



BUSINESSatOECD

## A Proactive Investment Agenda for 2020

*January 2020*

The world is facing unprecedented challenges. To address them, we need investment, and to make this possible, we need business. Investment is essential to create jobs, generate economic growth and development and address the challenges we are facing in the areas of development, infrastructure and environment, just to name a few.

Foreign direct investment (FDI) is an integral part of a growth-oriented international economic system. Unfortunately, however, the state of the global investment climate has recently become more fragile, triggered by trade tensions, rising geopolitical and economic uncertainty and declining investment confidence, impacting global FDI flows.

Investment is also key to the achievement of the sustainable development goals (SDGs), aiming to eradicate poverty, and promote economic, social and environmental development in all countries at all levels of development, “leaving no one behind”. While there has been considerable progress, the process is far from being completed and the financing needs remain large. Achieving the SDGs will only be possible if governments acknowledge the importance of business and private investment and take the necessary steps to foster investment flows.

Thanks to its unique legal instruments and analysis and its ability to work in a cross-cutting manner, the OECD can and must speak up in this area. We need forceful defence action from the OECD to underpin and promote the value of an open international trade and investment environment. Business calls on the OECD to launch a pro-active investment agenda and highlight the importance of an enabling policy framework for investment at the highest political level.



## I. EFFECTIVE IMPLEMENTATION OF OECD INSTRUMENTS

OECD's role in fostering a pro-active investment environment is underpinned by several unique legal instruments. These instruments have high political standing and if effectively implemented, can make a major contribution to enhance the international investment environment. They also provide an essential benchmark for assessing the extent to which candidates for OECD membership adhere to these standards. For a global level playing field, it is important to encourage additional adherence, based on a rigorous process to keep up high standards.

### OECD Declaration on International Investment and Multinational Enterprises

Business underlines the importance of the OECD Declaration on International Investment and Multinational Enterprises (MNEs) as a high-level commitment by governments to promote an open and transparent environment for international investment. By fostering open markets, the Declaration helps host countries to reap the benefits of FDI while encouraging companies investing abroad to engage in Responsible Business Conduct (RBC).

We call for effective implementation of all parts of the Declaration: (1) The MNE Guidelines, which encourage responsible business conduct, (2) The principles of national treatment to accord to foreign-controlled enterprises treatment no less favourable than that accorded to domestic enterprises, (3) Co-operation to avoid or minimize the imposition of conflicting requirements on MNEs, (4) A commitment to give due weight to the interest of countries affected by investment incentives and disincentives and to make such measures as transparent as possible.

#### **Business Recommendations to the OECD:**

- *A robust process to ensure continued observance and additional adherence to the Declaration*
- *Strengthen dialogue with business on all aspects of the Declaration*

### OECD Codes of Liberalization of Capital Movements

The OECD Codes of Liberalization are a unique instrument for capital flow liberalization and the only multilateral agreement dedicated to openness and mutual accountability in capital flow management. Business supported the recent revision of the Codes, which provided adhering countries with more flexibility to cope with financial stability concerns (i.e. high volatility in capital in- and outflows), while maintaining high standards of openness. Looking ahead, the Code will become increasingly relevant as major emerging economies open their capital accounts. At the same time, business underlines the importance of a rigorous review process and country examinations, relying on "peer pressure" to encourage further liberalization and prevent countries from resorting excessively to reservations.

#### Business Recommendations to the OECD:

- *Keep high standards and ensure reservations are subject to regular review*
- *Encourage additional adherence to the Codes*

## The Policy Framework for Investment (PFI)

Business reiterates its strong support for the PFI. By offering governments, including those of developing countries, a broad-based checklist of policy recommendations and questions for self-assessment, the PFI plays an important role in creating a robust and competitive climate for domestic and foreign investment. Governments around the world should use the guidance in all policy fields that affect the investment environment and take the PFI as the basis for developing national action plans to improve the quality of a country's environment for investment. We encourage governments to participate in the OECD Investment Policy Reviews process, which identifies potential for further reforms and strategies for improving the framework conditions for investment.

