Investment Policies related to National Security

As highlighted at the March 2018 OECD investment meeting, growing attention is being paid to investment policies related to national security in OECD countries and beyond. Additionally, other policies related to national security, such as data localization or source code disclosure requirements, raise serious concerns for investors and lead to rising costs and reduced competitiveness.

Many countries, including OECD countries, have been reviewing the screening policies for foreign investment which could raise national security concerns. Investment screening for the purpose of safeguarding national security, such as through putting a brake on foreign ownership of critical infrastructure, the outflow of critical technologies and on technology diversion, is legitimate. However, business cautions against overly expansive or vague investment screening that could be used as a disguised form of protectionism or an improper instrument in trade negotiations and would thus have unjustified negative impacts on cross-border investment, growth and job creation.

Investment screening with a view to national security considerations has become one of the key issues on the international investment agenda. It is important to address legitimate security concerns while maintaining an open international investment environment. To this end, due consideration should be given to ensuring that such measures take into account the need for transparency and non-discrimination, have their scope clearly understood and clearly focused on national security, and are based on well-defined criteria. Restrictive measures should be used only as a last resort when other policies cannot be used effectively.

In 2009, the OECD adopted the Guidelines for Recipient Country Investment Policies relating to National Security to help countries design and implement policies that allow them to achieve national security goals with the smallest possible impact on investment flows. Business supports the recommendation to governments that if they consider or introduce investment policies designed to safeguard national security, these policies should be guided by the principles of

- Non-discrimination,
- transparency of policies and predictability of outcomes,
- proportionality of measures,
- accountability of implementing authorities

In the light of recent measures taken by several member states, the OECD Guidance should be given renewed attention. As stated in the Recommendation, we encourage the Investment Committee to ensure the necessary follow up to this Recommendation, including through peer monitoring, and regular discussions during the investment committee meetings and consultations.