

OECD-ARAB LEAGUE REGIONAL CONFERENCE

Fostering Regional Integration on Investment

9-10 December 2014

League of Arab States Headquarters, Cairo, Egypt

Draft Conclusions

Conference objective

The OECD-Arab League Regional Conference was held on 9-10 December 2014 at the League of Arab States (LAS) Headquarters in Cairo. The Conference was aimed at fostering regional investment integration and considered the merits of establishing an Arab Free Investment Area, as proposed during the 2014 Kuwait Social and Economic Summit of the Arab League. The conference provided an opportunity to assess investment flows in the region, analyse investment legal reforms at the national, regional and international levels, take stock of existing economic and legal tools to stimulate investment, learn from the experiences of other regional groupings, in particular the Association of Southeast Asian Nations (ASEAN), and share Member States positions on building an integrated free investment area.

The Regional Conference was part of strengthened cooperation between the OECD and the Arab League, which began with a joint technical workshop on “The amended Arab League Investment Agreement: Key improvements and ratification process”, held in April 2014. The Conference followed the first meeting, held on 7-8 December 2014, of a recently established “technical committee”, which seeks to address investment-related issues on a regular basis.

Participants

The Regional Conference brought together 50 participants, including investment policy makers from 13 Arab countries, representatives from OECD countries (including the European Union), from regional organisations (Cairo Regional Centre for International Commercial Arbitration (CRCICA), General Union of Chambers of Commerce, Industry and Agriculture for Arab Countries, Arab Monetary Fund, Gulf Cooperation Council), and from the private sector. Experts from the conference organisers, the Arab League Secretariat and OECD, also participated.

Opening remarks

- Dr Mohammed Bn Ibrahim AtTawijirri, Secretary General Assistant, Economic Sector, LAS, highlighted the importance of the Regional Conference as a follow up to the technical meeting held in April. He expressed his appreciation for the enhanced co-operation between the OECD and the Arab League. He stressed the value of policy dialogue and sharing good practices among Arab countries to support their efforts to attract investment from both within and outside the region. He announced the recent ratification of the amended Arab League Investment Agreement by Jordan, the Palestinian Authority, Saudi Arabia and Oman, noting that the Agreement would come into effect upon ratification by a fifth member of LAS;

- Mr Carlos Conde, Head, MENA Division, Global Relations Secretariat, OECD welcomed the opportunity to co-operate with the Arab League. He stressed the need to attract more productive investment in the region, i.e. investments that generate inclusive growth and job creation while pointing to the scope for increasing intra-regional investment flows. He reiterated the OECD commitment to reinforce the co-operation between the two organisations, as well as to assist both the Arab League and Arab countries in their efforts to promote investment and enhance the investment climate in the region; and
- Ms Margareta Davidson-Abdelli, Counsellor, Swedish Embassy in Cairo, reiterated Sweden's belief in investment and trade as key determinants for economic growth and for improving the living standard of citizens, which explained Sweden's continued support for the MENA-OECD Investment Programme.

Meeting outcomes

Introductory Session – Stimulating regional integration through investment

Participants discussed the relationship between investment and regional integration. In this context, they noted that:

- As international FDI movements are beginning to recover from the effects of the global financial crisis, emerging economies are the new growth drivers, accounting for 54% of total global FDI in 2013, but the Arab country share in global FDI flows has slipped from 5.3% to 3.3% in 2013;
- Developing and transition economies constitute one-half of the top 20 host economies and six developing and transition economies rank among the top 20 outward investors in the world;
- Intra-Arab trade and investment has not yet reached the required levels for achieving sustainable economic development in Arab countries. The Arab economic integration index is at only 5.8%. Recently signs have emerged of greater intra-regional investment interest by GCC countries;
- Among the recent trends in investment agreements, inter-regional trade and investment agreements are becoming more important in stimulating FDI flows into and within regions. These agreements include APEC and others under negotiations including the Trans-Pacific Partnership (TPP – 12 countries), the Transatlantic Trade and Investment Partnership (TTIP – including countries with a 45% share of global GDP), the Regional Comprehensive Economic Partnership (RCEP includes 17 countries and is the largest in terms of population). These commercial regional blocks are expected to change significantly the investment systems and patterns and dealing with them successfully will require further economic integration in the Arab region;
- Most Arab countries are members of the WTO and of different regional groupings including the Greater Arab Free Trade Area (GAFTA) and the GCC, thereby expanding markets and opening new sectors for investment; and

- The positive impact of further economic regional integration, in particular on investment issues, is fully recognised.

