment provisions. They have explained that MFN obligations apply to treatment actually accorded to investors and investments through concrete government ‘measures’ (such as laws, regulations etc.) rather than to treaty commitments contained in their agreements. As such, substantive treaty protections – such as ‘fair and equitable’ (FET) provisions or ‘umbrella’ clauses – may not constitute a ‘treatment’ that may be extended by virtue of MFN treatment clauses.

12. Some jurisdictions further clarified the relation between treaty commitments and ‘treatment’ under MFN. They explained that while substantive provisions do not, *in themselves*, constitute ‘treatment’, some treaty-based commitments may generate or give rise to a ‘treatment’ where a government takes ‘measures’ (e.g., laws, regulations, or decisions) pursuant to them.

⁵ These discussions took place on 1 February 2024, supported by a research note by the Secretariat issued as [DAF/INV/TR2/WD\(2024\)1](#). The Summary of discussions of that meeting is publicly available on the dedicated webpage <https://oe.cd/foit2>. See Summary of discussions – February 2024.

13. Fewer jurisdictions address ‘importation’ via MFN in their recent investment treaties using a conceptually different approach. Rather than clarifying the scope of MFN clauses (*i.e.*, defining ‘treatment’), they have clarified the *effect* of these clauses by specifying explicitly that MFN clauses shall not be used to ‘import’ or ‘incorporate’ substantive treaty protections that may be included in other agreements concluded by the treaty parties.

14. Other jurisdictions stated that they have not included any explicit specification on the exclusion of ‘importation’ via MFN in their recent investment treaties. However, they clarified that their policy intent is aligned with jurisdictions that have adopted such explicit exclusions. In particular, they explained that various design features and configurations in their recent agreements that are intended to clarify the scope of MFN treatment obligations implicitly preclude interpretations permitting ‘importation’ through MFN clauses. These features include, among others, provisions that list the activities covered by MFN treatment obligations and clarifications regarding the methodology for assessing MFN breaches, including whether treatment was accorded in ‘like circumstances’. According to these jurisdictions, these elements collectively indicate their intended interpretation of the MFN obligation and should prevent the clause from being used as a basis for ‘importation’. While they consider these design features sufficiently clear to avoid misinterpretation, they indicated that internal consultations have been considering whether the inclusion of an explicit provision addressing MFN importation would be beneficial and should be reflected in their future treaty practice.

1.1.2. The rationale for the inclusion of explicit limitations on MFN ‘importation’ in recent treaties

15. Participants explained the rationale underpinning the inclusion of language addressing explicitly or implicitly ‘importation’ via MFN:

- *First*, participants explained that allowing the ‘importation’ of substantive provisions using MFN clauses misconstrues the intent of MFN treatment obligations. MFN obligations constitute a non-discrimination standard addressing the treatment actually accorded to investors or to their investments and are not meant to serve as a means for treaty shopping.
- *Second*, participants noted that excluding importation preserves the balance of rights and obligations in individual treaties. Allowing investors to selectively rely on provisions drawn from third-party agreements was viewed as potentially modifying treaty protections negotiated and agreed between the parties.
- *Third*, participants highlighted the importance of legal certainty and predictability. Explicit treaty language clarifying the scope of MFN clauses was considered useful in reducing uncertainty, avoiding divergent interpretations, and limiting disputes regarding the possibility of importation.

16. Some participants also observed that treaty drafting addressing concepts such as “treatment *in like circumstances*” may provide additional guidance regarding the assessment of MFN claims and further clarify the intended scope of MFN obligations.

1.2. Clarifying MFN clauses with respect to ‘importation’ in older treaties: preliminary considerations

17. Participants observed that many older treaties do not contain explicit language addressing whether MFN clauses permit the importation of substantive provisions from

third-party agreements. As a result, interpretations have varied and have given rise to significant arbitral jurisprudence.

