

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE**

Freedom of Investment Roundtable 32: Summary of Discussion

Note by the Secretariat

This note by the Secretariat summarises discussions at Freedom of Investment (FOI) Roundtable 32, held on 3 and 4 November 2020.

Sixty-two economies are invited to participate in the Roundtable.

For general information on the Roundtable and its work please refer to www.oecd.org/daf/investment/foi.

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JT03472884

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1. The Freedom of Investment (FOI) Roundtable is an inter-governmental forum that supports countries' efforts to maintain and extend open, transparent and non-discriminatory policy frameworks for international investment. Through analysis and regular multilateral dialogue, the Roundtable promotes the sharing of experiences with investment policy design and implementation. It also helps countries to address policy concerns that international investment may raise, in particular those related to national security. Policy monitoring by Roundtable participants promotes observance of countries' international investment policy commitments, including those taken under the OECD investment instruments and in the context of the G20.

2. The present document summarises views and information contributed by participants at Roundtable 32, held in a virtual format across two sessions on 3 and 4 November 2020. Participants included representatives of governments of the 37 OECD members as well as the European Union, other governments that have adhered to the OECD Declaration on International Investment and Multinational Enterprises (Argentina, Brazil, Costa Rica,¹ Croatia, Egypt and Morocco), and government representatives from Bulgaria, P.R. China, the Russian Federation, Saudi Arabia and South Africa.² Representatives from the World Trade Organisation (WTO) also participated in the Roundtable.

3. Discussions at Roundtable 32 addressed several topics³ including:

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1. Recent investment policy developments

4. Roundtable participants discussed selected recent investment policy developments based on an [inventory of investment measures taken between 16 September 2019 and](#)

¹ On 15 May 2020, the OECD countries unanimously decided to invite Costa Rica to become a member of the Organisation. Costa Rica's accession will take effect after the country has taken the appropriate steps at the national level to accede to the OECD Convention, and deposited its instrument of accession with the French government, the depository of the Convention.

² The following economies are invited to participate in the Roundtables: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, and the European Union.

³ The Roundtable also addressed some other items that are not reported here given their procedural nature or relation to ongoing work in other OECD Committees.

[15 October 2020](#).⁴ Participants heard a brief presentation of the inventory by the Secretariat, which noted that the inventory showed a marked increase of investment policy measures in the reporting period. Many measures were taken in the context of the COVID-19 pandemic to respond to and calm the exceptional economic turbulence. The Secretariat noted that the main factor that appears to be responsible, in large part, for this unusually intense policy making activity in the reporting period was the growing concern about threats to essential security interests associated with foreign investment. In this respect, the Secretariat confirmed what was presented in an earlier [policy note on this issue](#): that the COVID-19 pandemic appears to have accelerated an existing trend that had begun since 2016 of increased policy activity in this area.

5. Roundtable discussions focussed on three main issues. The first of these issues was the extent to which concerns over problematic acquisitions in health-related and other sectors that triggered many policy measures have actually materialised. Roundtable participants agreed that it was probably too soon for clear observations in this regard. Participants reaffirmed the importance of investment screening mechanisms as tools for governments seeking to address a range of risks posed by potentially problematic foreign investors, including beyond issues that may be specific to the COVID-19 pandemic. A participant noted their view that temporary measures taken by their government in response to the COVID-19 pandemic had played a vital role in reassuring the public that their government was responding appropriately to possible new risks linked to FDI activity during the pandemic.

6. While declining to mention specific transactions, some participants reported increases in overall transaction activity in health-related and other sectors in their economies during the COVID-19 pandemic. A participant suggested that this development justified renewed attention and scrutiny on the design and use of investment screening mechanisms. Another participant reported that the overall number of inbound foreign investment transactions subject to review in his jurisdiction had nearly doubled in 2020 as compared to 2019 and that this increase had prompted the government to implement a triage system for receiving new cases and quadruple the number of staff available to handle them. Another delegate linked some of this increase to the temporary measures adopted by their government in response to the COVID-19 pandemic and suggested that this was an indicator of a relatively healthy level of FDI activity in their economy despite the effects of the pandemic. The delegate also noted that the government had been able to conduct the majority of these new review procedures without significant delays, referring to data from the third quarter of 2019 (median processing time of 40 days) and the third quarter of 2020 (median processing time of 46 days).

7. The second issue considered by Roundtable participants was whether and why the investment policy response to the COVID-19 crisis appears to diverge, by and large, from the response that governments chose in response to the 2008/2009 Financial and Economic crisis. Participants broadly agreed with observations made in the [inventory](#) on this issue (Section 1, paras 15-18). A participant suggested that the evolution of governance structures for FDI might also be a relevant consideration in assessing this question, citing as an example the new role of the EU in this regard since the Lisbon Treaty came into effect in 2009. It was further suggested that although one difference between the current crisis and the 2008/2009 crisis may lie in government perceptions of risks associated with international investment, perceptions regarding the benefits remain unchanged. Several participants reiterated their governments'

⁴ This report and all previous reports, including the joint public reports by OECD, WTO and UNCTAD under a mandate of G20 Leaders, are published on the OECD website: <http://www.oecd.org/daf/investment/G20>.

steadfast commitment to remaining open to FDI and the importance of FDI in the recovery phase for the current crisis.

