

Secretariat background note to the survey of climate policies for investment treaties

October 2022

Context

This OECD Secretariat note provides background information for the Survey of Climate policies for investment treaties. It was provided to governments invited to participate in Track 1 work in October 2022. The survey was originally included in Annex 2 of the note. The [note and the survey questions](#) were made available to the public at that time on the OECD website.

The survey was updated to December 2022 to extend the time for responses to 31 January 2023. In addition, a Word version of the survey was provided to governments to facilitate the preparation of responses across different departments (in addition to the original online Lime survey version). The questions in the survey remained the same. The body of the note was not updated to reflect the new date or availability of a Word version of the survey but remains otherwise relevant as an introduction to the survey.

For purposes of the 2023 Conference, the updated Dec. 2022 survey and this note (without its original Annex 2 survey) are provided separately on the Conference webpage.

Introduction

1. Frequent use of investment treaties for claims by investors in fossil fuels and other high-carbon activities has increased public awareness about interaction between investment treaties and climate outcomes. Some governments have begun to take action expressly and publicly on climate grounds for a small number of investment treaties. The survey in Annex 2¹ is the first to take stock of government climate policies and practices with regard to investment treaties. It forms part of the 2022 work plan on investment treaties and climate change at the OECD, and builds on an initial body of work and meetings on investment treaties and climate change including a January-March 2022 public consultation and a Conference in May 2022.²
2. Surveys and public reporting have become common practice in climate policy and climate accountability. A wide range of public, industry-led or civil society entities mandate, carry out or report on detailed climate surveys of or reports by business, financial actors, cities, states and others. They are particularly important for actors with broad influence on financial markets and operating companies and are frequently repeated on an ongoing basis, reflecting the urgency of tracking commitments and actions. Surveys have been carried out by the Bank of England, the Task Force on Climate Disclosure (TCFD) and Carbon Disclosure Project (CDP) among many other organisations. A wide range of further reporting- or information requirements are under development.³ The quality of reports and of climate exposure and action is also analysed by a host of public and private entities.⁴

1. Recent government climate commitments

3. The recognised urgency of addressing climate across most if not all government regulation and action has generated an unprecedented range of recent multilateral, plurilateral and unilateral government commitments to take action on climate. Government attention has expanded from environment ministries to finance and trade ministries, and to leaders.

¹ [As noted in the Context section above, the updated Dec. 2022 version of the survey is available separately on the Conference webpage. Annex 2 is accordingly not included herein.]

² The survey has been developed in accordance with the overall road map for Track 1 and the work program for 2022. [DAF/INV/TR1/WD(2022)1]. The timing for the survey was postponed to take account of many developments in climate policy and to benefit from public and expert input in the public consultation, meetings with governments and stakeholders, and the 2022 OECD Conference on Investment treaties and climate change.

³ See, e.g., US Securities and Exchange Commission, [Enhancement and Standardization of Climate-Related Disclosures, Fact Sheet](#) (2022); European Financial Reporting Advisory Group (EFRAG), [EFRAG launches a public consultation on the Draft European Sustainability Reporting Standards \(ESRS\) Exposure Drafts \(EDs\)](#) (2022); id., European Sustainability Reporting Standards (ESRS), [Exposure Draft ESRS E1: Climate Change](#) (2022); European Central Bank, [ECB Banking Supervision launches 2022 climate risk stress test](#) (2022); Maiko Morishita et al., [Japan Sustainable Finance Policy Update - October 2021 – January 2022](#) (noting that ‘Disclosure Working Group’ in the Financial Services Agency (FSA), is considering how Japan’s regulatory measures, through mandatory disclosure in securities reports, should include sustainability-related/non-financial corporate disclosures); IFRS, [Exposure Draft, \[Draft\] IFRS S2 Climate-related Disclosures](#) (2022); Fu Sha, [How should China improve climate disclosure in the finance sector?](#) (2022).

⁴ See, e.g., European Central Bank, [The state of climate and environmental risk management in the banking sector](#) (2021); Autorité des marchés financiers, ["TCFD" climate reporting in the financial sector: a study on reporting practices of 10 French institutions according to the Task Force on Climate-related Financial Disclosures framework](#) (2020).

4. Over 190 countries signed up to the Paris Agreement in 2015, which sets out a global framework for combating climate change. The Paris Agreement sets out two fundamental and innovative goals for government climate policies. First, governments set for the first time the clear objective of less than 2 degrees Celsius warming, with the stretch objective of 1.5 degrees. In the years since the Paris Agreement was signed, the need to limit warming to 1.5 degrees has become even stronger. In recent years, more than 130 countries have announced their ambitions to reduce emissions to net zero with many setting legally binding targets.
5. Second, governments expressly agreed on the objective to make “finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”. Paris Agreement, art. 2.1(c). This core objective, set out in the same article as the temperature goals, has two elements – a focus on finance flows and the aim to align them to low emissions.
6. In May 2022, G7 Climate, Energy and Environment Ministers recognised the urgent need to align finance flows in accordance with art. 2.1(c) of the Paris Agreement. They underlined the need to fully take into account climate and sustainability aspects in all relevant economic and financial decision-making processes:

We recognise the urgent need to align financial flows with the long-term goals of the Paris Agreement as required in Article 2.1.c. Making finance flows consistent with low-emissions and climate-resilient development is an objective of all Parties and we call on all countries to enhance the understanding of ways to implement and progress towards this goal. All relevant economic and financial decision-making processes need to fully take into account climate and sustainability aspects ... We note with concern the scale of private finance currently still supporting non-Paris aligned activities especially in the fossil fuel sector. We welcome private sector initiatives and voluntary commitments including through their active participation in the Glasgow Financial Alliance for Net Zero. Additionally, we underline the urgent need for the public sector to further enhance the enabling environments in all countries by adopting appropriate regulatory frameworks, policies and fiscal and economic levers in order to create more sustainable investment opportunities for private investors contributing to the implementation of NDCs.”⁵

7. Governments have also committed to specific action with regard to the financing of fossil fuels. For example, G20 Leaders committed in October 2021 to “put an end to the provision of international public finance for new unabated coal power generation abroad by the end of 2021”.⁶ In May 2022, all G7 members committed to “end new direct public support for the international unabated fossil fuel energy sector by the end of 2022, except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement”.⁷
8. The G7 Ministers also committed “to align our official trade, export and development finance policies towards these objectives ...” and stated that “we ... ended new direct government support for unabated international thermal coal-fired power generation by the end of 2021, including through ... investment”⁸

⁵ [G7 Climate, Energy and Environment Ministers’ Communiqué](#), para. 52 (May 2022).

⁶ [G20 Leaders’ Declaration](#), para. 28 (Oct. 2021).

⁷ [G7 Climate, Energy and Environment Ministers’ Communiqué](#) (May 2022), para. 74. A broader range of governments, but not all of the G7, made the same commitment in November 2021. [Statement on International Public Support for the Clean Energy Transition](#) (Nov. 2021).

⁸ [G7 Climate, Energy and Environment Ministers’ Communiqué](#) (May 2022), para. 74 (emphasis added).

Additional recent commitments addressing fossil fuels and trade and support policies include the [Beyond Oil and Gas Alliance \(BOGA\) Declaration](#), the [Export Finance for Future \(E3F\) Statement of Principles](#), and the [Powering Past Coal Alliance Declaration](#).

9. Annex 1 to this note lists these and other recent government climate commitments and identifies a range of working groups and other bodies working on climate issues. The information is provided for background for officials who may have had limited occasion to follow recent developments in climate policies. In addition, the commitments and bodies working on the climate are referenced in some survey questions. The information is necessarily incomplete and governments are encouraged to identify additional relevant climate commitments and working groups including in the survey.
10. While government commitments to take climate action have become frequent, it can be difficult to see changes in investment treaties or their associated finance flows. In addition, while there are multiple inter-governmental groups addressing sustainable finance or the climate effects of trade, it is unclear whether governments have included investment treaties and their finance flows in this work. Overall, despite the many initiatives and commitments, it is unclear if governments are addressing the alignment of investment treaty incentives with the Paris Agreement and sustainable finance in any other ongoing work.
11. The uncertainty and possible gaps make it valuable for governments to provide information on their climate policies for investment treaties as part of this ongoing OECD work. This survey provides a channel for government reflection, input and exchanges.
12. In order to address the broad range of existing investment treaties, jurisdictions with investment treaties that are also members of a Regional Economic Integration Organisation (REIO) that has concluded investment treaties as a Contracting Party are invited to respond with regard to their existing national treaties where the REIO is not a Party. Information about investment treaties where both the REIO and some or all of its member states are Parties can be supplied by the REIO, reflecting its individual member specificities as appropriate. Complementary information can also be supplied subsequently where needed.

2. Guidance for survey responses

13. The purpose of the survey is to receive input, and prompt reflection and action where appropriate. Given that both climate- and investment treaty policies impact a wide range of economic activities and government measures, responses should come from the government as a whole. It is expected that the primary respondents will be supervisors and members of investment treaty units. However, consultation with finance, environment, foreign affairs and trade ministries among others, as well as central banks, may be valuable. Developments such as the emerging importance of financed emissions or climate clubs may also be relevant to consider.
14. The Lime Survey software application used for this survey and generally for OECD substantive surveys of government policies is flexible. It can facilitate internal consultations where appropriate. A single unique “token” or code is provided to each jurisdiction by email. This ensures that each jurisdiction provides a single response on behalf of the jurisdiction as a whole. The token can be provided to staff

in interested ministries and agencies to allow them to access the Lime version of the survey and input information. The “Question index” allows users to see the structure of the question groups and to go directly to a particular group. The token allows for input and also submission of the responses. For ease of administration, jurisdictions can identify a principal contact person and additional contact persons for the survey.