#### Business Recommendations to the OECD:

- *Step up efforts on monitoring of the implementation of the PFI*
- *Use the PFI as a key benchmark for OECD's current and future members*

## II. OBJECTIVE DATA TO INFORM POLICY DISCUSSIONS

The OECD is a key provider of investment data, which play an important role in informing national and international policy discussions. Such analysis is important to help shape future investment projections and to provide governments with the analytical basis for their own policy discussions. Business underlines the importance of OECD analysis including in the following areas:

- **Monitor trade and investment measures:** in line with the G20 mandate to OECD, WTO and UNCTAD, monitor policy developments and report publicly on these commitments.
- **FDI restrictiveness index:** benchmark countries, measure reforms and assess the impact of restrictions on FDI.
- **FDI in figures:** provide analysis on key developments and trends in global foreign direct investment flows.
- **International trade, foreign direct investment and global value chains (GVCs):** continue to provide new evidence of the role played by investment in GVCs and the interdependencies between trade and investment.

#### Business Recommendations to the OECD:

- *Increase visibility of OECD data and monitoring of investment developments*
- *Continue empirical analysis of new emerging trends*

### III. SHAPING POLICY DISCUSSIONS

#### Communicate the benefits of open markets

An open investment environment is an essential prerequisite for inclusive economic growth worldwide. As outlined at the outset, the goals of the 2030 Agenda cannot be achieved without private sector cross-border investment. Yet the merits of trade and investment are being increasingly contested. *Business at OECD* calls on the OECD to draw upon its analysis and data to help better understand the opportunities stemming from both inward and outward investment and use the organization's leverage to communicate these messages to the broader public. Organising dedicated events, which provide a platform for a direct dialogue and the sharing of best practices among practitioners and policy makers, may also be useful to promote a more positive image of both domestic and international 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 necessary instrument to tackle the great challenges of our time such as technological change and climate policy. It should further illustrate the role of investment as a driver for supporting the competitiveness of our economies and the efficiency of markets. Particularly in times where public misconceptions are widespread, business is looking at the OECD to speak out more forcefully on the importance of an open investment environment.

#### Business Recommendation to the OECD:

- *Communicate more clearly the importance of open markets and investment*

#### International Investment Agreements and investment protection

A pro-investment environment requires assurance of fair and non-discriminatory treatment of foreign investors, adherence to the rule of law and effective dispute settlement. Investment protection provided by bilateral and international investment agreements is therefore essential and must include efficient enforcement mechanisms that investors can call upon. Investment agreements are not the only factor, but a very important one to help attract, protect and retain international investment by guaranteeing equitable treatment of foreign investors. The investor-state dispute settlement has proven to be an effective way to make sure the commitments in bilateral and international investment

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agreements are preserved. In particular, it has allowed taking investment disputes out of the political arena and into a transparent, rules-based forum of independent and impartial arbitrators.

In the current climate where public opposition to and misconceptions of investment agreements are widespread, it is more important than ever that the OECD speaks out clearly on why international investment agreements and adequate investment protection matter.

**Business Recommendation to the OECD:**

- *Refine OECD analysis and highlight to policy makers and the public at large why investment agreements and adequate investment protection matter*

## Foreign Direct Investment (FDI) Qualities

A good opportunity for further highlighting the benefits of an open investment climate is the OECD initiative on FDI Qualities, which was launched in the context of mobilizing private cross-border investment for achieving the SDGs. Business contributed to the development of the FDI Quality Indicators, the first phase of which focused on how FDI contributes to productivity and innovation, employment and job quality, skills development, gender equality and the reduction of the carbon footprint.

However, this should only represent the first step and should be complemented by additional analysis to reflect the contribution of FDI to sustainable development more broadly. We encourage the OECD not to segregate FDI by sectors in its analysis, but to evaluate the potential of each investment to contribute to the overall target of the 2030 agenda. The FDI Qualities should enhance the understanding of how the benefits of FDI go beyond the supply of capital and help to promote the role of business in meeting the goals of the 2030 agenda. We advise the OECD to pursue a balanced approach and extend the Indicators to reflect the SDGs more broadly, also with regard to the development of an FDI Qualities toolkit.

