

# Survey of climate policies for investment treaties

Updated - December 2022

## ■ Note from OECD Secretariat

Governments at the OECD have initiated the first major multilateral effort to consider the relationship between climate policies and investment treaties. This responds to growing demands to consider the climate impacts of the investment treaty regime. In its 2022 report, for instance, Working Group III of the United Nations' Intergovernmental Panel on Climate Change (IPCC) expressed concern about the role of existing investment treaties and investor-state dispute settlement for fossil fuel regulation. As climate considerations are beginning to permeate other areas of international economic governance – most notably within the world of finance – climate concerns with the investment treaty regime are likely to intensify. Building on recent work at the OECD and elsewhere, this survey will cast light on the steps governments are taking, or considering, to align their investment treaty networks with the Paris Agreement and net zero objectives. It will support work within and across governments to incorporate climate commitments into their investment treaty networks and policies.



**Prof Lauge N Skovgaard Poulsen**  
Chair of OECD's Track I – Future of Investment Treaties

## ■ Note from OECD Secretariat

The OECD is pleased to host multilateral work on climate policies for investment treaties as part of its work on the “Future of Investment treaties” and sustainable investment policies. With GHG emissions anywhere contributing to a growing crisis, the climate change challenge is global. Investment treaty policy makers are only beginning to come to grips with the need to address the global climate impacts of existing investment treaties and the investment treaty regime. In a regime accustomed to think only of small sets of treaties or individual treaties, this requires new thinking and new approaches. Work commenced at the OECD in 2021 with governments, stakeholders and experts is helping governments to address this and other challenges. Following a broad public consultation and Conference addressing cutting-edge developments, this first survey of climate policies for existing investment treaties and policies will provide critical stocktaking. We encourage all jurisdictions to take this opportunity to reflect on their existing treaties and their policies in this area and to provide information in response to the survey. The OECD is ready to provide the platform for your engagement in aligning investment treaties with climate commitments.



**Ana Novik**  
Head of Investment Division, OECD

This document has been updated in December 2022. The questions in the survey have not been modified. The updated introduction notes that the time for responses to the survey has been extended to 31 January 2023 in response to requests from governments engaged in work on the survey. In addition, the introduction has been modified to make clear that survey responses may be provided either through a Word document of the Lime survey software. A number of governments have indicated that a Word document may facilitate input from across the government.

## Introduction

This document contains a survey of the climate-related policies and practices that have been implemented or are under consideration by governments with regard to their investment treaties and related policies. The purpose of the survey is to inform on-going work on investment treaties and climate change.

For an overview of themes in OECD work on investment treaties and climate change to date, see [OECD 2022 Conference on Investment Treaties and Climate Change](#) (video, session 1/4, minutes 8-15, remarks by the Chair).

Jurisdictions were initially invited to complete and submit the survey using the Lime Survey application by 14 December 2022. The time for responding to the survey has been extended to **31 January 2023**. As noted, jurisdictions may opt to complete the survey using the Lime Survey application or using a Word document.

Please note that in the Lime Survey application, each user can see the structure of question groups using the Question Index function. He/she can move back and forth throughout the survey. Until the responses are submitted, each user with the single token for a jurisdiction can add responses. He/she can also modify or delete existing responses. When work on part of the survey is complete or suspended, the work can be saved for resumption of work later by clicking on the button at the bottom of the screen.

For this Word version of the survey, the question groups are listed in order below for reference:

- Identification of jurisdiction
- Overview of investment treaty unit and other participants in investment treaty policies

- Climate governance and risk management
- Investment treaties and alignment with the Paris Agreement
- Alignment of investment-treaty-covered investment and investors: financed emissions
- Exclusions - Coal-related projects
- Exclusions - Oil-related projects
- Exclusions - Gas-related projects
- Exclusions - other sectors
- Policy space for climate policies
- Market access
- Additional incentives
- Implementation
- Data gathering
- Reporting and transparency
- Assessing government needs for assistance in addressing climate impacts of investment treaties
- Multilateral and plurilateral climate policy commitments, and investment treaties
- Unilateral commitments to climate measures affecting outward international investment
- Other measures
- Document upload and contact information

Please see the [Secretariat note](#) [DAF/INV/TR1/WD(2022)3] (including Guidance for survey responses) for additional information. Thank you for your efforts in completing the survey.

## ■ Identification

**This section identifies the jurisdiction responding to the survey.**

**1. Identify your jurisdiction:** \_\_\_\_\_

The designation of Kosovo\* is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

## ■ Overview of investment treaty unit and other participants in investment treaty policies

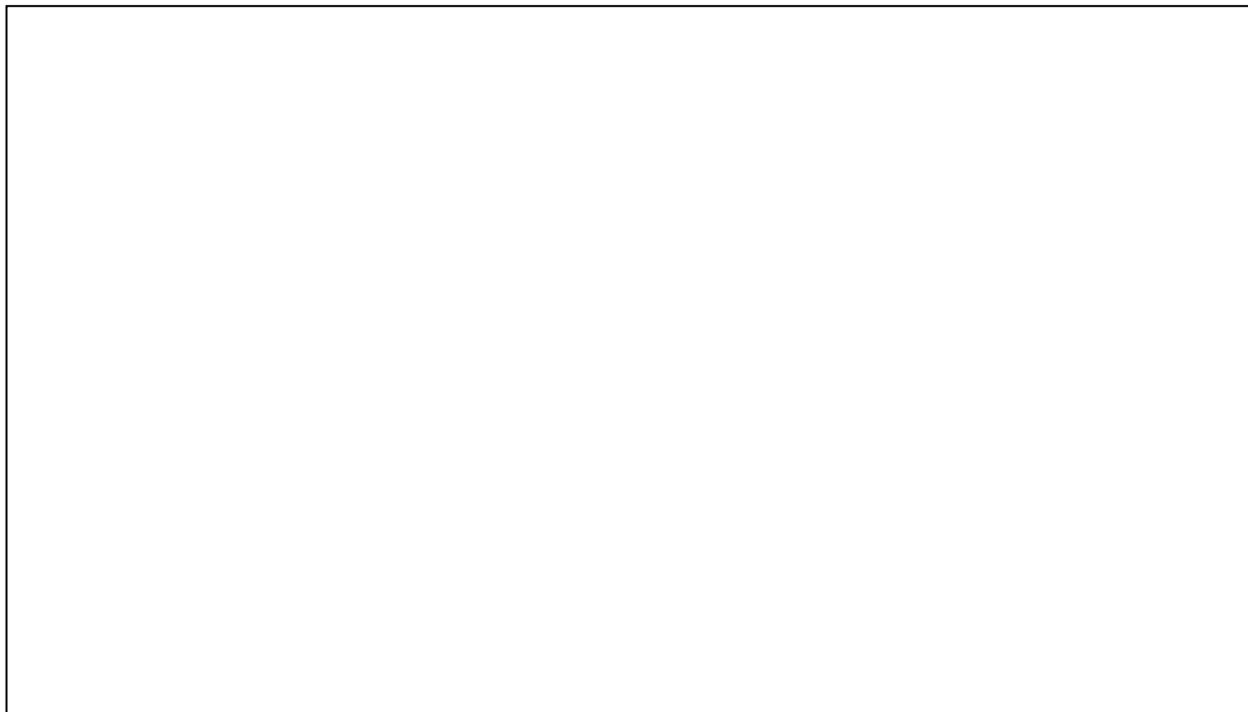
*This section identifies the people, units, ministries, and political parties that have a role in your government's investment treaty policies. Throughout this survey, references to investment treaties include investment chapters and provisions in broader trade and investment agreements, as well as stand-alone investment treaties. Both bilateral and plurilateral treaties are included.*

