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A Quick Guide to EU/International Investment Agreements

European Association of Mining Industries, Metal Ores & Industrial Minerals

International Investment Agreements (IIAs)

Investment is a leading source of economic growth, job creation, infrastructure, competition, international trade and innovation. Countries with a high level of investment systematically achieve higher levels of development in more sustainable ways. A central question among policy makers is therefore how to enhance investment? Bearing in mind that investment is triggered and influenced by multitude of factors, and that international investment agreements (IIAs) are not a substitute for long-term and comprehensive improvements towards a transparent, rules-based pro-business policy environment, they do play a fundamental role by providing an additional layer of security to foreign investors and can thus be an important factor for host countries to attracting incentivize more foreign direct investments (FDI), both in quantity and quality.

Today there are around 3000 IIAs, including Bilateral Investment Treaties (BITs), in place as well as a growing number of investment chapters included in free trade agreements. Moreover, mega-regional agreements which also have investment chapters are a key priority on the global trade and investment agenda and have increasingly attracted public attention. At the same time, however, public opposition to and misconceptions of IIAs are persistent and widespread, and an increasing number of countries contest the merits of the open investment climate. It is therefore more important than ever to recall and highlight to policy makers, and the public at large, why international investment agreements matter, and how they contribute to economic prosperity worldwide.

IIAs reduce risks for foreign investors and can contribute to increase FDI inflows

When making an investment decision, investors measure the riskiness of any proposed investment their operation or project. To encourage FDI inflows, policy makers seek to increase investors' confidence by decreasing risk. IIAs have a key role in achieving this. They act as an insurance policy through [i]two particular aspects: (1) protecting investment against political risk and (2) offering them a legal protection under an efficient Investor-State Dispute Settlement (ISDS) mechanism.

While undertaking an investment operation, economic risk is unavoidable. This risk has to be borne by the company itself. In addition, investments abroad are accompanied by political risk. The State is sovereign on its territory, and can reshuffle "the rules of the game" at any point in time, which can change the status and therefore the costs and risk regarding the project.

[i] UNCTAD, World Investment Report 2015

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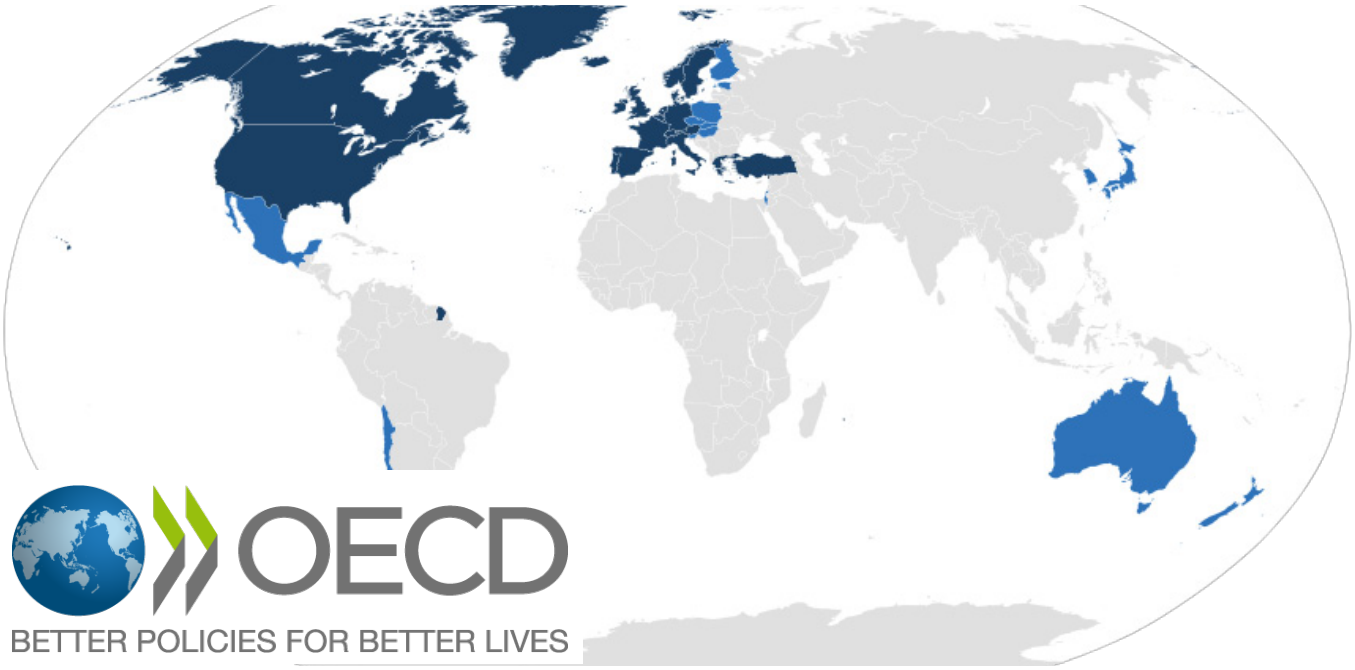
One of the main risk factors when making an investment decision is therefore uncertainty. It raises the question every time whether the conditions that led an investor to make the investment or project in a given country remain the same after the investment has been realised. Similarly, investors can fear about the possibility of their physical assets and intellectual property infringement, management resource exploitation and reputational damage and reputation. Such uncertainty can discourage foreign investors to invest their capital outside the security of their home market. Investors working on public infrastructure and public service projects at sub-sovereign level face particular risks. In developing economies, it is often these kind of projects that can make the biggest overall beneficial impact on the local economy and the lifestyles and wellbeing of the citizens.

