

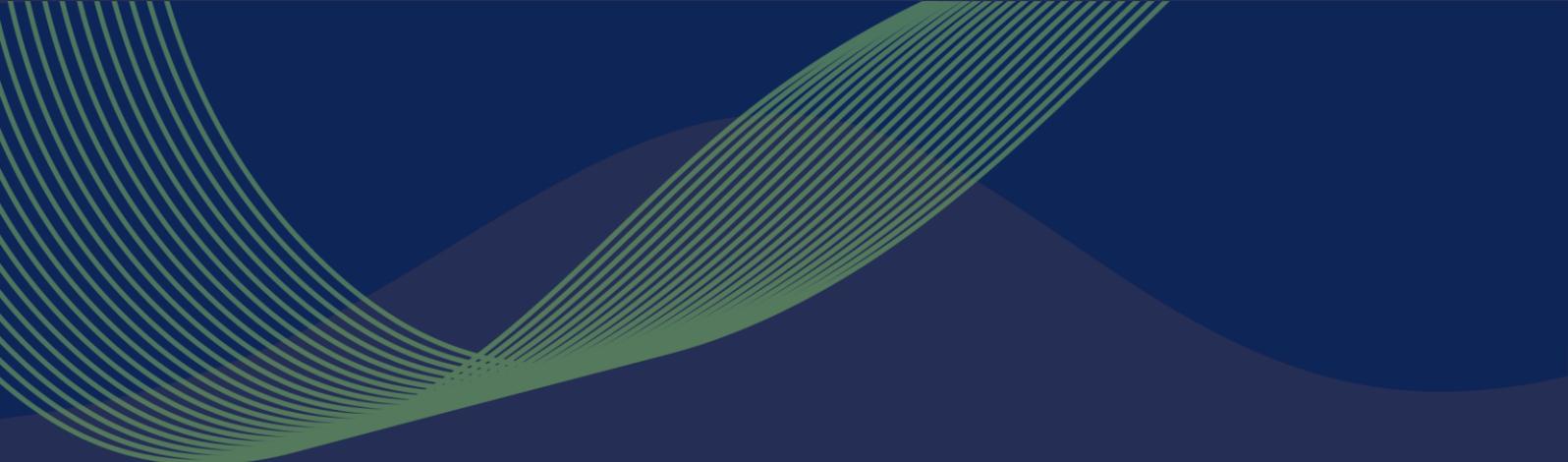


BUSINESSatOECD

MORE, BETTER, AND SAFE INVESTMENT

November 2023

*Business at OECD (BIAC) Priorities
for the OECD Investment Agenda*



Established in 1962, *Business at OECD* (BIAC) is the officially recognized institutional business stakeholder at the OECD. We stand for policies that enable businesses of all sizes to contribute to economic growth, sustainable development, and societal prosperity.

Through *Business at OECD*, national business and employers' federations representing over 10 million companies provide perspectives to cutting-edge OECD policy debates that shape market-based economies and impact global governance. Our expertise is enriched by the contributions of a wide range of international sector organizations.

Introduction

The many challenges that today's world is facing - among them green transition, digital transition, acute security issues and development needs - call for unprecedented amounts of investment from both public and private sources. At the midpoint of the **United Nations 2030 Agenda for Sustainable Development**, the **annual investment gap** across all **Sustainable Development Goals (SDGs)** has increased from \$2.5 trillion at the time of their adoption to \$4 trillion today (1). And, with the green and digital transformation of our economies picking up, our investment needs keep growing by the day.

Foreign Direct Investment (FDI) is indispensable in any effort to reverse this trend. Not only does it provide additional capital to many countries that do not have sufficient means to make the investments needed. It also fosters innovation, particularly amongst small and medium-sized enterprises, and helps disseminate new technologies and sustainable business practices across borders. Moreover, it enhances productivity, advances supply chain diversification and resiliency, and contributes to higher living standards and upskilling, thus contributing to multiple SDGs at the same time.

However, the global investment climate companies are exposed to today is increasingly challenging for FDI. Firstly, **economic uncertainty** fueled by geopolitical tensions, economic conflicts and the price pressures and high financing costs resulting from them has been on the rise in recent years. This is taking its toll on cross-border investment flows as illustrated by the 24 per cent drop in FDI in 2022, the year in which Russia launched its invasion of Ukraine (2). As recent crises have emphasized that economic dependencies can lead to vulnerabilities, companies are investing billions to diversify their supply chains, markets and production locations. Whilst these investments are necessary in view of an ever more unpredictable geopolitical environment, they also divert resources away from the SDGs and the green and digital transition, increasing global investment needs further.