**2. Responsibility for investment treaty network: Please identify the persons or units that are responsible for the maintenance and negotiation of your government's investment treaties. Please also identify the governing ministry/ies and institutional roles for a particular political party/ies.**

**3. Responsibility for litigation under investment treaties: Please identify the persons or units that are responsible for litigation under your government's investment treaties. Please include the defence of claims against your government and oversight of claims your national investors against other governments. Please also identify the governing ministry/ies or roles for a particular political party/ies.**



**4. Please describe the current human resources in your government devoted to investment treaty policy (person-years, hierarchical levels, roles).**



**5. Beyond your investment treaty unit, please identify other government ministries or agencies that are active participants in your government's investment treaty policies.**

**6. Please list the ministries and agencies of your government that participated in responding to this survey.**

## ■ Climate governance and risk management

**7. Has your investment treaty unit been given a mandate by an oversight minister or body to pursue initiatives based on climate change issues?**

- Yes
- No

**8. If answer to question 7 is yes, please describe.**

**9. Does your unit have at least one senior official with competence on climate-related issues?**

- Yes
- No

**10. If answer to question 9 is yes, please describe.**

**11. Has your government analysed the climate impact of your existing investment treaties?**

- Yes
- No

**12. If answer to question 11 is yes, please describe.**

**13. Please indicate the extent to which your government's existing investment treaties take account of the following specificities of climate policies and impacts (mark with x):**

	Fully taken into account	Partially taken into account	Not taken into account	Reject premise of question
The global impact of GHG emissions anywhere, promoted by any investment treaty.				
The recognised need for profound and rapid regulatory changes to address the climate crisis.				
The particularly challenging political economy for adoption of climate measures due to long-term nature of many climate threats.				

**14. If specificities in the previous question have been taken into account, please describe.**

**15. Has your government analysed the impact of its existing investment treaties on climate-related human rights?**

- Yes
- Under consideration
- No

**16. If answer to question 15 is yes or under consideration, please provide details.**

**17. How important are the UN Sustainable Development Goals, and in particular SDG 13 and its goals, for your government's existing investment treaties and treaty policies?**

- Very important
- Somewhat important
- Not important

**18. Does your government use climate-related scenario analysis to inform its investment treaty policies?**

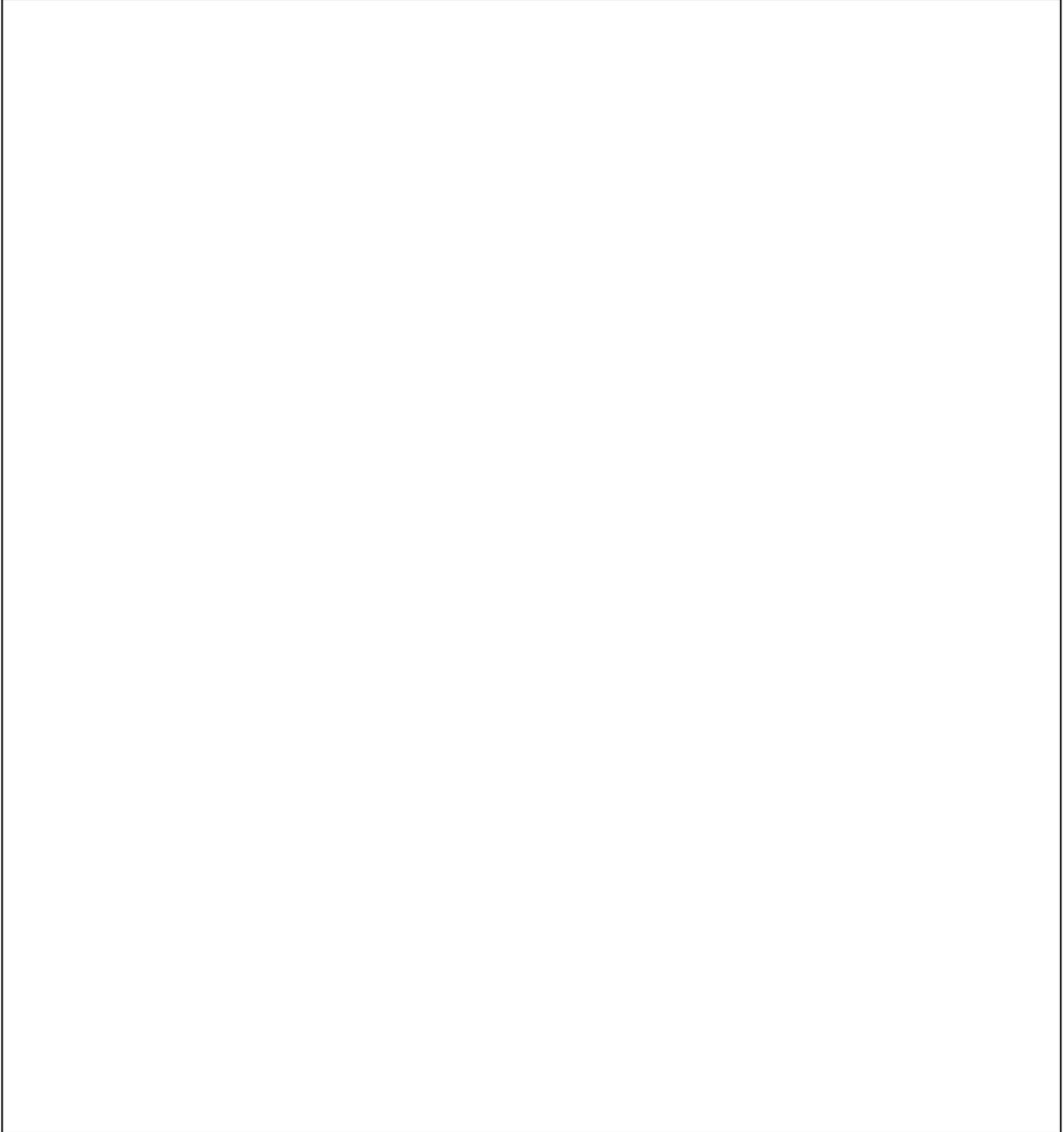
*Financial and other actors with climate impacts are increasingly requested or required to identify their expected policies under different climate scenarios. See, e.g., Network for Greening the Financial System, Scenarios Portal (identifying three broad climate scenarios for use in climate policies: (i) Orderly scenarios assume climate policies are introduced early and become gradually more stringent; (ii) Disorderly scenarios explore higher transition risk due to policies being delayed or divergent across countries and sectors; and (iii) hot house world scenarios assume that current policies are maintained or that some climate policies are implemented in some jurisdictions, but global efforts are insufficient to halt significant global warming.)*