Participants also noted that:

- Although many Arab countries have undertaken reforms to enhance their overall business environment, the road ahead is still long (only 6 Arab countries rank in the first 50 places in the ease of doing business out of 189 countries). Most investment in Arab countries does not touch the real economy and seek quick pay outs without generating jobs or transferring technology or know-how; and
- The main challenges on a country-level include the lack of stability and security, foreign ownership restrictions, dominance of the public sector in business and economic activity, lack of transparency and weaknesses in implementing the rule of law. On a regional level, a major challenge concerns visa restrictions that affect investor movements.

Session 1 – State of play of existing tools to promote investment in the region

Participants assessed existing legal and economic tools to support investment.

At the international level, they noted that:

- More mega treaties (such as TPP, TTIP, RCEP) are being negotiated worldwide and constitute a new feature of today’s investment landscape;
- Of 2,902 bilateral investment treaties (BITs) concluded worldwide, Arab countries have signed 734 such treaties. Many of these treaties were concluded many years ago as a tool for economic diplomacy. A significant number of treaties has not been ratified and are therefore not in force; among those in force some are now approaching their termination date. Most Investment treaties in the Arab region reflect a traditional approach. They have broad asset-based definition of investment, provide traditional investment protection and treatment standards and investment dispute mechanisms which may not reflect the policy priorities and strategies of host countries today. Worldwide, countries also tend to conclude free trade agreements (FTAs) that include investment and services provisions. However few Arab countries have concluded FTAs of this sort;
- Investor-State disputes are on the rise, including in the region (e.g. Investors have filed 14 investment dispute cases against Egypt to ICSID since 2011); and
- Today’s treaty practice emphasises “consistency, co-operation and consolidation” along with re-balancing the rights of States and the rights of investors.

At the national level, they noted that:

- Many Arab countries are in the process of revising their legal and institutional frameworks to offer a more attractive investment environment:
 - Some countries recently enacted new investment laws (e.g. Jordan);
 - Some countries have initiated reforms of their investment regime (e.g. Egypt, Morocco, Tunisia, Iraq);

- Some countries have announced upcoming reforms (e.g. Algeria, Yemen); and
- In reforming its investment code, Tunisia undertook a thorough assessment and an inclusive consultation process, gathering the views of the private sector and other relevant stakeholders. The draft Code also provides for a more balanced approach to States' and investors' rights and obligations.

At the regional level, participants discussed:

- The key features of the January 2013 Amendment to the 1980 Arab League Investment Agreement and to what extent it improves protection and treatment of Arab investors (i.e. fair and equitable treatment, right to freely transfer capital and revenues after fulfilment of legal obligations and in a convertible currency recognised by the IMF, right to a fair compensation in case of expropriation, right to employ professionally skilled labour, expanded investor-State dispute settlement mechanisms); and
- The proposal for a unified visa for Arab businessmen and investors that could be leveraged as a tool to enhance intra-Arab economic integration. In this context, they discussed the considerations that would have to be taken into account, including, *inter alia*, identifying the qualified investors, the specific privileges granted to visa holders, the responsible issuing entities, and setting standards and obligations of the investor. The Arab League Secretariat has received a specific mandate to complete the drafting of the agreement, prepare the card and its conditions, as well as co-ordinate with the Arab States for the relevant procedures and requirements.

While addressing the dispute settlement mechanisms and institutions available in the region, including the Cairo Regional Centre for International Commercial Arbitration (CRCICA), participants:

- Noted the different nature and procedures of international commercial arbitration and investment arbitration;
- Noted the increasing caseload before the CRCICA (the total number of arbitration cases filed before CRCICA until 30 September 2014 reached 1000 cases), which is the most important arbitration centre in the region;
- Discussed the experience of the CRCICA in dealing with international commercial arbitration disputes and more recently with investment arbitration disputes. In this regard, participants highlighted the need to enhance transparency in investment arbitration ;
- Noted the services provided by the CRCICA including arbitration and mediation, as well as the role of the CRCICA Director in participating in the drafting process as member of the drafting committee for "Scope of application of rules"; "Commencement"; and "Timeframe for mediation proceedings"; and
- Explored the Dispute Resolution Arab investment future outlook.