Secondly, in a world fragmented along geopolitical fault lines, the investment policies of countries in the OECD and beyond increasingly reflect security and resilience rather than efficiency considerations. The number of countries conducting FDI screening on national security grounds keeps increasing whilst the scope of these frameworks started expanding from inward to outward investment. At the same time, several countries rolled out massive subsidy programmes and increased local content requirements to boost investments in strategic sectors aiming to reduce dependencies and gain or maintain technological leadership. Whilst these measures often respond to legitimate concerns, they can lead to market distortions and inefficiencies.

1. UNCTAD (2023), World Investment Report 2023 - investing in sustainable energy for all, Geneva, <https://unctad.org/publication/world-investment-report-2023> (last accessed on 3 October 2023).
2. OECD (2023), FDI in Figures - April 2023, Paris, <https://www.oecd.org/daf/inv/investment-policy/FDI-in-Figures-April-2023.pdf> (last accessed on 3 October 2023).

Thirdly, internationally active companies face **increasing demands relating to their environmental, social and governance (ESG) performance** – both in terms of consumer expectations and a growing number of legally binding standards and regulations introduced by governments around the world. If not designed in a proportionate and harmonized way, such legislation can put our businesses on an unlevel playing field vis-à-vis companies that do not face similar obligations. It can also create demands conflicting with requirements they face in host countries, particularly in their activities outside OECD countries. Moreover, it can make it challenging for them to secure access to markets sufficiently large to drive the development of the cutting-edge technologies required for the green and digital transition and to the raw materials they are based on.

Fourthly, the merits of **international investment agreements (IIAs), particularly investment protection and investor-to-state dispute settlement mechanisms, have increasingly been challenged** in the public debate. Yet, ISDS is the catalyst for FDI, giving companies the confidence to invest, particularly in areas of political and economic instability. It is critical to expediting the green transition and promoting economic development and digital transformation in underserved areas of the globe. It provides investors legal recourse in the unlikely event of an expropriation or illegal action (such as the early termination of concession contracts), while encouraging host countries to eschew arbitrary action and abide by rule of law. The highly emotional manner in which the debate on ISDS has been led has prevented solution-oriented discussions on the legitimate concerns underlying some of the criticism against IIA. As a result, political appetite for measures improving the international legal framework for FDI waned and progress on the investment agenda stalled at a time when the realities investors face are evolving rapidly. This is illustrated by the fact that, in 2022, the number of international investment agreements terminated exceeded that of new IIAs for the third year in a row.

The radically changed environment our companies are facing calls for a paradigm shift in the way the OECD and its member states approach FDI. The current policies of OECD countries in this area seem to be primarily motivated by concerns on foreign investment and seek to identify and mitigate its potential negative effects, while the dimension of promoting the positive effects of investments does not get enough attention. Yet, if we would like to leverage the amounts of investment required for a more sustainable, secure, digital, and resilient economy, especially in countries that do not have a sufficient capital base of their own, **the balance needs to shift from imposing requirements on investors** to catering for the needs of investors and providing them with sufficient legal certainty and stability. If we would like our companies to invest in the economic transitions around the world and spread their technologies and business practices, policies need to acknowledge that this may sometimes involve engaging in environments with difficult governance and human rights situations. And if we would like to promote free markets, and open and inclusive societies as an alternative to state capitalism and authoritarianism, we need to engage with, and convince, both likeminded and non-likeminded countries.

Strategic Business Recommendations

With its expertise, its groundbreaking research and publications and its unique legal instruments, the OECD has a major role to play in driving this paradigm change. In light of this, we call on the OECD to take the following actions:

- OECD countries must boost their efforts to **create a sound business environment and a conducive investment climate** within OECD member states and beyond. Regulatory coherence and transparency, the streamlining of regulation across ministries and sectors, the reduction of administrative burden, and the acceleration of relevant administrative procedures, such as investment permits, are important factors in this regard. Any new regulatory proposals in OECD countries should thus consider their impact on competitiveness, evaluate associated costs as well as their practical impacts on the business environment. The OECD Policy Framework on Investment provides valuable guidance in this area and should be further promoted within and outside of the OECD. Moreover, the OECD should keep facilitating the use of blended finance and innovative financing instruments in development policy to mitigate risks for private investors in developing countries. Common standards such as the OECD Blended Finance Principles and related guidance play an important role in this regard. The contribution of such instruments should also be more consistently measured in development statistics.
- Supply chain diversification is an important way to achieve greater economic resilience and increase the capacity of business to withstand shocks. We caution against calls for re-shoring, localizing production and broad-based decoupling as this would create inefficiencies, market distortions, and duplications whilst increasing political tensions and uncertainty. Instead, we call upon governments to **create conditions conducive to fostering the supply chain diversification efforts of companies**. The conclusion and subsequent implementation of ambitious trade and investment agreements with partner countries plays a crucial role in this regard as such deals act as a stable and predictable framework for investment decisions. In this regard, *Business at OECD* is concerned that the number of international investment agreements terminated exceeded the number of new deals for the third year in a row in 2022.
- A pro-investment environment is based on guaranteeing legal certainty and stability through assurances of fair and non-discriminatory treatment for foreign investors, accompanied by effective enforcement mechanisms that safeguard private property rights and due process. **Ensuring investment protection through an independent, rules-based arbitration system** is crucial for making sure foreign investors obtain fair treatment.