- Yes
- No

**19. Has your government included binding provisions to strengthen domestic law climate policies in your existing investment treaties, such as obligations to meet Paris Agreement commitments?**

- Yes
- Under consideration
- No

**20. If answer to question is 19 yes or under consideration, please describe.**

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**21. Please describe your government's experience with risks of litigation challenging your existing investment treaties, proposed new treaties or investment treaty policies based on climate-related considerations.**

*Comments may be included with regard to a selected answer.*

*Please note this question addresses litigation challenges to your government's investment treaties, for example with regard to their legality, or their consistency with a constitution, the Paris Agreement or human rights. This question does not address challenges to other policies or measures by investor claimants under your government's investment treaties. Such challenges are covered by other questions in the survey.*

- My government has faced claims or threats of claims challenging its investment treaty policies on climate-related grounds.
- My government has not faced claims or threats but has evaluated the risk of claims.
- My government has not evaluated the risk of claims.

**22. Please describe the human resources in your government specifically allocated to the climate impact and aspects of investment treaties.**

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**23. Do climate considerations play a role in policies of your government with regard to foreign investment in the following areas?**

	Yes	Under Consideration	No
Export finance support?			
Development assistance?			
Scope for diplomatic interventions by your government abroad on behalf of companies?			
Other			

**24. If answer for any of the policy-areas in question 23 is yes or under consideration, please describe.**

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## ■ Investment treaties and alignment with the Paris Agreement

This section concerns how governments consider the alignment of their investment treaty policies with the Paris Agreement. Some issues in this area were addressed in sessions 1/4 and 3/4 of the 2022 [OECD Investment Treaty Conference \(Paris Agreement and Net Zero Alignment\)](#) and in a Secretariat [background paper](#) for the Conference.

### 25. What is your government's view about the importance of aligning your existing investment treaties and treaty policies with the Paris Agreement?

*Comments may be included with a selected answer.*

- Very important
- Somewhat important
- Not important

**26. What are the principal obstacles to the Paris Agreement alignment of existing investment treaties and treaty policies in your government's view?**

*Choose as many as applicable. Comments may be included with a selected answer.*

- My government has other priorities
- Other governments have other priorities
- There is broad mutual government interest, but costs to address the climate impacts of many treaties are too high
- Private sector lobbying (business, lawyers, others)
- Lack of climate awareness
- It is hard to know what to do to address the climate in existing treaties
- It is difficult to change existing practices
- The scope for treaty shopping makes effective reform difficult
- Other

**27. Have investors in fossil fuels or other high-carbon activities filed claims under your government's investment treaties:**

*Please choose the appropriate response for each item.*

	None	One	2-5	More than 5
Against your jurisdiction?				
Against other jurisdictions?				

**28. If answer to question 27 is yes, please describe.**

**29. The IPCC has estimated that a reduction of CO2 emissions by 45% by 2030 is required to limit global warming to 1.5 degrees Celsius. What actions does your government plan regarding its investment treaty policies to contribute to this goal?**

**30. What are your government's views about the relationships between existing investment treaties and treaty policies on the one hand, and commitments by governments to ambitious National Determined Contributions (NDCs) to address climate change under art. 2.1(b) of the Paris Agreement on the other hand?**

*Choose as many as applicable. Comments may be included with a selected answer.*

- Current investment treaties have no impact on the ambition of government NDC's
- Current investment treaties encourage ambitious government NDC's
- Current investment treaties discourage ambitious government NDC's
- Investment treaty policies should encourage ambitious government NDC's
- Investment treaty policies should be neutral regarding government NDC's
- Other

**31. What is your government's view about the importance of making finance flows consistent with a low-carbon pathway as set out in Article 2.1 of the Paris Agreement:**

	Very important	Somewhat important	Not important
In general			
For the finance flows associated with investment treaties			

**32. Has action been taken by your government or is action under consideration with regard to the finance flows associated with your existing investment treaties and art. 2.1(c) of the Paris Agreement?**

- Yes
- Under consideration
- No

**33. If action in light of art. 2.1(c) has been taken or is under consideration, please describe.**

**34. Does your government have a transition plan to align your investment treaty policies with net-zero emissions by 2050 or earlier?**

- Yes
- Under consideration
- No

**35. If answer to question 34 is yes, please describe.**

**36. Does your government have any plans to implement new climate policies in your investment treaties in the next two years?**

- Yes
- No

**37. If answer to question 36 is yes, please describe.**

## ■ Alignment of investment-treaty-covered investment and investors: financed emissions

This section concerns how governments consider climate issues with regard to financed emissions and the overall portfolios of covered investments and counterparties (covered investors) under their investment treaties.

For brief background on the notion of financed emissions, see, e.g., PWC, [Financial institutions are pledging to lower carbon footprints. Here's what you need to know about financed emissions](#); Sudeep Doshi et al, [Aligning portfolios with climate goals: A new approach for financial institutions](#) (McKinsey & Co 2021). For a discussion in the context of investment treaties, see the Background paper for the OECD 2022 [Conference on Investment treaties and climate change](#), and session 3/4 of the Conference (video).

