

In view of the Commission's transparency policy, the Commission is publishing the text of the EU-China Investment Agreement following the agreement in principle announced on 30 December 2020.

The text is published for information purposes only and may undergo further modifications as a result of the process of legal and technical revision, including of the final structure (such as numbering, sequencing, or titles of articles, or any duplication). However, in view of the growing public interest in the negotiations, the text is published at this stage of the negotiations for information purposes. This text is without prejudice to the final outcome of the agreement between the EU and China.

The text will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

Section IV: Investment and sustainable development

Sub-section I: Context and objectives

Article 1 Overarching principles

1. The Parties recall the relevant international documents with regard to sustainable development in particular the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalisation of 2008 and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want", the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals, and the 2019 ILO Centenary Declaration for the Future of Work and reaffirm their commitment to promote the development of investment in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations, and to ensure that this objective is integrated and reflected in their investment relationship.
2. The Parties are committed to pursue sustainable development, and recognize that economic development, social development and environmental protection are interdependent and mutually reinforcing dimensions of sustainable development.

Article 2 Corporate Social Responsibility

1. The Parties recognise the important contribution of Corporate Social Responsibility or Responsible Business Conduct to strengthening investment's positive role in sustainable growth, and in this way contributing to the objectives of this Agreement.
2. Each Party agrees to promote responsible business practices, including by encouraging the voluntary uptake of relevant practices by businesses, taking into account relevant internationally recognised guidelines and principles, such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of

Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises.

3. The Parties commit to exchanging information and, as appropriate, cooperating on promoting responsible business practices.

Article 3 [...]

1. Each Party, in accordance with its domestic laws and [Transparency provisions], shall ensure that measures of general application, including implementing measures, on matters related to this [Section] are proposed and adopted in a transparent manner providing reasonable opportunities for the public, including non-state stakeholders, to submit their views.

2. The Parties shall hold regular discussions and exchanges of views on the elements of this [Section] in the Investment Committee. In this regard, the Parties shall seek views of their non-state stakeholders, in a balanced representation of interests across all three dimensions of sustainable development. Each Party shall receive written communication on matters related to this [Section] and refer the relevant ones for due consideration by the Investment Committee.

3. The Parties may facilitate the meetings of non-state stakeholders on matters related to this [Section] in accordance with domestic law.

Article 4 Review of sustainability impacts

The Parties recognise the importance of reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development through their respective processes and institutions.

Sub-Section 2: Investment and Environment

Article 1 Right to regulate

The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or modify its relevant laws and policies accordingly, consistently with its multilateral commitments in the fields of labour and environment.

Article 2 Levels of protection

1. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.
2. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in their domestic environmental laws.

3. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental laws as an encouragement for the establishment, acquisition or retention of an investment or an investor in its territory.
4. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental laws, as an encouragement for investment.
5. The Parties recognize that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction results from a good faith decision regarding the allocation of resources in accordance with its priorities for enforcement of its environmental laws.
6. A Party shall not apply domestic environmental laws in a manner that would constitute a disguised restriction of investment or an unjustified discrimination between investors and investments of the Parties.

Article 3

Dialogue and cooperation on investment-related environmental issues

The Parties recognise the value of the United Nations Environment Assembly (UNEA) of the United Nations Environment Program (UNEP) and multilateral environmental agreements in tackling global and regional environmental challenges, and stress the need to enhance the mutual supportiveness between investment and environmental policies. In this context, the Parties agree to dialogue and cooperate as appropriate on investment-related environmental issues of mutual interest arising under this Section in a manner complementary to their efforts under existing bilateral and multilateral mechanisms.

Article 4

Multilateral environmental agreements

Each Party is committed to effectively implement the multilateral environmental agreements to which it is a party. The Parties shall regularly exchange information on their respective situation and developments as regards ratifications and implementation of Multilateral Environmental Agreements or amendments to such agreements in a manner complementary to the exchanges under the multilateral mechanisms.

Article 5

Investment favouring green growth

In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its environmental aspects, the Parties:

- a. shall facilitate and encourage investment in environmental goods and services,
- b. agree to co-operate by exchanging experiences and good practices related to environmental impact assessments in respect of investments which are likely to have significant impact on the environment.

Article 6

Investment and Climate Change

Recognising the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) and the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC at its 21st session (the Paris Agreement) in order to combat climate change and its impacts and committed to enhance the contribution of investment to climate change mitigation and adaptation, each Party shall:

- a. effectively implement the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contributions;
- b. promote and facilitate investment of relevance for climate change mitigation and adaptation; including investment concerning climate friendly goods and services, such as renewable energy, low-carbon technologies and energy efficient products and services, and by adopting policy frameworks conducive to deployment of climate-friendly technologies;
- c. cooperate with the other Party on investment-related aspects of climate change policies and measures bilaterally and in international fora, as appropriate.

Sub-Section 3 – Investment and Labour

Article 1 Right to regulate

The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or modify its relevant laws and policies accordingly, consistently with its multilateral commitments in the fields of labour¹ and environment.

Article 2 Levels of protection

1. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.
2. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in domestic labour laws.
3. A Party shall not waive or derogate from, or offer to waive or derogate from, its labour laws as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.
4. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws, as an encouragement for investment.
5. The Parties recognize that with respect to the enforcement of labour laws, a Party is in compliance with paragraph 4 if a course of action or inaction results from a good faith

¹ For greater certainty, when labour is referred to in this Article, it includes social protection.

decision regarding the allocation of resources in accordance with its priorities for enforcement of its labour laws.

6. The Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards cannot be used for protectionist purposes. A Party shall not apply domestic labour laws in a manner that would constitute a disguised restriction of investment or an unjustified discrimination between investors and investments of the Parties.

Article 3

Dialogue and cooperation on investment-related labour issues

The Parties agree to dialogue and cooperate as appropriate on investment-related labour issues of mutual interest arising under this Section in a manner complementary to the efforts under existing bilateral and multilateral mechanisms.

Article 4 [...]

1. Each Party, in accordance with its obligations assumed as a member of the International Labor Organization (“ILO”), and its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, shall respect, promote and realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions.

2. Each Party is, in accordance with the commitments of the members of the ILO and the 2019 ILO Centenary Declaration for the Future of Work, committed to effectively implement the ILO Conventions it has ratified and work towards the ratification of the ILO fundamental Conventions. In particular, in this regard, each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions No 29 and 105, if it has not yet ratified them. The Parties will also consider the ratification of the other Conventions that are classified as "up to date" by the ILO.

Article 5

Investment favouring decent work

In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its labour aspects, the Parties agree to promote investment policies which further the objectives of the Decent Work Agenda, in accordance with the 2008 ILO Declaration on Social Justice for a Fair Globalisation, and the 2019 ILO Centenary Declaration for the Future of Work, including a human-centred approach to the future of work, adequate minimum wages, social protection and safety and health at work.

Sub-section 4 Mechanism to Address Differences

Article 1

Consultations

1. In the event of disagreement on any matter covered under this Section, the Parties shall only have recourse to the procedures established under this Sub-section. Section X (State to State Dispute Settlement) does not apply to this Section.
2. In case of any disagreement referred to in paragraph 1, a Party may request consultations with the other Party by delivering a written request to the other Party.
3. The request for consultations shall set out the reasons for the request, including information that is specific and sufficient for consideration and response, the identification of the matter, and an indication of the legal basis of the request.
4. The Party to which the request for consultations is made shall enter into consultations with the requesting Party within 30 days after receipt of the request, or any longer period agreed by both Parties.
5. During consultations each Party shall provide sufficient factual information related to the matter, with a view to arriving at a mutually satisfactory resolution of the matter.
6. The Parties, by mutual agreement, may seek information from international organizations, such as the ILO or relevant multilateral environmental organizations in which both Parties participate.
7. The consultations, including the information disclosed and positions taken by the Parties during the consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

Article 2 **Mutually agreed solution**

The Parties may reach a mutually agreed solution to a disagreement at any time. The Parties shall comply with a mutually agreed solution, and take the measures necessary to implement it.

Article 3 **Panel of Experts**

1. If the disagreement has not been satisfactorily resolved through consultations within 120 days, or a longer period agreed by both Parties, after the delivery of the request for consultations, a Party may request, by delivering a written request to the other Party, the establishment of a Panel of Experts to examine the matter.
2. The request shall indicate whether consultations were held, identify the specific measure at issue and briefly explain how that measure affects the application of the relevant provisions in the Sustainable Development Chapter and investment between the Parties in a manner sufficient to present the legal basis clearly. The Panel of Experts is deemed established when the request is delivered to the other Party.
3. The Panel of Experts shall be composed of three members. The Parties shall consult in order to reach an agreement on its composition.

4. If the Parties fail to reach an agreement on the composition of the Panel of Experts within 30 days of the delivery of the request for the establishment of a Panel of Experts, the chairperson shall be selected by lot from the sub-list of chairpersons established under paragraph 7 and each Party shall designate one expert from the sub-list of that Party established under paragraph 7 within 10 days. If a Party fails to designate an expert within that time period, the expert shall be selected by lot from the sub-list of that Party within 5 days.

5. Should any of the lists provided for in paragraph 7 not be established, the expert shall be selected by lot from the individuals formally proposed for that list, within the same time-period.

6. The date of composition of the Panel of Experts shall be the date on which all three selected experts have accepted their appointment. The date of composition of the Panel of Experts shall be made publicly available without delay.

7. At the latest within one year of entry into force of this agreement, the Investment Committee shall establish a list of individuals who are willing and able to serve as experts. The list shall be composed of three sub-lists. Each Party shall propose a sub-list and the third sub-list shall consist of individuals that are not nationals of either Party and who shall serve as chairperson to the Panel of Experts. Each sub-list shall include at least four individuals. Every three years, the list shall be reviewed if a Party so requests. The list may also be reviewed at any moment upon a duly justified request of a Party.

8. The list shall comprise individuals who shall have specialised knowledge of, or expertise in, international labour law or international environmental law, or relevant aspects of international trade or investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party. They shall comply with the Code of Conduct, as set out in Annex X.

9. The Panel of Experts shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case.

10. Unless the Parties agree otherwise within 10 days from the date of the establishment of the Panel of Experts, the terms of reference of the Panel of Experts shall be: "To examine, in the light of the relevant provisions in the Sustainable Development Chapter, the matter referred to in the request for the establishment of the Panel of Experts, and to issue reports, in accordance with Article 4, making recommendations for the solution of the matter."

11. The Panel of Experts shall examine the matter in accordance with the Sustainable Development Chapter and interpret the provisions therein in accordance with customary rules on interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties.²

12. The Panel of Experts, after consulting with the Parties, may decide any procedural question not covered by this sub-section in a way that is compatible with the provisions in this sub-section, including by considering similar questions in other parts of the Agreement.

² For greater certainty, this is without prejudice to any consideration of the domestic law of the Party concerned, where relevant, as a matter of fact.

13. At the request of the complaining Party or both Parties, the Panel of Experts may, after giving the Parties an opportunity to comment, suspend its work at any time for a period not to exceed 12 months. If a Party does not request the resumption of the Panel of Expert's work at the expiry of the suspension period, the authority of the Panel of Experts shall lapse.

14. On request of a Party, or at its own initiative, the Panel of Experts may seek any information, technical advice, or expert opinion it deems appropriate³. Any such information, technical advice or expert opinion shall be disclosed to the Parties and the Parties may provide comments on it.

Article 4 **Reports and Follow-up Consultations**

1. The Panel of Experts shall deliver an interim report to the Parties within 150 days after the date of composition of the panel.

2. Each Party may comment the interim report within 10 days of its delivery. A Party may comment on the other Party's comments within 10 days of the delivery of such comments.

3. The Panel of Experts shall issue the final report to the Parties no later than 180 days from the date of its composition. The final report shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations.

4. The Panel of Experts shall make every effort to make its recommendations by consensus. If the Panel of Experts is unable to reach consensus, it shall decide by majority vote.

5. The deliberations of the Panel of Experts shall be confidential.

6. The final report of the Panel of Experts shall be made publicly available no later than 15 days after the issuance to the Parties, subject to the protection of confidential information.

7. The Parties shall consult within 30 days after the issuance of the final report of the Panel of Experts, and discuss measures to address the matter, based on the report. The agreed outcome shall be made publicly available, unless otherwise mutually decided. The Parties may receive views on the implementation of the measures through the mechanism referred to under [Article 3, Sub-section 1, Section IV].

Article 5 **Transparency of the proceedings**

1. A party making a request for consultations or a request for the establishment of a Panel of Experts shall make that request publicly available without delay, subject to the protection of confidential information.

2. Each Party may make its submissions or statements to the Panel of Experts publicly available, subject to the protection of confidential information.

³ Before seeking technical advice or an expert opinion the Panel of experts shall consult with the Parties.

3. Any hearing of the Panel of Experts shall be open to the public unless otherwise provided, and subject to the conditions set out below.
4. Based upon the timetable determined by the Panel of Experts, after consulting with the Parties and the other members of the Panel of Experts, the chairperson of the Panel of Experts shall notify the Parties of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public. Unless a Party disagrees, the Panel of Experts may decide not to convene a hearing.
5. The hearing shall be open to the public, unless the Parties decide that the hearing shall be partially or completely closed to the public. If the hearing is open to the public, the following conditions apply, unless the Parties agree otherwise:
 - (a) public viewing shall take place via simultaneous or delayed closed circuit television broadcasting in a separate viewing room at the venue of the hearing;
 - (b) registration for public viewing of the hearing shall be required and the Panel of Experts may decide on further logistical arrangements, in particular by limiting the number of places and allocating them on a first-come first-served basis; and
 - (c) no audio or video recording, photography, or webstreaming shall be permitted in the viewing room.
6. The openness of a hearing shall not affect the work of the Panel of Experts.
7. Notwithstanding paragraph 3, the Panel of Experts shall meet in closed session when the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of the hearings where the hearings are held in closed session.

Article 6 **Amicus Curiae Submissions**

1. Unless the Parties agree otherwise within five days of the date of the establishment of the Panel of Experts, natural persons of a Party or legal persons established in the territory of a Party, who are independent from the governments of the Parties, may deliver unsolicited written submissions to the Panel of Experts, provided that they:
 - (a) are received by the Panel of Experts within 10 days after the panel was composed;
 - (b) are concise and in no case longer than 20 pages, including any annexes typed at double space;
 - (c) are directly relevant to a factual or a legal issue under consideration by the Panel of Experts;
 - (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives, the source of its financing, and any controlling entity;

- (e) disclose any connection with a Party;
 - (f) specify the nature of the interest that the person has in the proceedings; and
 - (g) are drafted in the working language[s] chosen by the Parties.
2. The submissions shall be delivered to the Parties, who are allowed but not required to make comments.
 3. The Panel of Experts shall annex to its report a list of all the persons having made an amicus curiae submissions that complied with the conditions set out in paragraph 1. The Panel of Experts shall not be obliged to address in its report the arguments made in such submissions.
 4. The Panel of Experts shall ensure that the amicus curiae submissions do not disrupt the proceedings or unduly burden or unfairly prejudice either Party.