8. Roundtable participants also expressed views on the prospects for greater international cooperation in the design and implementation of investment policies related to the protection of essential security interests. Participants agreed that the merits of international cooperation in this area are not in doubt. They expressed support for the OECD continuing to play a role in this regard, especially through its monitoring of policy developments and providing a forum for governments to exchange information and best practices. Some participants affirmed the continued relevance of the [OECD Guidelines for Recipient Country Investment Policies relating to National Security \(2009\)](#) as a useful instrument for policy design and assessment.

9. Following this discussion, the Roundtable heard brief presentations by Switzerland on its plan to introduce an investment review mechanism and by Finland on a reform of the country's investment review mechanism that had come into force on 11 October 2020. Finland announced that it would provide further information on its reforms in a forthcoming notification under the [Declaration on International Investment and Multinational Enterprises](#) and the related [3rd Revised Decision on National Treatment](#).⁵

2. Business responsibilities and investment treaties

10. Roundtable participants continued their consideration of business responsibilities and investment treaty policy based on a revised scoping paper.⁶ The revisions addressed comments received, new developments and input received during a public consultation in January-February 2020.⁷ Roundtable participants agreed that the revised version of the paper would be made available as a working paper on the OECD website following an additional period for comments. The Roundtable requested the Secretariat to prepare a note on possible topics for additional work in this area.

3. Investment facilitation

11. Roundtable participants heard a presentation by the WTO Secretariat on recent developments regarding investment facilitation and considered the ways in which the Roundtable and the OECD's Investment Committee could contribute to ongoing efforts.

12. The WTO Secretariat updated the Roundtable on the status of negotiations for a multilateral agreement on investment facilitation following the September 2020 decision by participants in the structured discussions on investment facilitation to start formal negotiations. The WTO Secretariat noted that the negotiations are based on an informal consolidated text prepared by the coordinator of the structured discussions that brings together input and proposed clauses provided by 105 WTO member governments and views expressed in the process. The consolidated text is available to WTO members but is not public. Negotiations

⁵ Notifications are published on the OECD website <https://oe.cd/natsec>.

⁶ See [Summary of Discussion for FOI Roundtable 31](#), 24 October 2019.

⁷ The [consultation version of the scoping paper](#) and a [compilation of comments](#) received during the public consultation are available on the OECD website (<https://oe.cd/BR-consult>). The consultation version of the scoping paper on the OECD website does not reflect comments from governments except for corrections or clarifications with regard to individual government policies.

are seeking to streamline the consolidated text and reach consensus on as many items as possible before the end of 2020. The WTO Secretariat expressed its expectation that a final text will be agreed before the Twelfth WTO Ministerial Conference scheduled for June 2021.⁸

13. The WTO Secretariat further noted that governments are addressing the possible implications of the investment facilitation framework and their existing investment treaties including as part of the negotiations. From the outset, governments participating in the structured discussions have emphasised that investment protection and investor-state dispute settlement (ISDS) are excluded from the scope of their work.⁹ It was noted that ongoing negotiations and outside commentary are addressing concretely the issue of isolating a future multilateral agreement from the broad coverage of investment treaties.

14. Roundtable participants expressed appreciation for the WTO Secretariat's presentation, agreed to continue to keep track of the negotiations and expressed interest in receiving an update on relevant developments at an upcoming Roundtable. Participants agreed that the Roundtable could explore ways for the OECD to contribute to these efforts, including efforts to implement commitments in a possible future agreement on investment facilitation, through its network of Investment Promotion Agencies, work on business responsibilities and investment treaties, work on investment incentives or other possible avenues. Some participants suggested that the Roundtable could provide a useful forum for governments to exchange best practices to support efforts to implement commitments in a future multilateral agreement.

4. Roundtable decision to broaden its work programme on investment treaties

15. The Roundtable agreed on a new programme of work on investment treaties that follows two parallel tracks:

- A first track will provide a forum for a broad discussion about the future of investment treaties in light of recent changes to the overall policy environment including urgencies such as climate change and changes in societal expectations about what is appropriate, acceptable and fair.
- A second track will continue efforts to shed light on treaty designs with a new emphasis on identifying options for adjustments and effects of designs. This track will respond to ongoing interest in managing existing treaties given that a broader reconsideration under the first track will take time.

16. The Roundtable agreed that the March 2021 OECD Investment Treaty Conference would be dedicated to the launch of the new work programme.

⁸ Further information regarding the negotiations for a multilateral agreement on investment facilitation appear on the [WTO website](#).

⁹ Joint Ministerial Statement on Investment Facilitation for Development, WTO reference [WT/MIN\(17\)/59](#), 13 December 2017; Joint Ministerial Statement on Investment Facilitation for Development, WTO reference [WT/L/1072](#), 5 November 2019.