### 38. Investment treaty coverage of investment: Have you established, or are you considering establishing, criteria based on the potential impacts of the investment on climate change (e.g., climate-friendly, climate-neutral, climate-unfriendly) for:

	Yes	Under consideration	No
Inward investment?			
Outward investment?			

### 39. Investment treaty coverage of investment: Please indicate whether the following elements are taken into account or are under consideration.

	Yes	Under consideration	No
Project GHG emissions			
Project carbon intensity			
Climate change mitigation measures to limit GHG emissions			
Climate change adaptation measures			
Other			

### 40. Investment treaty coverage of investors: Have you integrated, or are you considering integrating, climate policies into the scope of covered investors in your investment treaties for:

	Yes	Under consideration	No
Inward investment?			
Outward investment?			

**41. Investment treaty coverage of investors: Have you included or are you considering including, the following characteristics among the criteria for coverage of investors under your government's investment treaties?**

See, e.g., GFANZ, [Introductory Note on Expectation for Real-Economy Transition Plans](#) (June 2022), p. 3 (p. 3 ("Financial institutions will increasingly be considering climate-related constraints (e.g., carbon budgets, portfolio coverage) which will influence financing, underwriting, and provision of other financial services to companies that have credible climate transition plans in place."))

	Yes	Under consideration	No
A credible climate transition plan?			
CAPEX in net-zero assets?			
GHG emissions reductions?			
Climate disclosure in accordance with TCFD recommendations?			
Other?			

**42. Please consider the actual or potential application of the types of criteria in green or climate taxonomies or metrics set out below (or other similar ones) for your government's existing investment treaties.**

See criteria in the [EU Taxonomy](#), [EU Do No Significant Harm principles](#), [Chinese Green Bond Endorsed Projects Catalogue](#) (2021 Edition, English), [IFC Definitions and Metrics for Climate-Related Activities](#) (2017), [International Platform on Sustainable Finance](#), etc. For work comparing certain taxonomies and exploring certain possible common green taxonomies, see International Platform on Sustainable Finance (IPSF), [Common Ground Taxonomy - Climate Change Mitigation](#) (instruction report by IPSF Taxonomy Working Group) (3 June 2022) (in-depth comparison exercise that puts forward areas of commonality between the EU and China taxonomies, using the amended 2021 Chinese Green Bond Endorsed Projects Catalogue as the Chinese equivalent of the EU Taxonomy

for purposes of the report).

## ■ Exclusions - Coal-related projects

This section concerns policies for excluding investment treaty protection support for projects involving coal. It also addresses possible exceptions to such exclusions.

**43. Have you implemented, or are you considering implementing, policies to exclude support for projects involving substantial coal-related content:**

	Yes	Under consideration	No
In your government's existing investment treaties?			
In your government's future investment treaties?			

**44. If answer to question 43 is yes or under consideration for your government's existing investment treaties, please provide details about exclusions of the following types of projects:**

	Excluded	Exclusion under consideration	Still supported
New coal-fired power plants?			
Expansions of existing coal-fired power plants?			
Existing coal-fired power plants, without expanding capacity?			
Exploration and extraction of coal for energy generation?			
Transportation of coal and related infrastructure?			

**45. Please indicate which descriptions best apply to the action to date by your government on coal-related exclusion policies for your existing investment treaties and its outcomes.**

	For none of its investment treaties	For one of its investment treaties	For several of its investment treaties	For most or all of its investment treaties
My government has requested exclusion(s)				
My government has requested and obtained exclusion(s)				
My government has requested but not obtained exclusions				

**46. If exclusion policies in this area have been implemented or are under consideration, are there any exceptions or are you considering implementing any exceptions to the exclusions: for example, relating to improving energy or emissions efficiency, health & safety issues, decommissioning, use of carbon capture and storage (CCS), transition plans in line with the Paris Agreement, etc.?**

- Yes
- Under consideration
- No

**47. If you are employing or considering any exceptions to the exclusion of support for projects with coal-related content, please provide details.**

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## ■ Exclusions – Oil-related projects

*This section concerns policies for excluding investment treaty protection support for projects involving oil. It also addresses possible exceptions to such exclusions.*

### **48. Have you implemented, or are you considering implementing, policies to exclude support for projects involving substantial oil-related content:**

	Yes	Under consideration	No
In your government's existing investment treaties			
In your government's future investment treaties			

### **49. If answer to question 48 is yes or under consideration for your government's existing investment treaties, please provide details about exclusions of the following types of projects:**

	Excluded	Exclusion under consideration	Still supported
New oil-fired power plants?			
Expansions of existing oil-fired power plants?			
Existing oil-fired power plants, without expanding capacity?			
Exploration and extraction of oil?			
Exploration and non-conventional extraction methods (fracking, oil sands, etc.)?			
Transportation of oil and related infrastructure, including pipelines?			
Downstream activities, such as oil refineries, petrochemicals, etc.?			

### **50. Please indicate which descriptions best apply to the action to date by your government on oil-related exclusion policies for your existing investment treaties and its outcomes.**

	For none of its investment treaties	For one of its investment treaties	For several of its investment treaties	For most or all of its investment treaties
My government has requested exclusion(s)				
My government has requested and obtained exclusion(s)				
My government has requested but not obtained exclusions				

**51. If exclusion policies in this area have been implemented or are under consideration, are there any exceptions or are you considering implementing any exceptions to the exclusions: for example, relating to improving energy or emissions efficiency, health & safety issues, decommissioning, use of carbon capture and storage (CCS), transition plans in line with the Paris Agreement, etc.?**

- Yes
- Under consideration
- No

**52. If you are employing or considering any exceptions to the exclusion of support for projects with oil-related content, please provide details.**

## ■ Exclusions - Gas-related projects

*This section concerns policies for excluding investment treaty support for projects involving gas. It also addresses possible exceptions to such exclusions.*

### 53. Have you implemented, or are you considering implementing, policies to exclude support for projects involving substantial gas-related content:

	Yes	Under consideration	No
In your government's existing investment treaties			
In your government's future investment treaties			

### 54. If answer to question 53 is yes or under consideration for your government's existing investment treaties, please provide details about exclusions of the following types of projects:

	Excluded	Exclusion under consideration	Still supported
New gas-fired power plants?			
Expansions of existing gas-fired power plants?			
Existing gas-fired power plants, without expanding capacity?			
Exploration and extraction of gas?			
Exploration and non-conventional extraction methods (fracking, etc.)?			
Transportation of gas and related infrastructure, including pipelines?			
Downstream activities, such as gas processing, LNG plants, petrochemicals, etc.?			

### 55. Please indicate which descriptions best apply to the action to date by your government on gas-related exclusion policies for your existing investment treaties and its outcomes.

	For none of its investment treaties	For one of its investment treaties	For several of its investment treaties	For most or all of its investment treaties
My government has requested exclusion(s)				
My government has requested and obtained exclusion(s)				
My government has requested but not obtained exclusions				

### 56. If exclusion policies in this area have been implemented or are under consideration, are there any exceptions or are you considering implementing any exceptions to the exclusions: for example, relating to improving energy or emissions efficiency, health & safety issues,

**decommissioning, use of carbon capture and storage (CCS), transition plans in line with the Paris Agreement, etc.?**

- Yes
- Under consideration
- No

**57. If you are employing or considering any exceptions to the exclusion of support for projects with gas-related content, please provide details.**

## ■ Exclusions – Other Sectors

*This section concerns policies for excluding support for projects in certain sectors.*

**58. Have you implemented, or are you considering implementing, policies to exclude support for industrial operations requiring dedicated fossil-fired energy supply to achieve high temperatures: for example, cement, glass, pulp & paper, steel, etc.:**

	Yes	Under consideration	No
In your government's existing investment treaties?			
In your government's future investment treaties?			

**59. If answer to question 58 is yes or under consideration, please provide details.**

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**60. Have you excluded or are you considering excluding other sectors:**

	Yes	Under consideration	No
In your government's existing investment treaties?			
In your government's future investment treaties?			

**61. If answer to question 60 is yes or under consideration, please provide details.**

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**62. Please indicate which descriptions best apply to the action to date by your government on exclusion policies in this area and its outcomes.**

	For none of its investment treaties	For one of its investment treaties	For several of its investment treaties	For most or all of its investment treaties
My government has requested exclusion(s)				
My government has requested and obtained exclusion(s)				
My government has requested but not obtained exclusions				

## ■ Policy space for climate policies

*This section concerns the impact of investment treaties on policy space for climate policies including recent reforms and reform proposals, and specificities of the climate context.*

### **63. Please provide your government's view about the appropriate regime for disclosure of government requests for greater climate policy space under investment treaties, and their outcomes.**

	Agree	Somewhat agree	Somewhat disagree	Disagree	No view
Disclosure would advance the goals of the Paris Agreement and should be made.					
Disclosure would interfere with investment treaty negotiations and should be avoided.					
Disclosure would improve inter-governmental cooperation in the setting and achievement of ambitious National Determined Contributions (NDCs) under the Paris Agreement.					
Each government should decide on the scope of disclosure of the existence and outcomes of such requests.					
Only the final outcome of negotiations should be disclosed.					
Disclosure should be made in the context of broader work on the climate such as in the UNFCCC process.					

**64. Please explain the views expressed in question 63.**

**65. With regard to its climate or environmental policies, has your government:**

	No	Yes - once	Yes – more than once
Faced threats of ISDS claims?			
Faced ISDS claims?			
Considered the potential for ISDS claims?			

**66. Please whether you agree or disagree with the following statements:**

	Agree	Somewhat agree	Somewhat disagree	Disagree	No view
Many governments fear to request more policy space under existing investment treaties applicable to climate measures because of concerns about the perceived impact on the attractiveness of their jurisdiction for investment.					
Governments should be encouraged to make requests for additional policy space applicable to climate policies.					
Avoiding risks to climate policy space is best achieved by avoiding investment treaties with ISDS with States with significant inward investment in one's jurisdiction.					
Investment treaties as interpreted in ISDS provide clear parameters on policy space for climate measures.					

**67. Please evaluate the following techniques, focused on substantive treaty provisions and language, to address policy space for non-discriminatory climate action:**

	Highly effective	Moderately effective	Uncertain effectiveness	Not effective
Omission of high-claim-frequency substantive provisions (e.g., fair and equitable treatment (FET), indirect expropriation)				
Changes in the language of high-claim-frequency substantive provisions				
Joint government interpretations of high-claim-frequency substantive provisions				

**68. Please describe the effectiveness of the following dispute settlement policies for protection of climate policy space:**

	Highly effective	Moderately effective	Uncertain effectiveness	Not effective
Actions and submissions as a respondent in ISDS cases				
Non-disputing Treaty Party submissions on interpretation issues				
Transparency of ISDS proceedings				
Access for amicus curiae and interveners				
Reforms to ISDS				
Use of only State-State dispute settlement (SSDS) for high-claim-frequency substantive provisions (e.g., FET, indirect expropriation) in current ISDS				
Use of only SSDS rather than ISDS for investment protection claims				

**69. Is your government concerned that other governments may delay, postpone or avoid action on climate due to concerns about possible ISDS liability:**

	Yes	No
Under your government's treaties?		
Under other investment treaties?		

**70. Please provide details to explain your answers in question 69.**

**71. Has your government received any requests from other governments for modifications to its existing investment treaties to provide greater or more certain policy space applicable to climate measures than under currently applicable treaties as interpreted in ISDS?**

*Examples could include requests for treaty modifications or joint interpretations to exclude preferential treatment for covered investors, eliminate a FET provision, exclude legitimate expectations theories under FET or subject claims for non-discriminatory regulation only to SSDS.*

	Yes	No
Requests for modifications to treaty language including removal of substantive provisions?		
Requests or removal from coverage of investments in certain sectors (e.g., fossil fuels)?		
Requests for joint government interpretations?		
Requests for changes to dispute settlement provisions?		

**72. If answer to any of the sub-questions in question 71 is yes, please provide details to explain.**

**73. Has your government made any requests to other governments for modifications to existing investment treaties to provide greater or more certain policy space applicable to climate measures than under currently applicable treaties as interpreted in ISDS?**

	Yes	No
Requests for modifications to treaty language including removal of substantive provisions?		
Requests for removal from coverage of investments in certain sectors (e.g., fossil fuels)?		
Requests for joint government interpretations?		
Requests for changes to dispute settlement provisions?		

**74. If answer to any of the sub-questions in question 73 is yes, please describe the requests and outcomes.**

**75. Has your government delayed, considered delaying or postponed any climate action due in part to risks of ISDS liability?**

- Yes
- No

**76. If answer to question 75 is yes, please describe.**

**77. Has your government considered the impact of actual and potential ISDS liability on its budgets for the energy transition and other climate policies such as additional mitigation or adaptation?**

Yes

No

## ■ Market access

This section addresses investment treaty policies encouraging and providing a framework for commitments for greater market access (market openness or liberalisation) or to preserve existing and future market access for foreign investment and in particular FDI, including in key areas such as green technology.