- Safeguarding security interests by protecting sensitive technologies and capacities is a legitimate concern. However, *Business at OECD* is alarmed by the proliferation of investment screening mechanisms, both inbound and outbound. Investment screening mechanisms should be based on a clear, predictable, and narrow definition of national security risks and would benefit from more alignment. The OECD should work with its member countries to **better coordinate investment screening policies**, making sure that businesses do not face duplicative or contradictory demands. For this, the organization should take a close look at the Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to National Security. In any case, governments should consult business to ensure that any investment screening measures adopted are effective and have as little impact as possible on competitiveness. Where possible, existing tools should be used instead of creating new regulatory structures.
- **Global competition to attract FDI must not be determined by subsidies.** Excessive subsidization does not only tilt the playing field between countries; picking the winners in that way can also disincentivize companies from investing in potentially more efficient or sustainable solutions and can even lead to problematic overcapacities in the long run. Moreover, governments trying to home-shore industries through subsidies must keep in mind that this approach to increasing resilience involves duplicating existing structures, processes and supplier relations. Instead of enhancing economic efficiency and decreasing consumer prices, it has the opposite effect. Hence, it should not be promoted where it is not strictly necessary. The OECD should help increase transparency in this area to better identify distortive government support measures in selected value chains and their effect on investment flows, and facilitate global cooperation on this matter.
- Companies face an increasing number of legally binding requirements relating to responsible business conduct. To avoid unintended consequences and enable a “stay and improve approach”, striking a reasonable balance between the respective responsibilities of states and of companies, and between ambition and what business can implement in practice is crucial. The **OECD should shed more light on the link between RBC policies, trade and investment** by assessing how voluntary and legally binding RBC approaches impact FDI flows, particularly from developed to developing countries.
- More stringent demands are not enough for achieving higher social, environmental or governance (ESG) sustainability standards. Any legally binding requirements that OECD countries introduce on ESG must be accompanied by flanking policies that support relevant actors to meet them. This is particularly important for developing countries, where governments often lack the capacity to enforce their social and environmental laws and companies struggle to meet higher ESG requirements without support. To avoid excluding these countries from the value chains of our companies and leaving the field to actors from non-likeminded countries, **OECD countries need to better use their development policy tools to help relevant actors in developing countries meet ESG as well as RBC-related requirements.** The OECD is well placed to convene discussions on this issue and lead the development of related guidance documents and policy recommendations.

- As the merits of open trade and investment are increasingly contested, we call upon the OECD to **communicate more about the benefits of both inward and outward investment**. Communication should highlight the role of investment as a leading source of economic growth and job creation, an effective tool for fighting poverty, and a means to tackle global challenges, such as climate change. We support continued OECD analysis and data collection, including the monitoring of trade and investment measures, FDI restrictiveness index, and further work on FDI qualities. On the latter, we support the proposal to expand the analysis beyond the initial 4 policy areas (decarbonisation, job quality and skills, gender equality, productivity/ innovation) and have consistently underlined the importance of addressing other areas covered by the SDGs to give a comprehensive picture.
- The COVID-19 pandemic underlined the importance of resilient health systems. **FDI can help improve the quality of local health systems** (e.g. through innovation, medical supplies and equipment, health infrastructure, availability of health workers) and support the achievement of universal health coverage. Fostering FDI in health bears great potential particularly in developing countries, where health systems tend to be more fragile and where health service providers are often poorly equipped. Therefore, the OECD should develop additional analysis on the challenges and opportunities of FDI in health related industries, with a special focus on the potential of FDI in health care systems in developing countries. It should also include a health dimension in its FDI Qualities work. Finally, the OECD should extend its FDI Regulatory Restrictiveness Index to specifically include health infrastructure and health services.



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Business at OECD (BIAC)

13-15, Chaussée De La Muette – 75016 Paris

Tel: + 33 (0) 1 42 30 09 60

communications@biac.org | www.businessatoecd.org



@BusinessatOECD