15. Substantial time is being provided to respond to the survey. The survey can be circulated for review without the token. This can facilitate the preparation of preliminary input and development of a plan for the collection and treatment of various inputs through use of the token.
16. Submission of survey responses through the Lime survey software application is encouraged. Jurisdictions that are interested in completing the survey in pdf form are requested to contact the Secretariat.
17. Ninety-nine economies are invited to Track 1 and Track 2 OECD work on the Future of Investment Treaties. Many of the economies invited to Track 1 and 2, including the G20, have previously participated in work at the OECD on investment treaties. Over 60 economies have participated in work by the FOI Roundtable. The inclusion of additional economies in work on the Future of Investment Treaties is in its early stages and some economies have not yet engaged in the discussions. Consequently, for some economies, the survey will be more exploratory in nature.
18. In this context, two versions of the survey have been developed. The full survey has been prepared for economies with prior participation, large economies or extensive investment treaty networks. A shorter version of the survey will be sent some invited economies. Such jurisdictions may opt to respond to the full survey. The Secretariat will continue to engage in outreach including with economies that have recently been invited to the work on the Future of investment treaties.
19. While investment treaty units will be key recipients of the survey, it is valuable to inform other constituencies interested in climate policies in related areas. The survey questions are being made publicly available on the OECD website and the Secretariat will further distribute them to (i) OECD committees working on trade and the environment, and/or responsible business conduct; (ii) the National Focal Points for each jurisdiction under the UNFCCC⁹; and (iii) the Secretariat of the Network for Greening the Financial System (NGFS) to allow for distribution to central banks and supervisors that are members or observers of the NGFS.¹⁰
20. Responses to the survey will be confidential. The Secretariat expects to prepare an overview of responses for consideration by governments. The Secretariat (david.gaukrodger@oecd.org; investment@oecd.org) is also available to provide assistance and information to all participating governments.

⁹ UNFCCC, [National Focal Points](#).

¹⁰ The purpose of the NGFS is to help strengthen the global response required to meet the goals of the Paris Agreement and to enhance the role of the financial system to manage risks and to mobilize capital for green and low-carbon investments in the broader context of environmentally sustainable development. As of June 2022, the NGFS brings together 114 central banks and supervisors and 18 observers. Together, they represent five continents and more than 85% of global greenhouse gas emissions, and are responsible for the supervision of all of the global systemically important banks and 80% of the internationally active insurance groups. See NGFS, [NGFS publishes its 2022-2024 work program](#). The NGFS Secretariat is permanently provided by the Banque de France.

Annex 1: Links to climate commitments and climate working groups

1. [Paris Agreement](#) (2015) (art. 2)
2. [G20 Leaders' Declaration](#) (Oct. 2021) (para. 28)
3. [G20 Sustainable Finance Roadmap](#) (October 2021)
4. [G7 Leaders' Communiqué](#) (June 2022) (paras. 3-20)
5. [G7 Climate and Environment Ministers' Meeting Communiqué](#) (May 2021) (see, e.g., para. 33)
6. [G7 Climate, Energy and Environment Ministers' Communiqué](#) (May 2022) (see, e.g., paras. 52, 74)
7. [Joint Ministerial Statement, The Coalition of Finance Ministers for Climate Action](#) (12 October 2021)
8. [G7 Foreign Ministers' statement on climate, environment, peace and security](#) (May 2022)
9. [Powering Past Coal Alliance Declaration](#) (2017)
10. [Joint statement: Agreement on Climate Change, Trade and Sustainability \(ACCTS\) Trade Ministers' meeting](#) (October 2021); see also [Joint Leaders' Statement on the launch of the 'Agreement on Climate Change, Trade and Sustainability' \(ACCTS\) initiative](#) (Sept. 2019)
11. [Statement on International Public Support for the Clean Energy Transition](#) (Nov. 2021)
12. [International Platform on Sustainable Finance](#) (2019-2022)
13. [Beyond Oil and Gas Alliance \(BOGA\) Declaration](#) (2021-2022)
14. [Export Finance for Future \(E3F\) Statement of Principles](#) (2021)
15. [Global Methane Pledge](#) (2021)
16. [OECD, Agreement to end export credit support for unabated coal-fired power plants](#) (Oct. 2021)
17. Open and cooperative climate club ([G7 Leaders' communiqué](#), June 2022), para. 12
18. [OECD Inclusive Forum on Carbon Mitigation Approaches](#) (Meeting of the OECD Council at Ministerial Level, June 2022)