As throughout this survey, investment treaties include investment provisions in broader trade and investment agreements.

**78. Please indicate whether investment market access or post-establishment protection is more important for your government in the categories below:**

	Market access is more important than post-establishment protection	Post-establishment protection is more important than market access
For my government's current investment treaties as a whole		
For my government's recent investment treaties (last 5 years)		
For my government's investment treaty policies in the future		

**79. In rough terms, what proportion of your existing investment treaties include binding international law provisions for market access for new investment flows?**

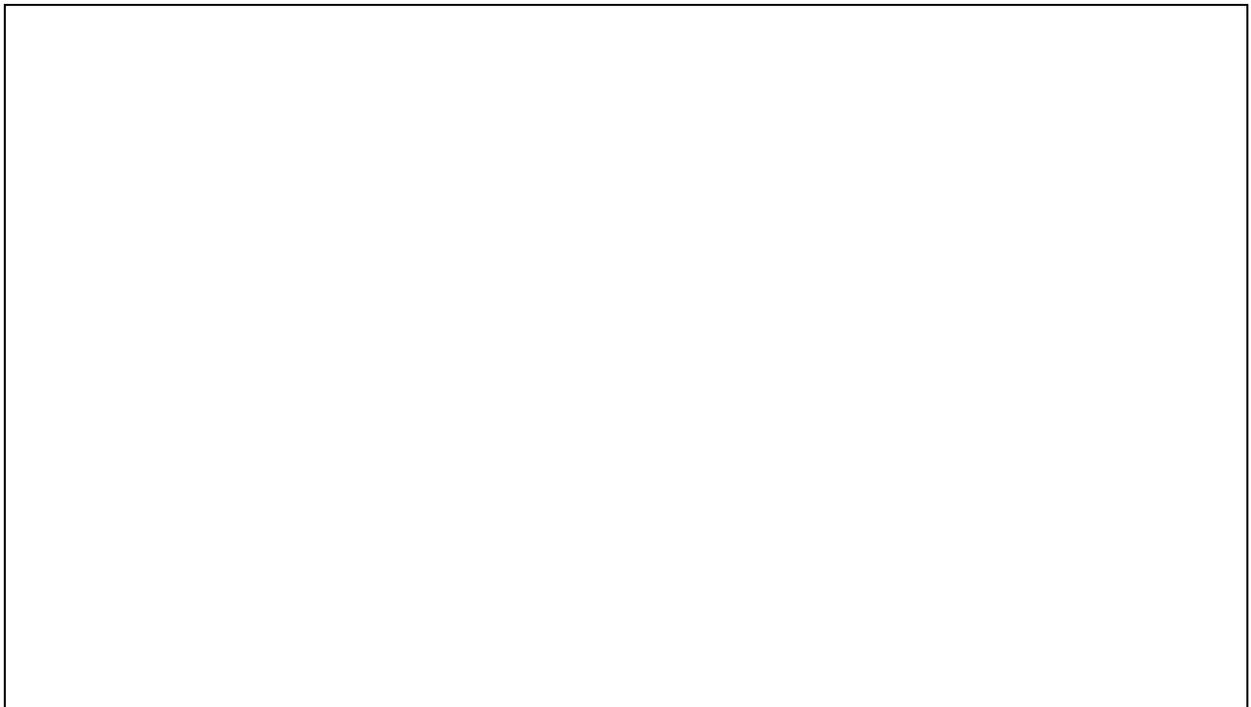
*This question and subsequent questions in this group seek information about binding international law commitments to maintain or improve market access. Preambles and provisions encouraging the acceptance of investment subject to domestic law do not qualify for these purposes.*

- All
- Most
- Some
- Few
- None

**80. Please describe the importance of climate considerations, if any, in the binding market access provisions of your existing investment treaties (including in schedules to trade and investment agreements or negative lists).**



**81. If your government's existing investment treaties contain binding provisions on market access, please describe the provisions, policy rationale and experience with them in relation to climate goals.**



**82. Please describe what aspects of market access or investment facilitation, including for climate-friendly investment, should be addressed in future Track 1 discussions.**

## ■ Additional Incentives

*This section concerns incentives beyond investment protection and ISDS that government investment treaty departments have implemented, or are considering implementing, in their treaties to promote climate-friendly projects.*

**83. Have you established, or are you considering establishing, any additional incentives in your investment treaties to promote transactions considered climate-friendly?**

- Yes
- Under consideration
- No

**84. If answer to question 83 is yes or under consideration, please provide details.**

## ■ Implementation

*This section concerns the range of implementation mechanisms in investment treaties to address both investment protection and other interests. Investment protection is used broadly here to include any benefits for investment at the post-establishment stage with regard to risks of government regulatory action other than with regard to initial market access. Such provisions may at times be framed as supporting investment liberalisation, but should be addressed here. In light of ongoing UNCITRAL work on reform of ISDS, the procedural aspects of ISDS are not addressed.*

**85. Do any of your existing investment treaties provide only for options other than ISDS for resolution of investment protection disputes involving climate policy, such as binding state-to-state dispute settlement (SSDS) or diplomatic negotiations?**

- Yes
- No

**86. If answer to question 85 is yes, please describe the provisions, policy rationale and experience with them.**

**87. Do any of your existing investment treaties provide for government power over remedies in investment protection disputes involving climate policy, such as requirements that remedies taking the form of financial payments are to be agreed by governments?**

- Yes
- No

**88. If answer to question 87 is yes, please describe the provisions, policy rationale and experience with them.**

**89. Do any of your existing investment treaties provide only for non-binding mechanisms to resolve disputes of certain types, such the use of expert reports to provide findings for consideration by governments or others in disputes?**

- Yes
- No

**90. If answer to question 89 is yes, please describe the provisions, policy rationale and experience with them.**

**91. Do any of your existing investment treaties provide for:**

	Yes	Under Consideration	No
Obligations for covered investors relating to the environment?			
Conditions for treaty coverage of investors relating to the environment?			
Adjustment of treaty benefits for covered investors relating to the environment?			
Other provisions affecting covered investors relating to the environment?			