**Business Recommendations to the OECD:**

- *Engage with Business and involve stakeholders in the development of the FDI Qualities toolkit*
- *Complement initial research on FDI Qualities with additional analysis related to other SDGs*

## Investment for development

With nine out of every ten jobs in developing countries being created by the private sector, ensuring strong private sector growth, driven by either domestic or foreign business, is critical to sustainable

development. Today, over 80% of capital flows to developing countries come from private investment, whereas in the four decades following World War II, official development assistance (ODA) still made up 70% of the financial capital flowing from developed to developing countries. In order to achieve the SDGs considerable amounts of financing are needed. The UN estimates the gap in financing at \$2.5 trillion per year in developing countries.<sup>1</sup> Private investment is hence indispensable, which underlines the importance of setting enabling conditions for local and international business investments. Among others, this includes providing a sound regulatory framework, supporting infrastructure development, investing in education and establishing transparency and non-discrimination in regulation.

*Business at OECD* encourages the OECD to continue its work on supporting developing countries in the mobilization of private sector finance, targeting both local entrepreneurs and large international MNEs, with fora such as the Roundtable on Investment and Sustainable Development and country programs such as the OECD-MENA Competitiveness Programme or the OECD/G20 Global Compact for Africa. We further support the important OECD work into public-private partnerships in OECD and non-OECD countries.

#### **Business Recommendations to the OECD:**

- *Support private sector involvement in implementing the SDGs*
- *Focus on investment in the dedicated non-member countries programs*

### **Investment screening and national security**

As highlighted by a recent report on G20 Investment Measures<sup>2</sup>, the trend to introduce or strengthen investment policies motivated by national security concerns continues in OECD countries and beyond. Even more so, the scope of transactions that are subject to review has widened, the timeframes for the screening process have been extended and the thresholds to trigger investment screening have been lowered to include also smaller investments and stakes.

Safeguarding essential security interests by putting a brake on the outflow of trade secrets and technical knowledge is legitimate and recognised by international investment law. However, overly expansive or vague investment screening can easily become a disguised form of protectionism and have negative impacts on cross-border investment, growth and job creation. Business calls for giving due attention to agreed policy principles and disciplines and keeping national security policies focused and narrow in scope.

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<sup>1</sup> <https://worldinvestmentforum.unctad.org/financing-for-the-sdgs/>

<sup>2</sup> [https://unctad.org/en/PublicationsLibrary/unctad\\_oecd2019d21\\_en.pdf](https://unctad.org/en/PublicationsLibrary/unctad_oecd2019d21_en.pdf)

#### **Business Recommendations to the OECD:**

- *Identify and address emerging challenges related to national security*
- *Promote existing instruments such as the G20 Guiding Principles for Global Investment Policymaking and the OECD Guidelines for Recipient Country Investment Policies relating to National Security*

### **Competitive neutrality and state-owned enterprises**

Today over 20% of the top global companies are state-owned enterprises (SOEs). Moreover, these SOEs are increasingly present in the global marketplace, which has given rise to a number of concerns. SOEs operating internationally can enjoy preferential treatment from their governments, undermining a level playing field with privately owned enterprises.

Moreover, their conduct can generate negative excess capacity spillovers. Lastly, SOEs are, both through their engagement in selected sectors and their close interaction with government officials, subject to higher corruption risks. We therefore strongly support the OECD's efforts to strengthen the focus on SOEs. We call for effective implementation and the promotion of further adherence to the OECD Guidelines on Corporate Governance of SOEs and the Anti-Corruption and Integrity Guidelines for SOEs.

Business has repeatedly expressed its strong support for dedicated work in this area, bringing together the expertise of different OECD Committees. We believe that due attention should be given to new emerging policy challenges related to SOEs operating in international settings. The OECD can make an important contribution by providing analysis and fostering a deeper understanding of how to address arising distortions, thereby also engaging in an active dialogue with emerging economies.

#### **Business Recommendations to the OECD:**

- *Work with other Committees and combine the expertise on SOEs*
- *Address distortions and ensure a level playing field for private and public investors*

### **Investment and Responsible Business Conduct**

Responsible business conduct is an essential part of an open international investment climate. Moreover, there is a growing expectation on companies to incorporate and set up RBC frameworks in their operations. Especially in today's fast-paced, hyper-connected world where news travel fast, misconduct often results in a loss of trust, creating a drag on corporate success. The importance of RBC is recognized by the OECD Declaration on International Investment and MNEs which includes the MNE Guidelines. The guidelines have recently been supplemented with a number of due diligence guidance documents. Considerations about business responsibilities with regard to RBC and the



protection of human rights are also increasingly reflected in the design of investment treaties and are currently being discussed both at national and international levels.

