

## Public consultation on investment treaties and climate change

The OECD is holding a public consultation to contribute to on-going government, stakeholder and expert work on investment treaties and climate change

### ■ Background

In 2020, the OECD Investment Committee decided it would launch broader government-led consideration of the **Future of Investment Treaties**, with regular participation of experts and stakeholders. The work builds in part on inter-governmental **evaluation** and **analysis** of key aspects of investment treaties at the OECD since 2011.

The overriding importance of confronting the climate crisis forms a core part of the work, which will include a series of meetings under Chatham House rules over two years. The role of investment treaties, as well as alternative or complementary policy options, will be examined with regard to three goals:

- Contributing to sustainable development by encouraging sustainable investment and preserving sufficient policy space.
- Improving or maintaining market access including in key areas such as green and health technology.
- Considering a broader and flexible range of implementation mechanisms such as state-to-state dispute settlement with non-pecuniary or negotiated remedies, expert reports, dispute prevention, as well as implementation of possible business obligations or responsibilities.<sup>1</sup>

The **March 2021 launch of the work programme** included discussion of the possible impact of Investor-State Dispute Settlement (ISDS) on the costs of the energy transition; an OECD Secretariat **background paper** underlined climate change and transition policies as vital policy contexts for consideration of the future of investment treaties.

In discussions at the OECD, there has been strong support for the wide consultation of the public and relevant stakeholders. To this end, the OECD is running the current online consultation, with a view to helping government policy-makers respond to the climate crisis in their investment treaty policies with the benefit of a broad range of inputs.

Consideration of the issues, both at the OECD and in individual governments, increasingly involves interaction between policy makers from different fields including trade and investment, environmental policy, finance and others. Submissions understandable to a range of policy audiences may therefore be particularly useful.

Consideration of barriers to change in the investment treaty regime and how they may be addressed where appropriate, including by reference to experiences with transitions in other policy fields, would be valuable. More generally, insights from experts and stakeholders from both investment and policy fields other than investment are welcome.

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<sup>1</sup> A second track of the work program on the Future of Investment Treaties is considering whether it would be better if specific substantive provisions of older investment treaties were more similar to those now almost universally used in newer treaties.

In addition to providing relevant factual information, it will be helpful to set out and justify the actions you would like governments or others to take – including relating to the existing stock of investment treaties or their implementation. The need for urgent action on the climate and the long-term future effects of some investment treaty policies may make it valuable to consider options to achieve results in 2025 and 2030 as well as in the longer term. Although not expected, contributors may propose amendments or model language, accompanied by commentary.

Professor Lauge Poulsen (University College London), Chair of the meetings between governments, experts and stakeholders, has pointed to the importance of undertaking the first sustained multilateral consideration of the interaction of investment treaties with climate policy, and to the value of the public consultation in this context: “Recent years have made clear that the global network of investment treaties has important implications for climate policies, sometimes in unexpected and unintended ways. This is the first major multilateral initiative to address this urgent issue, so I hope experts and stakeholders from within and beyond the investment policy field will respond to the consultation with concrete suggestions on how to better align the investment treaty regime with climate priorities.”

Investment treaties and the climate crisis will also be the topic of the seventh annual **OECD Investment Treaty Conference**, expected to be held (probably virtually) on 10 May 2021. Contributions to the consultation will form an important part of the material for consideration at the Conference as well as in the continuing work.

Contributions to the consultation should be sent by **14 March 2022** to [investment@oecd.org](mailto:investment@oecd.org). Contributors are requested to take into account the guidelines for contributions set out below.

#### ■ Guidelines for Contributions to Public Consultation on Investment Treaties and Climate Change

Submissions are best limited to 3,000 words. It is helpful to use section headings and numbered paragraphs.

Please provide your name and affiliation together with your contribution. Please also provide information about any activity in connection with Investor-State Dispute Settlement (ISDS) proceedings. Academics should also provide information about affiliations with law firms or legal service providers.

The information you provide is likely to be published on the OECD website including your name (or your organisation’s name) and your affiliations. The OECD retains discretion with regard to the publication of contributions. We will inform you about the treatment of your contribution if it is not published.

We recognise that some people may need arrangements to facilitate contributions. Please contact us if you find it difficult to send us your contribution online, want to send it in a different format, want to send it after the deadline has passed or need any other changes in order to be able to send us your contribution.

Under the OECD’s Data Protection Rules, you have rights, including to request access, rectification and erasure of your personal data. To exercise these rights please contact [investment@oecd.org](mailto:investment@oecd.org). If you have further queries or complaints related to the processing of your personal data, please contact the Data Protection Officer. If you need further assistance in resolving claims related to personal data protection you can contact the Data Protection Commissioner.

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