**92. If the answer to any of the sub-questions in question 91 is yes, please describe the provisions, policy rationale and experience with them.**

**93. Under currently applicable law, please indicate whether the following factors are relevant to the enforcement in your jurisdiction of arbitral awards under investment treaties involving climate-unfriendly investments:**

	Relevant	Somewhat relevant	Not relevant
The award is contrary to international public policy with regard to the climate			
The award is contrary to your government's public policy with regard to the climate			
The claim is based on climate-unfriendly investment			
The outcome increases returns to climate-unfriendly investment			
The outcome raises the costs of climate measures including non-discriminatory measures			
The outcome increases the dissuasive effect of investment treaties on potential climate measures including non-discriminatory measures			

**94. Under currently applicable law, please describe whether climate impact is relevant in your jurisdiction to the enforcement of investment treaty awards:**

	Climate impact always evaluated before ISDS award enforced in my jurisdiction	Climate impact sometimes evaluated before ISDS award enforced in my jurisdiction	Climate impact never evaluated before ISDS award enforced in my jurisdiction
Under your government's investment treaties			
Under investment treaties between other governments			

**95. Please identify applicable legal barriers to consideration of climate impact with regard to the enforcement of ISDS awards in your jurisdiction.**

**96. Please describe what aspects of treaty implementation, including for climate-friendly investment, should be addressed in future Track 1 discussions.**

## ■ Data gathering

*This section concerns measures that government investment treaty departments have put in place to develop and improve their data for evaluation of the climate impacts of their investment treaties.*

*The gathering of data and stocktaking are recognised as of fundamental importance for government and business climate policies. See, e.g., Network for Greening the Financial System, [NGFS publishes its Final report on bridging data gaps](#) (7 June 2022); UNEP FI, [The Net-Zero Insurance Alliance: Statement of commitment by signatory companies](#).*

*Academics have begun to gather data about investment treaties and climate impacts with the results featuring in leading journals such as Science. See, e.g., Kyla Tienhaara et al, [Investor state disputes threaten the global green energy transition](#), Science (vol. 376, Issue 6594, 13 May 2022), p. 701.*

*In accordance with general use in work on finance and climate, the term "portfolio" is used in this survey to refer to a set of covered (financed) investments.*

### **97. Has your government implemented measures to improve your knowledge of the portfolio of covered investments under your government's existing investment treaties in the following contexts? Choose as many as applicable.**

*Comments may be included with regard to a selected answer.*

- The portfolio of covered investments in your jurisdiction?
- The portfolio of covered investments in other jurisdictions?
- The portfolio of covered investments in key economic sectors for climate policy, such as fossil fuels or renewables?
- The portfolio of covered investments in different regions?
- The portfolio of covered investments for which ISDS is made available?
- Other

**98. Has your government implemented or considered the following possibilities to improve the available data about the climate impacts of your investment treaties:**

	Yes	Under consideration	No
Requiring climate impact analysis by proposed insured (covered) entities about proposed projects as a condition for coverage, with screening or approval.			
Requiring climate impact analysis by proposed insured (covered) entities about proposed projects without screening or approval.			
Requiring insured (covered) entities to report on claims under your treaties.			
Analysing the climate impact of projects that are the subject of claims or threatened claims under your investment treaties.			
Evaluating the existence in other jurisdictions of major corporate producers of emissions or affiliates thereof that could qualify for insurance-type coverage in your jurisdiction under your investment treaties.			
Evaluating the existence in your jurisdiction of major corporate producers of emissions or affiliates thereof that could qualify for insurance-type coverage in your jurisdiction under your investment treaties.			

## ■ 15. Reporting and transparency

*This section concerns measures that government investment treaty units have put in place for disclosing information to the public about the climate impacts of their investment treaties, their applicable climate policies and targets, and progress in achieving climate goals over time.*

*Climate disclosure by financial actors is recommended by leading climate bodies, such as the Task Force on Climate-related Financial Disclosures (TCFD) created by the Financial Stability Board. See, e.g., TCFD, [Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures](#) (Oct. 2021).*

**99. Does your government or agencies of your government support stronger public disclosure of climate impacts, risks, policies, targets or progress including by reference to standards inspired by the Task Force on Climate-Related Financial Disclosures (TCFD) Recommendations:**

	Yes	No
By business?		
By financial services providers?		
By governments where they are providing products or services similar to those in markets?		
By governments generally?		

**100. Has your investment treaty unit implemented, or is it considering implementing, climate reporting measures including as inspired by the TCFD Recommendations?**

- Yes
- Under consideration
- No

**101. If your government has received requests for information about your climate policies with regard to investment treaties or their climate impacts from the following sources, please provide details including on the role of ISDS claims in generating interest. Choose as many as applicable.**

*Comments may be included with regard to a selected answer.*

- Parliaments?
- The press?
- Civil society?
- Business?

## ■ Assessing government needs for assistance in addressing climate impacts of investment treaties

*This section addresses government needs for assistance in addressing the climate in investment treaties. See, e.g. [Joint Ministerial Statement](#), The Coalition of Finance Ministers for Climate Action (12 Oct. 2021) ("We recognize that effective mainstreaming of climate change considerations into economic and financial policies hinges on building capacity, expanding training, deploying sound analysis backed by research, and sharing country cases. In line with Coalition efforts to mainstream climate action in Ministries of Finance, a whole-of-government approach is needed that considers also the particular strategies and governance arrangements at the country level. We stress the importance of launching a training program together with our Institutional Partners and welcome recommendations for good practices on mainstreaming climate action.").*

**102. Does your government consider that assistance with regard to improving the climate impacts of its investment treaties would be helpful?**

- Yes
- Under consideration
- No

**103. Has your government requested assistance with regard to improving the climate impacts of its investment treaties?**

- Yes
- Under consideration
- No

**104. If your government has requested assistance, please provide details.**

**105. Would your government be interested in contributing to helping governments address the climate impacts of investment treaties?**

*Comments may be included with a selected answer.*

- Yes
- Under consideration
- No

**106. Please indicate whether your government considers that the following types of help would be valuable. Choose as many as applicable.**

*Comments may be provided with regard to a selected answer.*

- Analysis of existing treaty practice addressing the climate
- Analysis of policy issues in addressing the climate in investment treaties
- Inter-governmental exchanges on policy goals and experiences
- Draft model provisions and commentary on scope of coverage of investment
- Draft model provisions and commentary on climate policy space
- Draft model provisions and commentary on alternatives to ISDS
- Input from experts on climate policies and outcomes in other fields
- Other

## ■ Multilateral and plurilateral climate policy commitments, and investment treaties

While there are multiple inter-governmental institutions and groups addressing climate policies, sustainable finance or the climate effects of trade and investment, it is not always clear whether governments have included investment treaties and their finance flows in their commitments and work. This section will help to identify applicable commitments as well as possible gaps in existing climate commitments, in particular relating to climate and finance.

