



Council of the European Union
General Secretariat

Brussels, 14 April 2023

WK 4916/2023 INIT

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WORKING DOCUMENT

From: European Commission
To: Trade Policy Committee (Experts - Services and Investment)

Subject: Questionnaire on barriers to investment in India



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B - Asia (I), Services and Digital Trade, Investment and Intellectual Property
Investment and Intellectual property

Brussels, 14 April 2023
TRADE.B2/B3/CM/OV(2023)4037
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NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE (SERVICES & INVESTMENT)

SUBJECT: *Questionnaire on barriers to investment in India*

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OBJECTIVE: *For information and possible action*

REMARKS:

Please find enclosed a questionnaire on barriers to investment in India that was circulated in the course of March through the EU Delegation to India to EU businesses operating in India as well as to EU Member States Embassies for further distribution to businesses originating in these Member States with operations in India. The questionnaire is intended to assist the EU negotiating team to better defend the interests of EU businesses in the context of the EU-India Free Trade and Investment Protection negotiations and in the EU-India Trade and Technology Council discussions.

The survey feedback will be used only for internal purposes to identify systemic concerns and hurdles. The completed feedback forms will not be published nor will any company specific input be quoted or referenced in the negotiations. Companies have been requested to send their feedback to the functional mailbox of the EU Delegation to India: delegation-india-trade@eeas.europa.eu, which shall channel the relevant information to the EU negotiating team in DG Trade. An initial deadline of **14 April** has been given to fill out the forms. In light of the importance of having as broad participation as possible in this survey, an extension of the deadline to **28 April** has been decided.

Member States may circulate the questionnaire further to eligible businesses. Member States are also highly encouraged to get in touch directly with the negotiating team on any aspect of the questionnaire and provide input on the basis of the engagement with their own stakeholders with a view to better defining and defending the interests of EU businesses in India.

QUESTIONNAIRE ON BARRIERS TO INVESTMENT

This questionnaire aims to identify **barriers to investment** that EU companies are facing in **India**. This shall assist the EU negotiating team to better defend the interests of EU businesses in the context of the EU-India Free Trade and Investment Protection negotiations and in the EU-India Trade and Technology Council discussions.

You are asked to try reply to the questions relevant to your company to the best of your knowledge and ability. You are not required to disclose any sensitive business information for the purpose of replying to this questionnaire.

***Please note: Survey feedback will be used only for internal purposes to identify systemic concerns and hurdles. The feedback forms will not be published nor will any company specific input be quoted or referenced in the negotiations.**

****Please email your replies to: delegation-india-trade@eeas.europa.eu**

- 1) Please identify your company. In which **industry/sector** is your business operating?
- 2) **Why** did you choose to invest in the Indian market?
- 3) **When** did you set up/acquire your company in India?
- 4) Did your investment consist of a **takeover** of an Indian business or did you **set it up from the ground up**? Where there any limitations on the form of legal entity under which your company had to be organised, or a requirement to be organised as a joint venture with an Indian entity?
- 5) In your sector, **at the time of setting up/acquiring of your company**:
 - a. Were there any **restrictions on majority foreign holdings** (foreign equity < 50% of total equity) or **limits on full foreign ownership/requirement of a domestic minority holding** (foreign equity > 50 % but <100% of total equity)? Are you aware whether such restrictions apply equally to greenfield investment and takeovers?
 - b. Was there in place a **prior approval procedure requirement and/or screening procedure**; and, if so, in what did it consist? [*Explanation: Such requirements may vary from, for instance, meeting economic needs, net economic benefit or national interest tests, which may relate to limitations on the total number of natural persons that may be employed in a sector, or limitations on the total value of transactions or assets, or the number of suppliers operating in a given sector); to a mere pre-notification requirement. Screening mechanisms may often be in place for security and public order purposes*].

- c. Were there any **licencing requirements**? If so, were such licencing requirements imposed at central government and/or state government level?
- 6) Are there any **aspects relating to the establishment and operation** of your business, including at local/municipal- government level, where you consider you are being **discriminated** against domestic investors or other foreign investors on nationality or other grounds?
- 7) Have you encountered any of the following requirements in connection with the **establishment or operation**, including in connection with the granting of and advantage (e.g. subsidies, tax credits), of your company in India?
- a) **Obligation to export** a given level/percentage of goods or services (“export performance requirements”)
 - b) **Obligation to use or purchase** goods or services provided for **in India** (“local content requirements”)
 - c) **Obligation to relate** in any way the volume or value of **imports to** the volume or value of **exports** (“trade balancing requirements”)
 - d) **Obligation to restrict the sale of goods or services** in India by relating those sales in any way to the volume or value of your business’s exports (“restrictions on domestic sales”)
 - e) **Export restrictions**
 - f) **Obligation to provide access to / transfer technology**, a production process or other proprietary knowledge to an Indian business (“technology transfer”)
 - g) **Restrictions on the choice** of goods or services that your business can **produce** and/or on the geographic market that you can supply (“product mandating requirements”)
 - h) **Obligation to employ local staff;**
 - i) **Obligation to achieve** a given level or value of **research and development** in India.
- 8) Are there nationality requirements for **senior managers and board of directors**?
- 9) Has your business encountered any **taxation** related measures that have had an adverse impact on the operation or viability of your business? [*Explanation: Such tax measures may include, among others, reforms in the feed-in tariffs and incentives to renewable energy, withdrawal of VAT subsidies, VAT exceptions or non-payment of VAT refunds, increase in windfall profit taxes and royalties, imposition of capital gain taxes, initiation of tax investigations or audits etc.*]

10) Questions relating to access to **Indian courts** and **investor-state dispute settlement (ISDS)**

i) What has been your experience with **Indian courts**, if any? In your experience, are cases handled in a timely and cost-effective manner by an independent judiciary? What is the average duration of a case? In the event of complications with your investment, has access to Indian courts helped to resolve the matter or, for any reason, have you felt discouraged from accessing the courts and why? If you did not have recourse to Indian courts, which other ways did you use to resolve the matter, if any?

ii) Are there to your knowledge effective **alternative systems of dispute resolution** in place? If so, please indicate which ones and whether would you use them?

iii) Do you have any **experience with ISDS**? Would you use it if it were available? Please explain why or why not. *[Explanation: ISDS is a mechanism, which allows an investor from one country to bring arbitral proceedings directly against the country in which it has invested by virtue of an investment treaty concluded between the country of origin of the investor and the host economy.]*

11) Has your company participated in **public procurement** processes and if so, have you encountered issues in the participation to the process or execution of procurement contracts?

12) Where you have concluded one or more **contract(s) with the state** (including state-owned entities or entities acting on behalf of the state), what has been your experience with the performance of the contract as far as the state is concerned? Have you encountered situations where the state's performance to a contract has become impossible due to government-related actions such as change of legislation that makes the performance of the contract impossible or effectively alters the terms of the contract concluded with the state entity?

13) If any of the issues you have encountered in the course of establishment/operation of your business is not covered by the above questions, as far as the regulatory environment is concerned, please explain in few words what that issue is.

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