18. While recognising that the scope of MFN clauses ultimately depends on treaty interpretation and must be assessed on a case-by-case basis based on the treaty language at issue, participants noted that the absence of express limitations may leave open the possibility of importation under some treaty formulations. Several participants therefore considered that explicit clarification may be desirable where treaty parties wish to exclude such outcomes.

19. Participants expressed interest in exploring ways to clarify the intended scope of MFN clauses in older treaties. Joint interpretations were identified as one possible avenue for expressing the common understanding of treaty parties without requiring full treaty renegotiation. Some participants also expressed interest in examining other approaches, including modifying their treaties.

20. The discussion also highlighted the potential relevance of MFN clarification for broader investment treaty reform efforts. Some participants observed that efforts to reform substantive treaty provisions may be hindered if MFN clauses were to allow investors to import protections from third-party agreements. Clarifying the scope of MFN clauses was therefore viewed as potentially important to ensuring the effectiveness of wider treaty reform initiatives.

21. Participants encouraged further work on possible drafting options capable of reflecting the discussion regarding the scope of MFN clauses while taking into account the diversity of formulations found in older treaties. Further analysis of arbitral decisions, including more recent cases declining to permit importation, was also considered useful for informing future discussions.

2. Operationalising a joint interpretative instrument to clarify obligations in older investment treaties: further examination of design options

22. Delegates welcomed the revision of the Secretariat research note [[DAF/INV/TR2/WD\(2026\)1/REV1](#)] on the design features and operationalisation of a joint interpretation, which incorporates additional information on the requirements and legal effects of joint interpretations. Based on past experience in litigation related to interpretative instruments, the revised version of the note suggests a list of design features that could potentially address some of the regular shortcomings of interpretative instruments identified by international courts and tribunals.

23. Some participants considered that such an instrument is a useful and pragmatic means to ensure that investment treaties function in line with their intention and recent treaty practice. They exchanged views on the structure and scope of a joint interpretation (**section 2.1**), its labelling as an “agreement” (**section 2.2**), its temporal application (**section 2.3**), and the modalities of acceptance of the interpretation (**section 2.4**).

2.1. Structure and scope of the interpretation

24. There was support expressed for a flexible and plurilateral approach. Several participants suggested prioritising incremental progress, including by developing separate instruments for each clause that jurisdictions wish to interpret, with a view to progressively increasing the overall impact and weight of the exercise. In this regard, some delegations welcomed the inclusion of a provision addressing any potential spill-over effects by

clarifying that agreement on interpretations of specific provisions of a treaty does not necessarily imply the absence of agreement on other provisions or aspects of the treaty.

25. While a delegation suggested elaborating a more comprehensive interpretative instrument that would cover several provisions, another one expressed a preference for a bilateral approach, potentially within a general framework. In response, one delegate considered that this preference for greater flexibility could be accommodated within a plurilateral instrument by allowing participating jurisdictions to specify the investment agreements to which the interpretation would apply, as illustrated in Annex B of the note.

2.2. Labelling of the interpretative instrument

26. Participants noted a terminological shift in the revised version of the OECD Secretariat note, from references to “joint interpretation” in the original version to “joint interpretative agreements” in the latest version. This shift was presented by the Secretariat as a means to align the language used in the note with the expression reflected in the VCLT of “subsequent *agreements*”; and to emphasise that the modality under consideration takes the form of an explicit, jointly adopted instrument.

27. Participants shared their perspectives on this terminological shift and its potential implications for the effectiveness of the instrument and domestic requirements for acceptance. In this context, several delegations emphasised that the legal relevance of an interpretative instrument lies primarily in the manifestation of a shared understanding between the parties to the underlying agreement. In this regard, some delegations considered that the labelling of the instrument would not affect its legal effectiveness – noting that a joint interpretation can be effective without being labelled as an ‘agreement’ – nor necessarily entail additional domestic legal requirements.