### 107. Please indicate whether you consider that the following commitments are relevant for your government's investment treaties.

For convenience, Annex 1 to the Secretariat note above sets out links to a number of recent government climate commitments.

	The commitments are relevant for investment treaty policies	The commitments may be relevant for investment treaty policies	The commitments are not relevant for investment treaty policies	Not applicable (my government is not a party to the commitments)
UNFCCC (1992)				
Paris Agreement (2015)				
G20 Leaders' Declaration (Oct. 2021)				
G20 Sustainable Finance Roadmap (October 2021)				
G7 Leaders' Communiqué (June 2022)				
G7 Climate and Environment Ministers' Meeting Communiqué (May 2021)				
G7 Climate, Energy and Environment Ministers' Communiqué (May 2022)				
G7 Foreign Ministers' statement on climate, environment, peace and security (May 2022)				
Powering Past Coal Alliance Declaration (2017)				
Joint statement: Agreement on Climate Change, Trade and				

Sustainability (ACCTS) Trade Ministers' meeting (October 2021)				
Statement on International Public Support for the Clean Energy Transition (Nov. 2021)				
International Platform on Sustainable Finance (2019)				
Beyond Oil and Gas Alliance (BOGA) Declaration (2021-2022)				
Export Finance for Future (E3F) Statement of Principles (April 2021)				
Global Methane Pledge (2021)				

**108. For any commitment relevant or possibly relevant to investment treaty policies, please describe action taken to date by your government in relation to the commitment with regard to investment treaties.**

**109. Please identify additional multilateral or plurilateral government climate commitments that are or may be relevant to investment treaties.**

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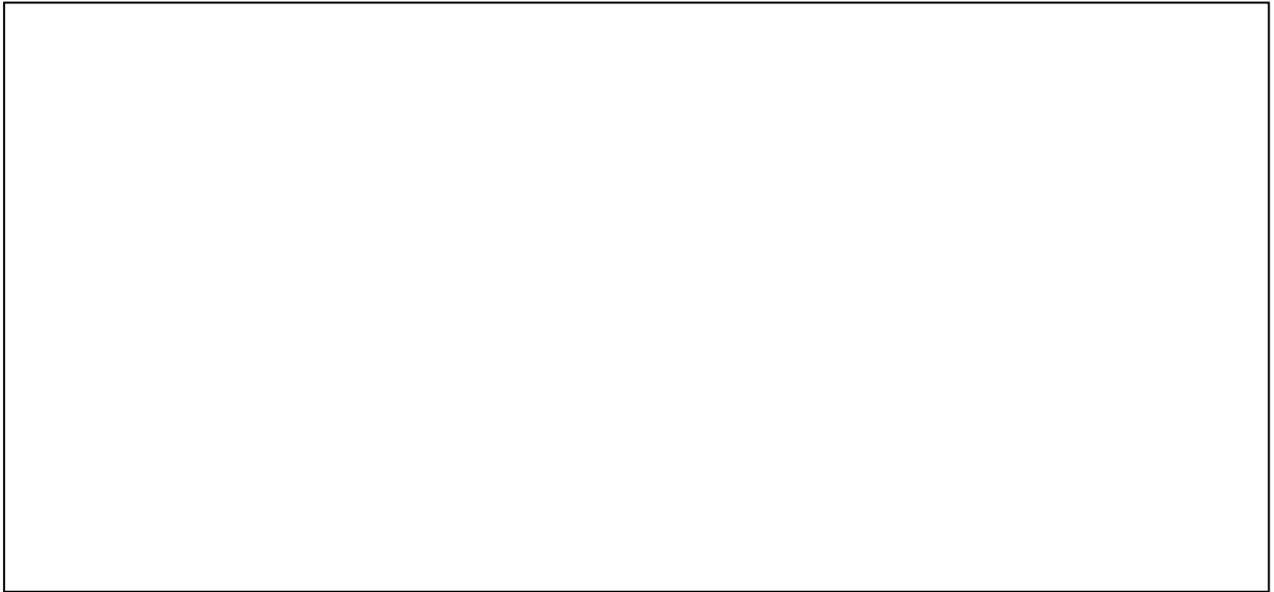
**110. Please indicate (i) whether your government has raised the issue of the climate impact of investment treaties in the groups or institutions set out below; and (ii) whether it plans to do so in the next year.**

*Check all that apply.*

	My government has raised the issue of the climate impact of investment treaties in this group or institution	My government has not raised the issue of the climate impact of investment treaties in this group or institution	My government expects to raise the issue of the climate impact of investment treaties in this group or institution within the next year	Not applicable (my government is not a party in this group or institution)
UNFCCC committees or working groups				
Paris Agreement committees or working groups				
G20 Leaders				
G20 Sustainable Finance Working Group				
Other G20 groups				
G7 Leaders				
G7 Climate and Environment Ministers				
G7 Foreign Ministers				
Other G7 groups				

Groups related to Network for Greening the Financial System (NGFS)				
Groups related to BRICS commitments on climate change				
Groups related to International Platform on Sustainable Finance				
Groups related to Powering Past Coal Alliance Declaration				
Groups related to Agreement on Climate Change, Trade and Sustainability (ACCTS) Trade Ministers				
Groups related to Statement on International Public Support for the Clean Energy Transition				

**111. Please identify other multilateral or plurilateral groups or institutions for which the climate impacts of investment treaties are or should be relevant considerations.**

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## ■ Unilateral commitments to climate measures affecting outward international investment

112. Has your government or its relevant agencies made unilateral climate commitments affecting outward international investment from your jurisdiction, such as commitments to cease or limit public support for coal-related projects?

- Yes
- No

113. If yes, please describe:

- (i) *your government's relevant commitments;*
- (ii) *its view on the application of the commitments to investment treaty policies with regard to existing and future treaties; and*
- (iii) *action taken under the commitment to date with regard to investment treaties.*

*Please address in particular unilateral commitments to cease or limit support for coal-related or other fossil fuel-related activities abroad.*

## ■ Other Measures

114. Please provide information on any other climate-related measures undertaken or under consideration with regard to your government's investment treaties.

## ■ Document upload

Files that are relevant to responses to the survey may be uploaded in the Lime Survey application. Please contact the Secretariat if your jurisdiction would like to provide additional files or provide them in a different manner. File(s) provided should be referred to in the relevant responses.

## ■ Contacts

Please provide name, title, email address, ministry or agency, department and unit for contact persons in your jurisdiction for this survey.

Contact person:

Additional contact person: