Model Clauses for Sustainable Investment in the Western Balkans Six

Background Information. The Western Balkans Six (WB6) has reached a stage of pursuing meaningful policy reforms at the intersection of investment and sustainability within the context of the EU integration process. At this juncture, the region is carving out the space for a green transition and a stronger contribution to sustainable development. In this dynamic and evolving context, governments should make use of their regulatory space, anticipate emerging needs, and ensure that measures related to sustainable investment regulation are transparent. The model clauses are designed to support the WB6 in negotiating investment treaties and contracts with foreign investors that incorporate sustainability considerations, while also serving as a reference for legislative reforms in the field of investment. They provide illustrative language that can serve as a baseline for each WB6. Developed under the WB6 Joint Working Group on Investments (JWGI), the clauses reflect best regional, EU, and international practices and standards, adapted to the WB6 context. They build on the Recommendation on Sustainable Foreign Direct Investment in the Western Balkans Six, developed under the Common Regional Market Action Plan 2025-2028 (CRM2), and the WB6 Regionally Accepted Standards for Negotiating IIAs. The model clauses, in many instances, move beyond aspirational or declaratory language, setting out concrete substantive and procedural standards to advance sustainable investment. In the context of negotiating investment treaties or contracts, or developing legislation, each WB6 may determine the most appropriate provisions, their arrangement, and final formulation in line with its priorities, while also working towards a common regional approach that reflects shared objectives and aligns with EU and international best practices. Note: The model clauses compiled here include only those most directly related to sustainability. However, there are other clauses typically contained in treaties and similar instruments that are also important from a broader perspective. The model language is provided below.

Preamble

(...)

RECOGNISING the importance of fostering economic cooperation and investment to promote prosperity and sustainable development;

DESIRING to create a stable and predictable environment for investment that balances the rights and obligations of investors and governments, while respecting regulatory policy space and protecting legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living and non-living exhaustible natural resources, integrity and stability of the financial system, and public morals;

COMMITTED to promoting investments that contribute to sustainable development, including economic growth, environmental protection, and social progress, in alignment with internationally recognised principles;

REAFFIRMING their commitment to the Charter of the United Nations and having regard to human rights, including labour rights and gender equality, as integral to responsible investment practices;

ACKNOWLEDGING the need to ensure that investment activities do not undermine environmental standards or the well-being of communities;

ENCOURAGING transparent and inclusive investment policies that support regional integration and equitable economic opportunities for all;

REAFFIRMING each Party's right to adopt and enforce measures necessary to pursue legitimate policy objectives such as social, environmental, security, public health and safety, and the promotion and protection of cultural diversity;

NOTING the disparities in economic development levels and scale between the markets; and

SEEKING to maintain the equilibrium between the interests of investors and the investment host.

(...)

Article Definition of Investment

"Sustainable Investment" means a foreign investment that, beyond investors' returns, contribute in a substantial and demonstrable manner to the economic, social, and environmental objectives of the investment host, as listed in key development policies and aligned with the SDGs, while ensuring no or minimal harm to the investment host.

A Sustainable Investment shall:

a) contribute positively to at least one environmental or social objective, measured through internationally recognised indicators (e.g. SDG targets, EU Taxonomy, WB6 Sustainable Finance Taxonomy, ESG standards, or other equivalent global standards);

b) do no or minimal harm to other environmental or social objectives, consistent with recognised international best practices; and

c) be undertaken by an investor or enterprise that adheres to good governance practices, including sound management structures, employee relations, respect for human rights, and compliance with applicable laws.

A Sustainable Investment shall be determined in accordance with international standards and best practices, including those developed by the United Nations, the World Bank, other relevant guidelines, as well as the terms of a specific project, concession, or contract when concluded with a foreign investor.

Article Denial of Benefits

1. A Contracting Party may at any time deny the benefits of this Agreement, including access to investment dispute settlement, to an investor and its investments if:

a) the investor is a juridical person owned or controlled, directly or indirectly, by persons of a non-Contracting Party and does not conduct substantial business activities within the jurisdiction of the Contracting Party under whose laws it is constituted;

b) the investor's activities fail to meet the requirements of a Sustainable Investment, as defined in this Agreement, by causing significant harm to the host's economic, social, or environmental objectives, or by violating its laws or regulations related to human rights, environmental protection, or anti-corruption;

c) an investment has been established or restructured with the primary purpose of gaining access to the dispute settlement mechanism under this Agreement;

d) an investor or investment is engaged in activities prejudicial to the essential public interests of the investment host;

e) an investor has committed a serious breach of a specific binding obligation under this Agreement.