28. At the same time, several delegations expressed reservations regarding a terminology that could suggest that the interpretative instrument is in fact a treaty. In particular, while indicating that domestic consultations were ongoing to assess these issues further, some delegates expressed reservations with respect to the use of terms such as “agreement”, as well as treaty-like formulations in annexes, including “Parties”, “Contracting Parties” and “shall”. They considered these elements as potentially misleading and observed that such language could trigger unintended additional domestic legal requirements for accepting the interpretation. In this respect, several delegations underlined the importance of ensuring that the instrument is clearly distinguishable from a treaty and is framed as an interpretative tool.

29. One delegation also underlined that, for a joint interpretation to qualify as a subsequent agreement within the meaning of the VCLT, participation of *all* parties to the underlying investment agreement would be required. The Chair recalled in this context that the key element remains the existence of a clear convergence of views (“meeting of minds”) among the parties, and that this convergence may be formalised in an interpretative instrument regardless of its labelling.

2.3. Temporal application of the interpretation

30. Delegates discussed aspects related to the temporal application of a joint interpretation, noting that this aspect constitutes a key distinction from treaty amendments and modifications and that, as such, it should be carefully considered. Some delegates welcomed the explicit reference in the note to the extent of the application of interpretation to concluded disputes, highlighting that, for clarification purposes, such an instrument would not allow the reopening of concluded proceedings.

31. Delegates also raised questions regarding the application of the interpretation to pending disputes, including the definition of what constitutes a “pending dispute” and its implications for ongoing proceedings. While a participant suggested that limiting the temporal scope of application to a defined stage of the proceedings could enhance predictability, another delegate recalled that an interpretation is, by nature, declaratory of the parties’ intent and, as such, cannot be deemed to operate from a specific date without crossing the line into an amendment or a treaty modification.

2.4. Acceptance of the interpretation and institutional considerations

32. Delegates exchanged views on possible modalities for acceptance and dissemination of a joint interpretation. One participant noted that there is no requirement for consent to be expressed through a single, specific formal mechanism, and that existing practices – such as exchanges of letters, joint declarations or notes – all constitute suitable means of expressing consent. Other delegations considered that unilateral notifications of acceptance as suggested in the note could offer a pragmatic solution in a plurilateral setting.

33. Several delegations emphasised the importance of ensuring accessibility and publicity of the instrument, including through publication in relevant databases. Some participants stressed the importance of ensuring that the instrument is sufficiently formalised to be taken into account by arbitral tribunals, noting that a publication on a webpage as suggested in the note may not be sufficient. In this regard, reference was made to approaches inspired by the BEPS process, with one delegation suggesting that participants express their will to accept one or several interpretations in a similar format to the BEPS MLI.

34. Delegates also exchanged views on the role of the OECD in this process, with several delegations expressing their preference for an open and inclusive plurilateral instrument that would not be limited to OECD countries. The Chair and the Secretariat recalled that the discussions taking place at the OECD have always been inclusive and, in principle, open to any interested jurisdiction. They clarified that the role of the OECD is to facilitate discussions and that the resulting instrument would be open to acceptance by any interested jurisdiction regardless of its prior engagement in the process.

35. In conclusion to the discussion, the Chair recalled that, in the context of a joint interpretation applying to a list of treaties, interested jurisdictions will need to examine the text of their treaties to determine whether the proposed interpretation is supported by the original treaty text or would instead amount to an amendment.

3. Priorities for continuation of work and sequencing of deliverables

36. The Secretariat briefly presented the potential deliverables for the next meeting tentatively scheduled to take place in October 2026. In this context, delegations identified several priorities: a ‘stocktaking’ note that summarises the state of the discussions on each provision covered since the beginning of the process in 2021; a deepening of the reflections on joint interpretations and treaty modifications; and the extension of work to additional substantive provisions, such as the definition of investor and investment, and denial of benefits clauses.

37. As a general consideration on the outcomes of the process, one delegation expressed an interest in prioritising information exchange and the elaboration of model clauses.