Participants called for:

- Evaluating existing BITs in the light of national development strategies, investment priorities and international and regional commitments;

- Developing new models and consolidating bilateral treaties complemented by a regional approach to strengthen national initiatives;
- Ensuring greater consistency between regional, bilateral and domestic investment policies and rules;
- Strengthening the role of the LAS to promote regional investment integration. In particular, the Amended LAS Investment Agreement stipulates that several bodies need to be created to implement the Agreement, disseminate investment-related information, promote the objectives of the Agreement, and interpret its provisions. Participants raised some concerns regarding substantive provisions of the Agreement. They also mentioned that weak implementation had negatively affected the impact of the 1980 agreement; and
- Strengthening the role of the Arab League Secretariat in the implementation of the unified visa for Arab businessmen; finalising the drafting of the Convention; co-ordinating with the Arab States on the requirements and conditions to issue the unified visa for Arab businessmen.

Session 2 – Towards establishing an Arab Free Investment Area

While addressing the experience of the Association of South-East Asian Nations (ASEAN) in building regional investment integration, participants noted that the ASEAN Comprehensive Investment Agreement (ACIA):

- Was built around four pillars, i.e. protection, facilitation, promotion and liberalisation;
- Its principles lie in liberalisation of investment sectors, transparency of investment rules and regulations, protection of investors and investment, clear dispute settlement mechanisms, preferential treatment and reciprocity among ASEAN member States;
- Provides for a clear definition of investment and investors covered; and
- Embraces international best practice and contributes to attracting FDI to the ASEAN region.

Participants also discussed the proposal to establish a regional Investment Free Area, presented at the last Arab League Political Summit (Kuwait, 2014). In this context, they noted:

- The rationale for establishing an Arab Free Investment Area, which aims to encourage investment amongst the Arab States; and
- The strengths and weaknesses, opportunities and threats (SWOT) as they stem from a comprehensive analysis which highlighted the need to provide a conducive environment for private sector.

Session 3 – The way forward

During this brainstorming session, participants:

- Expressed concern regarding certain unclear provisions of the amended Arab League Investment Agreement (e.g. definition of investment/investors, most-favoured nation treatment, dispute settlement mechanisms, transfer of funds) which may leave too much scope for interpretation by arbitrators in case of disputes;

- Questioned whether the amended agreement achieves the right balance of rights and obligations between states and investors;
- Discussed how to ensure effective implementation;
- Recommended that domestic investment legislations be revised towards greater harmonisation; and
- Considered that there is a need to evaluate existing BITs prior to negotiating new ones.

Some participants suggested considering:

- Updating and improving the amended agreement to clarify some amendments and with a view to serve as a foundation to launch an Arab free investment area.
- Simplifying investment procedures, reducing red tape and increasing transparency; and
- Investing in transportation and communication infrastructure projects as well as in education to yield an impact on innovation and creativity.

Participants called for OECD support:

- To assess the amended Arab League Investment Agreement and clarify its scope and content through comparison with other existing regional investment-related agreements (notably ACIA); and to examine its interactions with existing national and regional investment frameworks;
- To take stock and analyse content and impact of existing bilateral, regional and international investment-related agreements;
- To maintain policy dialogue on regional investment integration among Member States of the Arab League, other regional organisations, the private sector and other stakeholders; and
- To provide capacity-building activities to address specific issues relevant to regional investment integration (e.g. a training course on core investment protection provisions in international investment agreements).

Concluding remarks

- Dr. Al Nsour stressed the need for Arab League member States to pursue the dialogue on investment issues and regional integration. He also reiterated the Arab League's appreciation towards OECD and Sida for their support.
- Ms. Nicola Ehlermann-Cache noted that the policy dialogue on regional investment integration had matured and that the OECD is ready to continue facilitating this process through capacity building and policy dialogue. She highlighted the importance of involving the private sector when addressing investment issues. Finally, she recalled that the MENA-OECD Working Group on Investment Policies and Promotion provides another forum to discuss and share experiences and good practices on investment policies and promotion.
- Ms Margareta Davidson-Abdelli confirmed Sida's support for the MENA-OECD programme. She encouraged the LAS to conduct in due course an analysis of the effects of the LAS agreement on FDI flows. She believed that strong regional trade and investment agreements play a particularly important role in boosting economic growth and jobs.