For the avoidance of doubt, the exercise by an investment host of its right to deny benefits to an investor of another Party and the investment of such investor may be the subject of review in accordance with Article {xx} of this Agreement.

2. The Contracting Parties shall, to the extent possible, cooperate to ensure consistent application of this Article, including through:

a) sharing information on investors or investments that fail to meet Sustainable Investment requirements; and

b) developing guidelines to align denial of benefits decisions with human rights and sustainable development objectives.

Article Corporate Social Responsibility (CSR) and Responsible Business Conduct (RBC)

1. Investors are encouraged and expected/obliged to conduct their activities in a manner consistent with internationally recognised standards on corporate social responsibility (CSR) and responsible business conduct (RBC), including but not limited to the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Investors shall ensure that their operations:

a) respect human rights, including the rights to non-discrimination, decent work conditions, and freedom of association, as defined under applicable international human rights law and the laws of the investment host;

b) comply with environmental protection laws and regulations of the host and strive to exceed minimum standards by adopting practices that minimise environmental harm and promote sustainable resource use;

c) adhere to anti-corruption laws and international standards, including transparent business practices and due diligence to prevent bribery and illicit financial flows; and

d) contribute to the sustainable development objectives of the investment host, such as through job creation, skills development, technology transfer, or community engagement initiatives.

2. Investors are encouraged/obliged to adopt and implement voluntary codes of conduct or industry-specific standards that promote CSR and RBC, including but not limited to sector-specific guidelines on sustainable resource management, renewable energy, or fair labour practices. Contracting Parties may/shall:

a) establish or support mechanisms, such as ombudsman offices or contact points, to monitor investor compliance with CSR and RBC standards;

b) provide incentives, such as tax benefits or streamlined permitting processes, for investments that demonstrate measurable contributions to sustainable development goals, including climate change mitigation, gender equality, or poverty reduction;

c) facilitate dialogue between investors, local communities, and other stakeholders to promote transparency and address concerns related to investment impacts; and

d) encourage early community engagement and the pursuit of social licenses to foster mutual understanding and support between investors and local communities, recognising that such engagement may be governed by constitutional provisions, regulations or guidelines of the host, or other international best practices.

3. Non-compliance with the recommendations/obligations under paragraphs 1 and 2 may/shall result in the loss of protections under this Agreement failing which it may be considered by the host or a dispute settlement body as a basis for assessing the investor's claims or defences. Persistent or egregious violations of human rights, environmental, or anti-corruption laws may/shall lead to the denial of benefits under this Agreement, subject to due process and transparent procedures.

4. The Contracting Parties may/shall cooperate to promote awareness of CSR and RBC standards among investors, including through capacity-building programs, information sharing, and the development of joint guidelines.

Such cooperation may include joint initiatives to support small and medium-sized enterprises (SMEs) in adopting responsible business practices.

Article Climate Change and Clean Energy Transition

1. The Contracting Parties recognise the urgent need to pursue the objectives of the United Nations Framework Convention on Climate Change (UNFCCC) and the goals of the Paris Agreement to address climate change and its adverse impacts, while promoting sustainable development and respecting human rights.

2. The Contracting Parties commit to promoting investments that contribute to climate change mitigation and adaptation, particularly in energy-related sectors, by:

a) encouraging investments in renewable energy, energy efficiency, and low-carbon technologies that align with the investment host's NDCs under the Paris Agreement (where applicable) and related legislation.

b) supporting projects that enhance climate resilience, such as infrastructure for sustainable water management, disaster risk reduction, or ecosystem restoration; and

c) facilitating technology transfer and capacity building to support the clean energy transition, particularly for small and medium-sized enterprises (SMEs) and local communities.

3. Investors are obliged to conduct their investments in a manner consistent with the investment host's climate change policies and environmental laws, and are expected to make best efforts to:

a) conduct environmental and social impact assessments, in accordance with applicable laws and regulations, prior to initiating or expanding investments that may have significant environmental or climate-related impacts;

b) adopt measures to minimise greenhouse gas emissions and environmental degradation, in line with international standards such as the Task Force on Climate-related Financial Disclosures (TCFD) recommendations.

4. Each Contracting Party retains the right to adopt, maintain, or enforce measures necessary to achieve climate change

mitigation and adaptation objectives, including regulations to promote clean energy transitions or protect environmental and human rights, provided that such measures are applied in a transparent and non-arbitrary manner and are not used as a means of disguised restriction on investment.

For greater certainty, the change, reduction or withdrawal of an investment subsidy, including where it may adversely affect the operation of covered investments or the investor's expectations of profits, shall not, in and of itself, constitute an automatic breach of this Agreement. The Contracting Parties shall ensure that such measures are not applied to restrict sustainable investments within their markets.

5. In rendering any decisions or orders under the applicable investment dispute settlement mechanism involving climate change or clean energy transition measures of the host, an arbitral tribunal or other competent authority shall take into account:

a) the commitments and obligations of the Contracting Parties under the UNFCCC and the Paris Agreement;

b) the investment host's climate change policies and measures aimed at achieving sustainable development goals; and

c) the investor's compliance with the obligations set out in paragraph 3 of this Article, including the outcomes of environmental and climate impact assessments and community consultations, where applicable under the legislation of the investment host.

6. The Contracting Parties shall, to the extent possible, cooperate to promote investments that support the clean energy transition and climate resilience, including through:

a) sharing best practices and technical expertise on climate-friendly investment policies;

b) developing regional guidelines or incentives for investments in renewable energy, energy efficiency, or climate adaptation projects; and

c) establishing mechanisms, such as joint committees or working groups, to monitor and evaluate the contribution of investments to climate change objectives.

Article Right to Regulate

1. The Contracting Parties reaffirm their right to adopt, maintain, or enforce measures necessary to pursue legitimate public policy objectives, including, but not limited, to the protection of human rights, public health, labour standards, environmental sustainability, and climate change mitigation and adaptation, as well as the regulation of essential social services such as health and education, and the management of natural resources, provided such measures are applied in a non-arbitrary and non-discriminatory manner.

2. The Contracting Parties may adopt or maintain measures to promote sustainable development, including:

a) incentives, such as tax credits or expedited permitting, for investments that contribute to renewable energy, energy efficiency, or other climate-friendly initiatives aligned with the Paris Agreement;

b) regulations requiring environmental or social impact assessments for investments in sectors with significant potential impacts on the environment, human rights, or local communities; and

c) standards to ensure compliance with international labour obligations, including those under the International Labour Organisation (ILO) conventions, to protect workers' rights and promote decent work conditions.

3. In the event that a regulatory measure adversely affects an investment, the Contracting Party shall, where practicable, engage in dialogue with the affected investor to explore alternative measures or mitigation strategies that balance the public policy objective with the investor's legitimate investment-backed expectations. Such dialogue shall not prejudice the Contracting Party's right to regulate or delay the implementation of necessary measures.

4. In any dispute under the applicable investment dispute settlement mechanism, an arbitral tribunal or other competent authority:

a) recognise the Contracting Parties' right to regulate as set out in this Article and refrain from substituting its judgment for that of the investment host in matters of public policy;

b) consider whether the challenged measure was applied in a non-arbitrary and non-discriminatory manner; and

c) take into account the investor's compliance with applicable human rights, environmental, and labour standards when

assessing claims or defences related to the measure.

5. The Contracting Parties shall, where feasible, cooperate to harmonise and strengthen regulatory frameworks to support sustainable development and human rights, including through:

a) sharing best practices on designing regulations that balance investment promotion with public policy objectives;

b) developing regional guidelines or standards for environmental and social impact assessments; and

c) establishing joint mechanisms, such as working groups or regional forums, to monitor and evaluate the impact of regulatory measures on sustainable development goals.

Nothing in this Article shall be construed to prevent a Contracting Party from adopting or maintaining measures relating to taxation, subsidies, grants, public procurement, or other sensitive sectors, provided such measures are applied in a non-arbitrary and non-discriminatory manner.

Article Non-derogation Clause

1. Neither Contracting Party shall waive or otherwise derogate from, or offer to waive or derogate from, its environmental or labour laws in a manner that reduces protections afforded in those laws as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its respective market.

