December 2021

Business at OECD (BIAC) comments on the revised draft of the OECD FDI Qualities toolkit

- *Business at OECD* (BIAC) appreciates the opportunity to contribute to the work on the FDI Qualities project, which we have followed from the outset, and welcomes the opportunity to provide written comments on the proposed toolkit consultation paper.

- We appreciate OECD's extensive research in the context of the FDI Qualities project. In order to further enhance the usefulness of the toolkit, we would recommend to **indicate more upfront the target audience**, e.g. whether the toolkit is primarily directed to policy makers in OECD countries or also at policy makers beyond the OECD realm, as is the case for the Policy Framework for Investment (PFI). Relatedly, it may be helpful to **highlight further the link to the PFI** and to emphasize in how far the toolkit builds on and complements the underlying instrument and in how far it extends the PFI.

- Business strongly supports the PFI, supporting the development of predictable, stable and encouraging investment environments, including in third markets, where investment decisions tend to be riskier. To that end, we believe **the FDI Qualities toolkit (while directed at governments) can generate added value for the private sector** by strengthening location factors of host country environments (which is also important in order to enable OECD investors to compete in third markets) and providing a reference document for 'good practices' on investment policy making to be upheld by the business community.

- To the extent that the toolkit is directed at policy makers in OECD member countries, it is important to recognize that **foreign direct investment (FDI) into OECD countries as a share of total inward FDI has followed a declining trend** over the last decade, but especially over the last years. In In light of rising geopolitical tensions, it will be **important that OECD countries assert their position in the ongoing systemic competition** and consider how they can remain an attractive destination for FDI broadly. To that end, we see an important role for the OECD to reinforce **its focus on investment attraction and promotion,** also beyond the focus on the interlinkages between sustainability and foreign direct investment, looking for instance at tax factors, investment treaty frameworks and investment screening trends - with an emphasis on maintaining competitiveness in the global market.

- Increasing private investment, including FDI, has furthermore become all the more relevant in light of the growing **investment gap**, especially in critical areas such as digital and health infrastructure, as well as in consideration of FDI's critical contribution to job creation. Meanwhile, we observe strong headwinds the international investment climate and while global FDI flows are rebounding, preliminary indicators suggest that this recovery remains uneven. To that end, we need **broad based investment promotion and attraction efforts** to support recovery and resilience building going forward. Closely linked to these considerations is the importance of **maintaining open and rules-based investment climates,** in FDI can flow and the toolkit can be applied.

- That said, we have always **followed and will continue to follow the OECD's FDI Qualities project with great interest and expectations**.

- Compared to previous outlines of the toolkit,
  - We appreciate the **explicit upfront recognition that the toolkit ought not to be prescriptive and that there is need for flexibility** with respect to specific national development objectives. However, this does not rule out that the policy toolkit can also, by enabling an exchange of best practices, contribute to improve local host country conditions.
  - We also welcome the recognition that the FDI Qualities can also play an important role in a developing country context and that the **role of development cooperation in mobilizing FDI** should be strengthened. We have underlined this notion at previous meetings, including at the recent meeting between the Development Assistance Committee and the Investment Committee, where we have stressed our **appreciation for the development of a companion guide for donors.**
  - We further appreciate additional **references to the role that investment promotion agencies (IPAs) can play to contribute to respective policy objectives**, which we have underlined also at previous network meetings.

- Yet, we would like to underline the importance for the final toolkit, while being focused on promoting positive SDG impacts, to **maintain a balance with classic economic development aspects** (e.g. job creation, infrastructure development) **as well as to emphasize the key role of policy predictability, stability and planning certainty**. In this context, we underline the **central importance** of some of core provisions presented in the **productivity chapter**, which provide a basis for an enabling environment for FDI and with that, a prerequisite for many of the other positive sustainability impacts of FDI.

- Moreover, it should be ensured that there is a **balanced and holistic use** of the indicators and toolkits.
  - **Users should take into account interlinkages with other 'qualities' of FDI**. Some policy objectives may be mutually reinforcing, while for some, there may also be trade-offs between the different clusters.
  - **Users should evaluate chosen policy measures in light of their contribution to sustainable development more broadly** (e.g. all 17 SDGs).
  - Furthermore, in applying the recommendations from the toolkit, due attention should also be paid to **specificities and characteristics inherent to different sectors.**

- Finally, as additional **practical considerations,** we recommend the OECD to develop **shorter, more accessible executive summaries** of the toolkit to support practical application.

On the key principles

1. Provide coherent strategic direction on investment and sustainable development and ensure policy continuity and effective implementation

- We appreciate the call for **horizontal coordination and stakeholder engagement**, which is important to ensure that policies are practical and implementable on the ground. It should thereby be ensured that business is represented by **representative employer- and industry organizations.**

2. Ensure that domestic regulation is aligned with international standards and supports positive impacts of investment on sustainable development

- We strongly endorse the call to ensure **open, transparent, non-discriminatory investment policies.** In addition, the toolkit could also stress the importance of **good governance and efforts to fight corruption,** both in the context of the governance of investment tools and as well as in the context of ensuring an enabling environment more broadly. The prevalence of corruption and high corruption perceptions can serve as a major disincentive for companies to invest in a given region or country. To that end, the toolkit could make reference to **key international standards for tackling both the supply and demand-sides of corruption**, such as for instance the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

- Overall, the toolkit could more strongly encourage **governments to actively use the PFI** and work to ensure sound basic framework conditions for FDI. Additional references to the PFI would this be strongly appreciated.

- We appreciate the call to implement measures to improve the situation on the ground **get receiving countries closer to international standards** with a view to foster a level playing field and fair competition globally. However, we underline that states have a core responsibility of generating and maintaining sound framework conditions for business, which does not only entail **adhering to ratified international standards but also ensuring sound implementation** of these standards on the ground.

- On the reference to **investment agreements,** we underline that discussion on the nexus between sustainability considerations and investment treaties are **ongoing and complex in**

nature. While highly topical, respective discussion must pursue a balanced approach, **maintaining sound investment protection** for foreign investors.

- We also point to the role of **investment screening policies**, which are part of domestic investment regulation and which, if poorly designed or poorly communicated and managed can significantly contribute to uncertainty and represent a significant barrier to FDI. To that end, we suggest including a **reference to the key principles of non-discrimination, transparency, predictability, regulatory proportionality and accountability** to ensure that screening mechanisms do not unintendedly deter investment or become protectionist measures in disguise.

3. Financial and technical support should stimulate investment and build domestic capabilities to support sustainable development

- We strongly support the recommendation to ensure that **support is transparent, time-limited, subject to regular reviews.**

- The toolkit's **references to IPAs in the context of strengthening domestic capabilities could be further strengthened,** for instance, in the context of the quality jobs and skills cluster, where IPAs can support matchmaking and monitoring of labor market developments.

4. Facilitate investment and sustainable development opportunities by addressing information failures and administrative barriers

- We appreciate the call to address administrative barriers, which in our **experience represent some of the largest obstacles to FDI broadly**.

- The call to support firms in disclosing their compliance with international standards on sustainable development should be complemented by the recognition that companies should be granted flexibility given that **disclosure needs and possibilities can vary across sectors and company sizes.**

5. Strengthen the role of development cooperation for mobilising FDI and enhancing its positive impact in developing countries

- We appreciate the explicit recognition that the private sector needs to be engaged in development cooperation efforts. To that end, the report could also refer to the Kampala Principle on effective private sector engagement in development co-operation.

On the chapters

Productivity

- The toolkit should underline the **importance of the protection of intellectual property rights** to incentivize business to make (often risky) investments in innovative technologies.

- We stress the **importance of access to (potentially diverse sources of) finance**, especially for small and medium sized enterprises as well start-ups and micro-entrepreneurs.

- In addition to knowledge infrastructure mentioned in the toolkit, we believe that **complementary public investments in necessary, supporting infrastructure (e.g. sound transportation networks, fast internet access etc.)** can play an important role in attracting and retaining fast growing, productive firms.

- The toolkit could further emphasize that **good governance, rule of law, anti-corruption efforts and independence of the judiciary** are important prerequisites for ensuring policy stability and certainty, providing the basis for any entrepreneurial activity.

Quality jobs and skills

- We echo the **importance of labor market information and skills assessments as well as targeted training programs and matchmaking services**, and in that respect, underline that we believe that **IPAs can play an important role** to inform and operationalize these processes.

- We also appreciate the **references to the OECD MNE Guidelines.** Governments have a core responsibility of generating and maintaining sound framework conditions for business, including by adhering and ensuring sound implementation of ratified international standards. As far as the references to the ILO Conventions are concerned, it would be good to specify which of the over 180 ILO Conventions are being addressed.

- We further believe that rather than promoting rigid collective bargaining models, **governments should embrace the diversity of existing and evolving models of industrial relations and social dialogue** and consider what social partners do on the ground. The toolkit should thus promote flexibility and respect for the autonomy of social partners on collective bargaining.

- Finally, we would like to note that informality, which is particularly prevalent in the developing world, not only significantly hampers the promotion of secure, quality jobs but that it is also often linked to labor rights violations. To that end, we would recommend the OECD to **develop**

additional analysis on the relationship between job quality and informality and to include in the toolkit a **call on governments to work to address informality.**

Gender equality

- There is a large opportunity cost of not developing the potential of women in societies and economies. We thus believe that **equal access to education and financing as well as equal rights with respect to undertake entrepreneurial activity – in short equal opportunities - are important preconditions** to foster female employment and empowerment and welcome respective references in the toolkit. This may play an important role, especially in applications of the toolkit in non-member countries.

- We also see **an important role for governments to** underline **the importance of services such as childcare and elderly care**, which can enhance and support female employment.

- **Efforts to address prevailing stereotypes** and **provide information as recommended in the toolkit** can play an important role to foster female employment in sectors in which female representation remains low. In addition to awareness raising and encouragement, the toolkit could also encourage **skills development and training programs** for women in male dominated sectors.

- Overall, we believe it is important **not to limit gender quality discussions to wage considerations**, but consider the different nuances in which gender inequality can manifest itself, which may in turn have wage impacts. In addition, the OECD could also consider exploring the question of gender quality beyond a focus on women, taking into account for instance also other minority groups.

Carbon footprint

- We underline the importance for governments, in addition to pursuing policy coherence and coordination, to ensure **planning certainty and clear expectations on investment and climate policies and actions.** The energy system is complex and interlinked at national, regional and global levels, so abrupt change can lead to counter-productive disruptions in energy supply and high prices for consumers.

- Overall, however, it must be borne in mind that **there are a range of technological routes to address the energy transition.** The double challenge of fostering decarbonization, while also broadening access to energy globally is so large that all technologies will be needed. In effect, SDG 7 explicitly notes that countries should 'ensure access to affordable, reliable, sustainable and modern energy for all.' Policy approaches, be they related to the regulatory framework or to proactive considerations, with regard to the energy transition should therefore not narrowly prohibit certain technologies, but should be based on the **principles of technology neutrality, cost effectiveness and free competition**. Disregarding the key principle of technology neutrality will prevent innovation in the carbon-intensive sectors.

- Moreover, phasing out and abating greenhouse gas emissions should go hand in hand with clear policies to **phase in alternative and affordable sustainable sources of energy.**

- We support the call to work on **alignment according to the different responsibilities in order to prevent duplication as well as a proliferation of standards**, which create practical challenges for business. In addition, we would add that it must be ensured that **policies do not artificially and arbitrarily hamper international trade and investment, and work in concert with WTO rules.**

- In addition, we strongly request to **remove the recommendation that governments should use financial and technical support to build domestic low carbon supply chains**, which may be read as suggesting, that domestic supply chains and reshoring can be equated with more resource efficient, carbon friendly production and transport routes – and is an invalid generalization. This also contradicts considerations on ensuring supply chain resilience through diversification rather than relocation, which is particularly important in case of local and domestic extreme weather events. Instead, the guiding question should be reframed such that it refers to the **role of building domestic low carbon knowledge that can widely deployed through FDI.**

- Finally, considering sustainable investment and growth more broadly, it should also be recognized that, in addition to low-emission technologies, **energy-efficient and carbon capture/sequestration (CCS) technologies and climate-resilient infrastructure** will also play a decisive role in tackling the climate challenge and fostering sustainable development more broadly.