



Negotiating and implementing investment policies in the AfCFTA

Online Capacity building June 2020

Background note and programme

African Union Commission and Overseas Development Institute

Introduction

Economic transformation is one of the main pillars of the African Union Agenda 2063. Increasing trade and investment in general and specifically amongst AU Member States is critical to achieve economic transformation and the African Continental Free Trade Area (AfCFTA) helps to achieve both goals.

Phase I of the negotiations finalised in late 2017 established protocols on the liberalisation of intra-African trade in goods and services as well as the Dispute Settlement Mechanism. Phase II, launched in early 2018 and to be concluded in early 2020, will be oriented towards including provisions on investment, competition policy and intellectual property rights. The increase of intra and extra-African investment in Africa is critical to developing and improving the productive capabilities required to raise productivity and create employment.

The Capacity building exercise aims to address the range of investment development and treaty challenges for the African Union and its Member States, as well as build the negotiating capacities of

Member States and the AUC. It is important to have an adequate understanding of the links between the proliferation of bilateral investment treaties, existing investment protocols within the Regional Economic Communities (RECs) and the negotiations on investment in AfCFTA.

The capacity building event that had been scheduled in March 2020 had to be postponed given the Covid-19 pandemic. This online capacity building aims to provide trade negotiators with an alternative capacity building effort using the digital platform.

Objective of the AUC capacity building event

The AUC-ODI capacity building event aims to contribute to the capacity building of officials in the AU Secretariat and AU Member States to undertake investment negotiations and their implementation at country level. In particular, the event is expected to contribute to an:

1. Understanding of the current landscape of bilateral and regional investment treaties in Africa;
2. Understanding of the options for investment provisions in the AfCFTA;
3. Understanding of the likely economic effects of possible provisions that may result from the negotiations on investment at the continental, regional and national levels; and
4. Understanding of the range of policies, and the role of regional investment provisions in this, that help countries to become more attractive to foreign direct investment without compromising lowering human rights, social and environmental standards;
5. Understanding the relationship between Pan-African Investment Code (PAIC) and the AfCFTA Investment Protocol and;
6. Understanding the AfCFTA negotiating institutions.

Syllabus

The syllabus developed covers the following non-exhaustive list of topics to be discussed during the capacity building event.

- Review of provisions on investment policy and Concepts;
 - Investment facilitation;
 - Investment protection;
 - Investment and development and;
 - Sustainable development.
- Review of international investment law and multilateral provisions;
- Review of old and new generation of bilateral investment treaties in Africa and in some other relevant countries/regions;
- AfCFTA negotiating institutions;
- Overview of existing investment related provisions in African RECs. Examples;

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- International experience on international investment policy. Developed and developing countries;
 - National experiences in implementing negotiation provisions on investment, and;
 - Reforms in the Investment Agreements landscape and how they shape the AfCFTA.

Modality

The Covid-19 pandemic has impeded the delivery of the Capacity building event scheduled in March 2020. Lockdowns and generalised restrictions on travel make it extremely difficult to deliver on site the training. Consequently, the event is expected to be organised through online sessions.

The capacity building will be organised in sessions of 60 and 90 minutes and it will be delivered over a period of 4 days. This will facilitate participants to accommodate their schedules around several days rather than in a single day or two. The online sessions will replace specific sessions of the in-site original course. They will include a presentation by a specialist, followed by questions from participants.

The Online capacity building will target investment officials from Member States and RECs. The AUC will identify relevant officials in both AUC Departments in AU Member States (two representatives per country). In addition to this, AU cooperating partners such as ADB, UNECA, UNCTAD will be invited.

ODI will support the preparation of the content and its delivery. This will include the fees and logistic expenses of the trainers and facilitators. ODI will be responsible for the organisation of the sessions and communications platform.

Investment officials from the Member States should be from relevant organisations (e.g. Ministries of Trade, Industry, Investment, Planning,) The selected members shall be comprised of relevant experts, with a background on investment agreement negotiations, investment promotion and facilitation and investment arbitration, and as determined by each Member State.

This event is oriented towards increasing capabilities on policy making but does not focus on investment promotion as such. Participants are expected to have an adequate knowledge of economics and/or investment policy and law.

Resource persons

The event will be resourced by experts from ODI, from the African region, and international experts, and will include an exchange of experiences amongst investment officials.

Venue and time

The event will be held online in blocks of two presentations in four days between 16th and 24th June 2020.

Proposed event structure and proposed topics

Addis Ababa time zone. Zoom, Bluejeans or Microsoft Teams live will be used.

16th June

13:00 **Welcome and opening remarks.**

HE AU's Commissioner of Industry and Trade

Mr Secretary General of the African Continental Free Trade Area

13:45 **Introduction to the course.** (*Dr Max Mendez-Parra*)

14:00 **Status of AfCFTA negotiations.** This session will describe the AfCFTA in general, describe what was agreed so far. Presentation by **Prudence Sebahizi (AU)**

14:30 **An overview of PAIC in relation to the AfCFTA Investment Protocol.** In groups, participants will discuss how specific BITs provisions need to be adapted to the context of the AfCFTA. Presentation by **Mr Jamie MacLeod (UNECA)**

17th June

13:00 **Investment. Definitions. Economic effects.** This session will provide a series of definition, concepts and a general discussion of the main economic effects of investment. *Presentation by Dr Dirk W te Velde (ODI)*

14:00 **Architecture of Bilateral Investment Treaties (BITs).** This session will describe who BITs are typically structured, including the most typical provisions. Presentation by **Thierry Mutombo**

23rd June

15:00 **Investment protection and dispute settlement.** This session will describe typical provisions, their scope and limits. Presentation by *Sarah Brewin and Dr Suzy Nikiema (IISD)*

16:00 **Investment promotion and facilitation.** This section will discuss the most effective ways to pull investment and typical provisions in BITs, including the Brazilian model. Presentation by **Ms Brooke Guven (CCSI)**

24th June

15:00 **Characterising intra and extra-African investment.** This session will discuss how intra and extra-African investment affect economic transformation. Presentation by *Dr Stephen Gelb (ODI)*

16:00 **Modern provisions in BITs.** This session will discuss social, environmental, labour and health provisions in BITs. Presentation by **Ms Brook Guven (CCSI)**

17:00 **Closure of Event** *HE AU's Commissioner of Industry and Trade*

Facilitators and training

The event will be facilitated/delivered by international specialists on investment policy and related areas. Emphasis will be put in securing the presence of specialists with experience in Africa.

- Dr Max Mendez-Parra, who has facilitated and delivered training on trade and investment policy analysis in many African countries (Ethiopia, Uganda, Kenya, The Gambia, Nigeria, Zambia, Tanzania) and other developing countries.
- Dr Dirk Willem te Velde who has facilitated discussions on investment and services negotiations in EAC, COMESA and CARICOM. He has written widely on FDI policy
- Dr Stephen Gelb, who has worked extensively on investment policy in South Africa and is a leading expert on FDI policy.

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- Mr Jamie MacLeod (African Trade Policy Centre - UNECA)
 - Ms Brooke Guven (Columbia Center on Sustainable Development (CCSI) – Columbia University)
 - Mr Prudence Sebahizi (AUC)
 - Mr Thierry Mutombo (Business Development Consultant) who has worked as Director of Investment and Private sector Development at COMESA, he facilitated the negotiations of the PanAfrican Investment Code (PAIC)
 - Ms Sarah Brewin (International Institute for Sustainable Development - IISD)
 - Dr Suzy Nikiema (International Institute for Sustainable Development - IISD)

Identification of participants

The AUC will identify the key officials involved in the investment negotiations with the aim of creating a list of participants.

Preparation of material

ODI will coordinate the preparation of the didactic material (e.g. presentations and papers).