*Business at OECD* is proactively engaged in discussions on responsible business conduct. We caution, however, not to overburden business with too far-reaching expectations. There must be a well-understood differentiation between the responsibilities of governments and those of business. Companies' commitments play an important role in complementing the efforts of governments, but they cannot be considered a substitute for government action. It is the role of governments to establish and enforce law, create and maintain stable and predictable political systems and ensure sound regulatory and legal frameworks.

#### **Business Recommendation to the OECD**

- *Discuss the linkage between open investment and responsible business conduct in a balanced manner, recognizing that business cannot be a substitute for governments*

## **Investment and climate change**

Along with the growing pressures on businesses to engage in responsible business conduct, calls for more climate-friendly investment are also getting increased attention. Business plays a key role in the climate transition, providing financing and investing in modern, smart and more efficient infrastructure, processes and technologies.

Based on the principle of technology neutrality, all sectors should be enabled to support green growth. Governments need to provide an enabling policy framework for business across sectors to facilitate and engage in investment to address climate change. International co-operation remains essential. The OECD has a key role at the international level to provide a platform for dialogue and the development of evidence-based solutions. Dialogue on investment and climate change across committees would be particularly helpful in this respect.

#### **Business Recommendations to the OECD:**

- *Foster investment in energy efficiency and carbon capture technologies across sectors in addition to investment in zero-emission energy sources such as renewables*
- *Support the dialogue on climate issues and encourage governments to implement evidence-based policies in consultation with the private sector*



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## Global value chains (GVCs)

Foreign direct investment and international trade flows are complementary and represent the key drivers of GVCs. GVCs, in turn, are essential to the growth of businesses and job creation. They provide suppliers, intermediaries and final goods producers in the value chain with access to networks, global markets, capital, and technology, and are thus enhancing the productivity of our economies.

In the context of the recent trade tensions, unfortunately, more and more trade and capital restrictions are being introduced, reducing the potential of GVCs, which are increasingly put into question. Based on OECD analysis highlighting the interrelationships between trade and FDI, and the essential role of MNEs, we underline the importance of further OECD analysis investigating the linkage between investment and trade, and highlighting the benefit of an open economy. Such analysis should also support companies, including SMEs, with guidance on how to effectively participate in GVCs and should include a better explanation of trade deficits in the context of global value chains.

### Business Recommendations to the OECD:

- *Continue work on the trade-investment nexus and highlight the benefits of GVCs*
- *Identify opportunities to achieve progress in trade and investment liberalization*

## Predictable tax framework for promoting investment

An important element of an investment environment is the framework for taxation. Clear, stable, transparent tax policies and tax administrations are critical to support and should not impede investment. OECD tax instruments such as the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines are important underpinnings of global FDI, and as such, should be preserved to the extent possible. This is especially valid for the fundamental review of the international tax principles triggered by the changes resulting from the taxation of the digitalizing economy, which the OECD, through the Inclusive Framework, is currently engaged in.

While that project is ongoing, governments should continue to see through the effective implementation of the recommendations of the G20/OECD Base Erosion and Profit Shifting (BEPS) project and avoid unilateral measures outside the scope of the BEPS recommendations. Doing so is crucial to ensure certainty in the tax system, and to deliver tax policies that support investment and open markets. Effective, timely dispute prevention and resolution are equally essential to achieving tax certainty and supporting the investment climate. The OECD with its expertise in both taxation and investment should ensure that tax policies are not used for protectionist purposes, hampering cross-border trade and investment.

### Business Recommendations to the OECD:

- *Provide clear, stable rules that are based on value creation*
- *Increase tax certainty by ensuring, timely dispute resolution*



BUSINESSatOECD

**Business at OECD**

13-15 Chaussée De La Muette  
75016 Paris  
France  
[businessatoecd.org](http://businessatoecd.org)

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**Business at OECD Lead**

Hanni Rosenbaum  
Deputy Secretary General & COO

**Business at OECD Investment Committee Chair**

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Head Brussels Office  
Confederation of Netherlands Industry and  
Employers VNO-NCW