Article Investor Obligations

1. Investors shall ensure that their investments qualify as Sustainable Investments, as defined in this Agreement, by contributing to the host's economic, social, and environmental objectives, including through job creation, technology transfer, and sustainable resource management, while ensuring no or minimal harm to the host's human rights, environment, or public welfare.

2. Investors shall comply with applicable laws and regulations of the investment host, including those related to:

a) human rights, such as non-discrimination, freedom of association, and the right to decent work conditions, taking into account international standards such as the UN Guiding Principles on Business and Human Rights;

b) environmental protection, including regulations on pollution control, biodiversity preservation, and climate change mitigation, consistent with the investment host's commitments under the Paris Agreement; and

c) anti-corruption, including measures to prevent bribery, money laundering, and illicit financial flows, in line with international standards such as the OECD Anti-Bribery Convention.

3. Investors shall conduct due diligence to identify, prevent, mitigate, and account for adverse impacts of their investments on human rights, the environment, and local communities. This due diligence shall include:

a) undertaking risk-based assessments prior to initiating or expanding an investment to evaluate potential impacts on human rights, labour conditions, and the environment;

b) consulting with local communities where the investment is likely to have adverse impacts on their rights, environment, or socio-economic conditions, ensuring consultations are inclusive, transparent, and conducted in good faith;

c) implementing mitigation measures to address identified risks, incorporating feedback from consultations where feasible; and

d) publicly reporting, at least annually, on due diligence outcomes, mitigation measures, and contributions to Sustainable Investment objectives, in a format accessible to the investment host's authorities and the public.

4. Investors shall maintain adequate records of their compliance with the obligations under this Article and provide such records to the host's Focal Point (FP) or designated authority upon request, to verify adherence to Sustainable Investment criteria and applicable laws.

5. Non-compliance with the obligations under this Article may/shall:

a) result in the loss of protections under this Agreement, including access to investment dispute settlement, if the violations are persistent or egregious, subject to due process as outlined in the Denial of Benefits Article; or

b) be considered by an arbitral tribunal or other competent authority in assessing the investor's claims or defences,

particularly with respect to compliance with Sustainable Investment criteria and investment host laws.

Article Focal Points

1. Each Contracting Party shall establish or designate a Focal Point (FP) to promote and facilitate Sustainable Investments, as defined in this Agreement, in a manner that advances the host's economic, social, and environmental objectives, including those aligned with the Sustainable Development Goals (SDGs).

2. The Focal Point shall, to the extent possible and determined in their mandate, have the following responsibilities:

a) provide investors with accessible information on laws, regulations, and policies related to Sustainable Investments, including requirements for environmental, social, and human rights compliance;

b) facilitate dialogue between investors, local communities, and other stakeholders to ensure that investments align with the investment host's sustainable development priorities, such as job creation, technology transfer, and climate change mitigation;

c) monitor and evaluate the contribution of investments to the investment host's sustainable development objectives, including through periodic reviews of project compliance with environmental and social standards; and

d) serve as a point of contact to address concerns or complaints from investors, local communities, or other stakeholders regarding the impacts of investments, ensuring transparent and inclusive resolution processes.

3. The Focal Point shall cooperate with relevant authorities and, where applicable, regional or international organisations to:

a) develop guidelines or best practices for assessing whether investments meet the criteria for Sustainable Investment, as defined in this Agreement, in accordance with legislation and international standards;

b) provide capacity-building support to investors, particularly small and medium-sized enterprises (SMEs), to enhance compliance with human rights, environmental, and labour standards; and

c) coordinate with other Contracting Parties' Focal Points to share data, best practices, and lessons learned on promoting Sustainable Investments.

4. In the context of investment dispute settlement under this Agreement, the Focal Point may provide information to an arbitral tribunal or other competent authority, upon request and approval, regarding an investor's compliance with Sustainable Investment criteria, including adherence to human rights, environmental, and social standards, to assist in assessing claims or defences.

Article Participation In Multilateral International Investment Agreement Reform Model Clause (Cooperation Provision):

The Contracting Parties agree to cooperate in international forums and processes that aim to reform international investment law and to promote sustainable investment, and shall jointly support efforts to develop coherent, inclusive, and future-proof global frameworks for sustainable investment.