ESF2025-02

Mr. Maroš Šefčovič
Commissioner for Trade and Economic Security & Interinstitutional Relations and Transparency
European Commission
200, rue de la loi
BE – 1049 – Brussels

Brussels, 5 May 2025

Subject: **Sustainable Investment Facilitation Agreements (SIFA) in Africa and Market access for services investors**

Dear Commissioner Šefčovič,

The European Services Forum (ESF) represents the interests of the European services sectors in international trade and investment activities. We are committed to actively promoting the liberalisation of international trade and investment in services.

As an introductory remark, we would like first to highlight the crucial importance of outward foreign direct investment for the EU economy, and in particular for the European services sectors. The **EU is by far the world's biggest Investor (US$ 14.5 trillion outward stocks in 2023 – 32% of global FDI[1]).** According to Eurostat, in 2022, 77.7% of total EU Outward FDI comes from services sectors[2]. This not surprising as one of the ways for the services companies to export is to get closer to their customers. This is the main mode of supply of international services, also known as Mode 3 (commercial presence abroad) of the WTO General Agreement on Trade in Services (GATS). According to the WTO Database TISMOS, **57% of all extra-EU exports of services (representing €775 billion of exports in 2022) are provided through Mode 3**. Mode 3 is indeed possible only through establishment in a host country, i.e. by investing in the local economy either via a greenfield investment or via investing in an existing business (merger or acquisition). So, export of services and outward FDI are intrinsically related.

We welcome the call from European Commission President Ursula von der Leyen's 2024-2029 political guidelines that the EU "needs new impetus in our mutual partnership with **Africa**". We also take note that the Sustainable Investment Facilitation Agreement (SIFA) concluded between the European Union and the Republic of Angola entered into force on 1 September 2024. We understand that, as you mentioned at your hearing on 4 November 2024 by the International Trade and Constitutional Affairs committees of the European Parliament, that this SIFA might be used as a template for other similar agreements with other African trading partners.

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[1] https://unctadstat.unctad.org/datacentre/dataviewer/US.FdiFlowsStock
[2] See Eurostat - BOP_FDI6_POS: According to Eurostat, EU27 total outward FDI stocks in 2022 was €17.3 trillion; of which €13.4 trillion have been invested by the EU services sectors.

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This letter is to introduce the European Services Forum position on the SIFAs, with a **strong call to not waste an opportunity to ensure better market access to EU investors and for services sectors in particular**.

The European Union service providers and investors are the top leaders in environment and sustainability related services across the supply chain, and **SIFAs need to ensure that they encompass not only the investment related to clean energy and clean raw materials, but the whole supply chain of them**, and beyond.

ESF welcomes the SIFA between the EU and Angola but considers that this agreement, although full of good intentions, **will fall short of reaching its main purpose which is to provide new business opportunities to invest in Angola <u>because of lack of binding commitments to open new market access for European investors</u>**, including services investors.

You have also mentioned at the above-mentioned hearing that the EU will work on a new generation of the EPAs (Economic Partnership Agreements), which the EU has "in place with Kenya and is open to other countries"**. ESF welcomed the new EPA with Kenya, but deplores that it very unfortunately does not include anything on Services trade**. We consider this lack of rules and commitments on services as a major missed opportunity for the EU services sectors and for the economic development of Kenya. **We urge the EU to pursue the modernisation of the EPAs by systematically including negotiations on services, on investment**, on Intellectual property and on public procurement. The African continent is in full speed of economic development and will very likely be the place with the strongest growth rates in the next decades. At a time of geopolitical uncertainties and the need for the EU to diversify its supply chains and development opportunities, **any trade and investment negotiations must include talks on new market access**.

ESF agrees with the fact that the SIFA with Angola is important for the EU to secure a stable supply of critical raw materials and to reduce dependencies. The SIFA is a necessary framework to guide government action and improve local investment climates to create favourable conditions for FDI to contribute positively to host economies. By partnering with Angola, the EU will have the possibility to diversify its supply chain, foster economic growth in both regions, and ensure more sustainable and ethical sourcing practices. This deal also aligns with the EU Global Gateway investment package, which is an important element. **But that is not sufficient**. **If the market is closed, the agreement will only have minimal impact**. If a local regulation does not allow an investor to either start a greenfield operation through the setting up of a subsidiary with as far as possible full equity ownership, or buy the majority of the stakes of a local company, the agreement will not produce any significant result. The EU should not handle with African countries as partners only for improving better access to critical raw materials, but as a full-scale trading partners.

How does this agreement fit into the broader EU strategy for enhancing partnerships with African nations? Success will be measured whether the deal actually unlocks investment. The long-term question would be, how much have financial investments increased as a result of the deal? How many jobs were created? How much did Angola's GDP rise? Is the investment climate more favourable?

Of course, all the measures that are enshrined into the deal are welcomed and important. For 25 years now, ESF defends the view that Foreign Direct Investors needs transparent domestic regulation's information. They need to know what is required to invest, whether they need a licence, an authorisation; who is their interlocutors? what is the length of the process? how much does it cost? Is there a web portal? can they make an appeal if refused? Etc.