Thus, the main objective of investment protection, from a State point of view, is to define a safe environment in order to promote and attract investments which are important ingredients for sustained economic growth, while for enterprises, the main purpose is making sure that their investments are protected through the respect of an engagement by the State. This balanced protection is a condition sine qua none in order to invest (ex: constructions, intellectual property rights), and to subsequently preserve the jobs created as a result of foreign investment. IIAs are therefore crucial in bringing a predictable and stable framework for investment through an officially recognized and binding agreement. They reinforce the rule of law ensuring that States will respect their international commitments and take responsibility in case of violation of their obligations (ex: discriminatory treatment). This contributes to decrease uncertainty faced by investors, in turn encouraging FDI.

Role for the OECD

The OECD Declaration on International Investment and Multinational Enterprises, which balances the promotion by governments of an open international investment climate with a commitment from business to responsible business conduct, is a fundamental basis for OECD's work on investment policy. In 2015, the OECD updated its Policy Framework for Investment, which is the backbone for its work on investment and development. In addition, thanks to its convening power and its Freedom of Investment Roundtable, the OECD is ideally placed to highlight the importance of IIAs to both member and non-member countries.



Role of the EU and its Member States

On a bilateral level, the EU is committed to the use of investment dialogues and trade agreements to ensure open investment.

The EU has negotiated and continues to negotiate several bilateral trade agreements.

These agreements contain chapters on capital movements and payments, with provisions ensuring that payments operations remain unrestricted; that transactions related to direct investment remain free of restrictions; and that temporary safeguard measures are only possible in the case of serious difficulties for the operation of monetary and exchange rate policy.

The replacement of Bilateral Investment Treaties (BITs) between Member States and third countries by EU agreements will be a long term process and require a transition regime.

On 7 July 2010 the Commission adopted a proposal for a **Regulation establishing transitional arrangements for bilateral investment agreements between Member States and third countries.** The Regulation proposal is currently in ordinary legislative procedure. It shall, inter alia, empower Member States to amend BITs in order to remove incompatibilities with EU law.

Currently the Commission is negotiating several bilateral trade agreements to which both the EU and Member States are parties:

- Free Trade Agreements
- Partnership and Cooperation Agreement
- European Neighbourhood Policy
- Economic Partnership Agreement

Their provisions usually contain chapters on establishment and services. They also contain a chapter on capital movements and payments.

After entering into force of the Lisbon Treaty, the EU has exclusive competence on foreign direct investment (Article 207 TFEU). This will allow the EU in the future to conclude comprehensive investment agreements, while, until now, agreements on investment protection were concluded only bilaterally by individual Member States.

On 7 July 2010 the Commission adopted a Communication „Towards a comprehensive European international investment policy" which outlines the Commission's approach to future agreements.

For detailed information about specific country agreements please see:
http://ec.europa.eu/finance/capital/third-countries/bilateral_relations/index_en.htm

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Euromines

Euromines is the recognized representative of the European metals and minerals mining industry. The members' main objective is to promote the industry and maintain their relations with European institutions at all levels. Euromines provides services to its members with regard to EU policy and forms a network for cooperation and the exchange of information throughout the sector within Europe. The association also supports contacts with the mining community throughout the world.

Euromines members are large and small companies who with their subsidiaries in Europe and in other parts of the world provide jobs to more than 350,000 people. Their activities and operations produce more than 42 different metals and minerals.

Published by Euromines
Av de Broqueville 12
B-1150 Brussels
Tel 32 (0)2 775 63 56
Fax 32 (0)2 770 63 03
secretariat@euromines.be

www.euromines.org