Most of these requirements have in fact already been negotiated in the framework of the WTO Joint Statement Initiative on Investment Facilitation for Development (IFD) with an agreement finalised at MC13 in Abu Dhabi, but unfortunately blocked in Geneva as few countries oppose its integration into the WTO core set of rules as Annex 4 to the WTO Agreement. 126 WTO Members have supported this IFD Agreement, including the EU and its member states and a large number of African countries (31 of them). This means that these countries have accepted the principle of transparency of their domestic rules so as to attract foreign investors. If countries are not part of the IFD, yes, it is appropriate to include such rules into a SIFA. If there is a need to provide technical support that is part of the SIFA, yes, that is welcomed. **But it is not sufficient**.

We understand that SIFA could be replicated in other African countries, like **Democratic Republic of Congo**, **Gambia**, and **Zambia** for example, or **Cameroon**, **Côte d'Ivoire**, **Ghana**, or **Nigeria**[3]. All these countries but Ghana are participating countries to the IFDA. If the purpose of future negotiations is only to negotiate rules of transparency to facilitate investment, rules that they already have agreed to for a large part through the IFDA, these negotiations will be a significant missed opportunity.

Furthermore, we understand that the EU's new *Agenda for the Mediterranean* of 2021 called for the strengthening of the Union's ties with its southern neighbours as being a strategic imperative, especially in areas of investment facilitation and sustainable development, such priorities having not been sufficiently addressed in their trade and investment agreements concluded in the 1990s and the 2000s. Hence, Southern Neighbourhood countries could constitute strategic partners for SIFA negotiations, in light of the European Union's (**EU**) priorities to deepen its cooperation with its regional partners. According to the OECD, such SIFAs with the Southern Neighbourhood countries – namely, **Algeria**, **Egypt**, **Jordan**, **Morocco** and **Tunisia** - could help create favourable conditions to attract more and better investments. Interestingly, none of these countries except Morocco are member of the IFDA. So, a SIFA with these countries will make sense. Furthermore, we need to remember that the EU has established a network of Association Agreement with these countries that include only FTAs on trade in goods. In 2011, mandate was given to the Commission to negotiate deep and comprehensive FTA with Egypt, Jordan; Morocco and Tunisia. Talks effectively started with Morocco in March 2015 and with Tunisia in October 2015, but are currently on hold. This means that there are no rules and no commitments for trade in services, for investment, etc. It would therefore be important to resume these DCFTAs with these countries, or to launch SIFAs that would include investment market access.

Improving market access for European service providers is even more important for all of the countries listed above because all of them (*except Algeria = not member of the WTO; & Gambia = Reasonable schedule*) have very weak Mode 3 commitments in their Schedules of Commitments under the General Agreement on Trade in Services (GATS) at the end of the Uruguay Round (See WTO website here for details).

What must be negotiated in these talks, in addition of the investment facilitation rules, are concrete market access commitments. What will be the point of improving conditions for investors if the investors don't have the right to establish themselves in that territory, or might only be allowed on

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[3] *You will find attached to this letter some statistics on EU trade in services and on FDI with the countries that are listed in this letter. Unfortunately, data for investment are missing in Eurostat. Relevant data are important for guiding trade and investment policy.*

a case-by-case basis by the local authorities under possible discriminatory conditions, subject to possible corruption, etc. What business want are clear legally binding commitment that they will be allowed to invest. Falling short of such commitments will make these possible new SIFAs much less attractive to EU investors.

Indeed, it is important to highlight that the SIFA does not confer upon investors any substantive rights enforceable under the Agreement, and rather seeks to foster investment through the establishment of **obligations upon States**, to create a more transparent and reliable environment that individual investors will ultimately be attracted to and benefit from. The emphasis is, as the Agreement's designation itself indicates, on investment "facilitation," rather than on investment protection.

Indeed, SIFA is not a bilateral investment treaty and hence does not contain some of the substantive protections that are common in traditional investment agreements, such as the "fair and equitable" standard of protection, or provisions on the expropriation of investments. **ESF notes however that many EU member States do have still into force some 131 BITs with the eleven countries listed above** *(see Unctad International Investment Agreements website).* The SIFA does not contain any Investor-State Dispute Settlement provisions and merely provides for dispute resolution procedures among States. Therefore, to convince an investor to decide to invest into Angola or other countries covered by similar SIFA, **there is a need to have clear market access commitments. They will be the legal guarantee that will reduce the political risk of the investment, ultimately subject to state-to-state dispute.**

The European Services Forum urges the European Union's institutions, when debating of negotiating guidelines for future Sustainable Investment Facilitation Agreements (SIFAs) with African nations, to ensure that the mandates include the possibility to negotiate market access commitments for investors.

ESF reserves the right to come back on additional issues at a later stage and remains at disposal for any further information.

Yours sincerely,

Annette Meijer
ESF Chairwoman

List of members supporting the above position

- Amazon
- Amfori
- Apple
- Architects' Council of Europe –ACE
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- CISCO
- Danish Shipping
- DHL Group
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- PostEurop
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS