



# Rethinking Investment Treaties Public Consultations

A summary report

IISD REPORT



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### **Rethinking Investment Treaties Public Consultations: A summary report**

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Photo: iStock

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Any remaining errors or omissions are our own.



# Executive Summary

## About the Survey

If we were building the investment treaty regime from scratch today, what policy problems should the regime seek to solve, and how should it contribute to solving them?

This was the question that inspired the 2023 International Institute for Sustainable Development (IISD) report [Rethinking Investment Treaties: A Roadmap](#). Instead of tinkering with the existing 20th-century model of investment treaties that has [failed in delivering on its promise](#), the answer to this core question will point to various problems of international investment governance—issues where cooperation between states is both desirable and necessary.

Following the 2023 report, IISD launched a public consultation on the Rethinking Investment Treaties project in June 2025 that ran until September, seeking input on policy priorities and design from policy-makers, investors, experts, academics, and other members of the investment community. In these consultations, we received more than 60 responses.

The IISD Rethinking Investment Treaties public consultation was designed as a two-part survey. The main survey first asked the respondents to choose and rank what they considered to be the most pressing policy problems of investment governance, before asking them questions about the best tools to address these issues, as well as about the potential role of treaties in solving them.

The second survey was optional and was designed to focus on more technical aspects of investment treaty reform. The topics addressed were as follows: a) support of specifically sustainable investment, b) impact of the number of parties on the treaty's content, compliance mechanisms, and c) treaties' role in helping scale up renewable energy investments.

Most respondents came from academia and research (42%), followed by the government and public sector (23.2%), and civil society (13%). In terms of regions, the highest number of respondents were based in Europe (37.7%), followed by Africa (27.5%), and South America and the Caribbean (11.60%). In terms of gender, most respondents identified themselves as men (62%), whereas a minority identified as women (38%).

IISD Rethinking Investment Treaties is part of a broader project on [Rethinking International Investment Governance](#) that aims to assist in reforming the main tools of investment governance: treaties, [investment laws](#), and contracts.



## Results of Main Survey

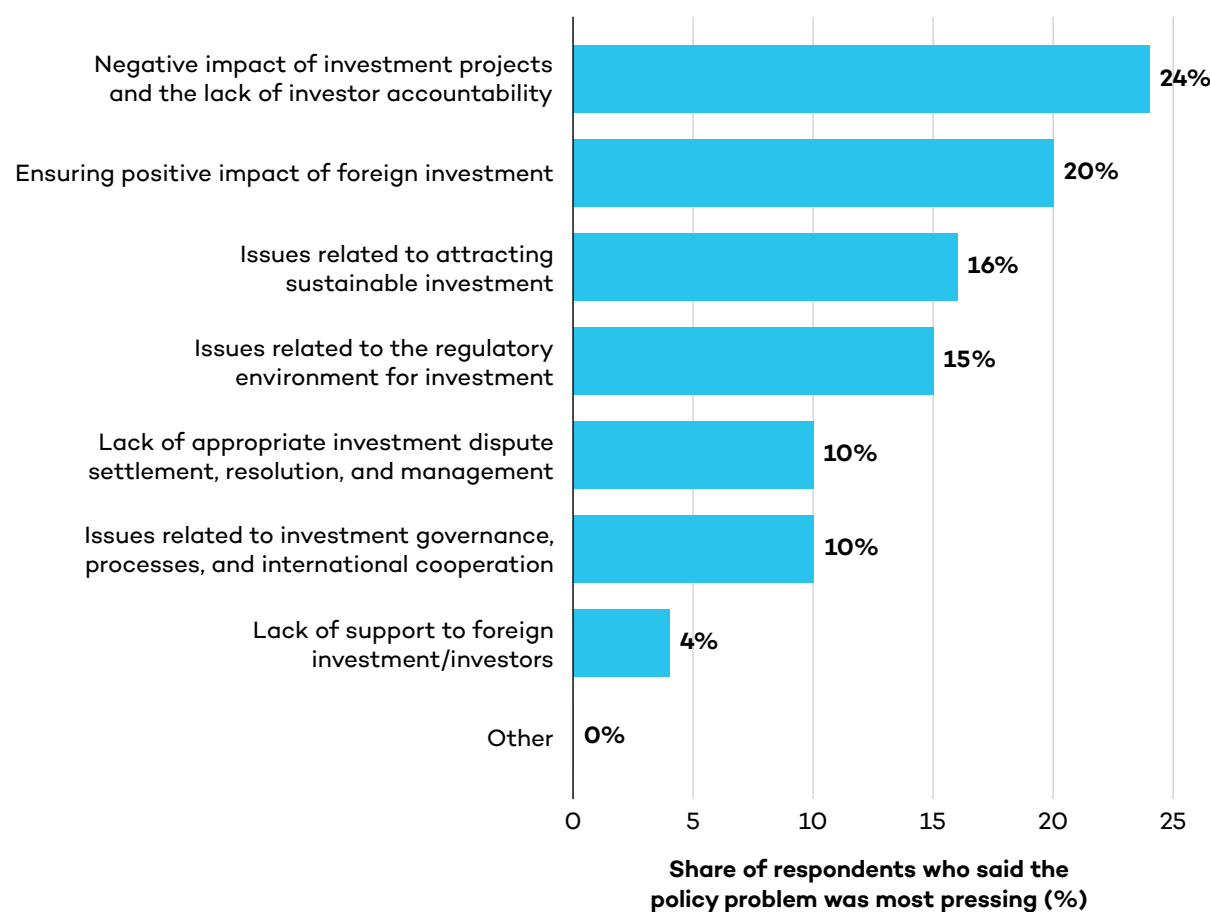
### Top-Ranked Policy Problems of Investment Governance

The respondents identified the following three policy problems as the most pressing:

- negative impacts of investment projects and the lack of investor accountability
- ensuring positive impacts of foreign investment (e.g., new technologies, decent jobs, economic linkages)
- issues related to attracting sustainable investment

The ranking of all the policy problems on offer is presented in Figure ES1.

**Figure ES1.** Policy problems of investment governance ranked



The traditional investment treaty preoccupations—investment protection and dispute settlement—did not rank high on the list. In other words, the respondents did not identify the problems addressed by the current investment treaties as the most pressing policy issues.

Respondents were then asked to specify which specific aspects of the policy problem were the main concern to them.



## Box 1. Subcategories of top three policy problems of investment governance

### Negative impacts of investment projects and the lack of investor accountability

- Lack of integration of human rights, environmental, and social considerations in decisions regarding investment projects
- Lack of investor accountability mechanisms
- Lack of investor obligations at the international level

### Ensuring positive impacts of foreign investment (e.g., new technologies, decent jobs, economic linkages)

- Limited tools to ensure that foreign investment has positive spillovers for the host economy (e.g., technology transfers, decent jobs, economic linkages)
- Ensuring benefits of foreign investment to the local community and economy
- Lack of administrative capacity to monitor and oversee investment projects

### Issues related to attracting sustainable investment

- Limited tools to attract needed investment (e.g., investments of a specific nature, in specific sectors, in specific regions)
- Lack of investment to achieve national development goals
- International competition for foreign investment (race to the bottom)

## Ideal Tools to Address the Selected Policy Problems

After the respondents identified their most pressing investment policy problems and ranked them, we asked them about the ideal tools to use when solving these problems. Here, **national laws were viewed overwhelmingly as the best tools to address various selected policy problems.**

National laws were seen as ideal tools to address the following policy issues:

- addressing the negative impact of investment projects
- ensuring the positive impact of foreign investment
- attracting sustainable investment
- improving the regulatory environment for investment.

Except for “Addressing negative impact of investment projects,” treaties were not viewed as a second-best tool either. Contracts or soft law instruments were preferred alternatives instead.

However, treaties were seen as ideal tools to address the following policy issues:

- setting up appropriate investment dispute settlement, resolution, and management
- solving issues related to investment governance, processes, and international cooperation.

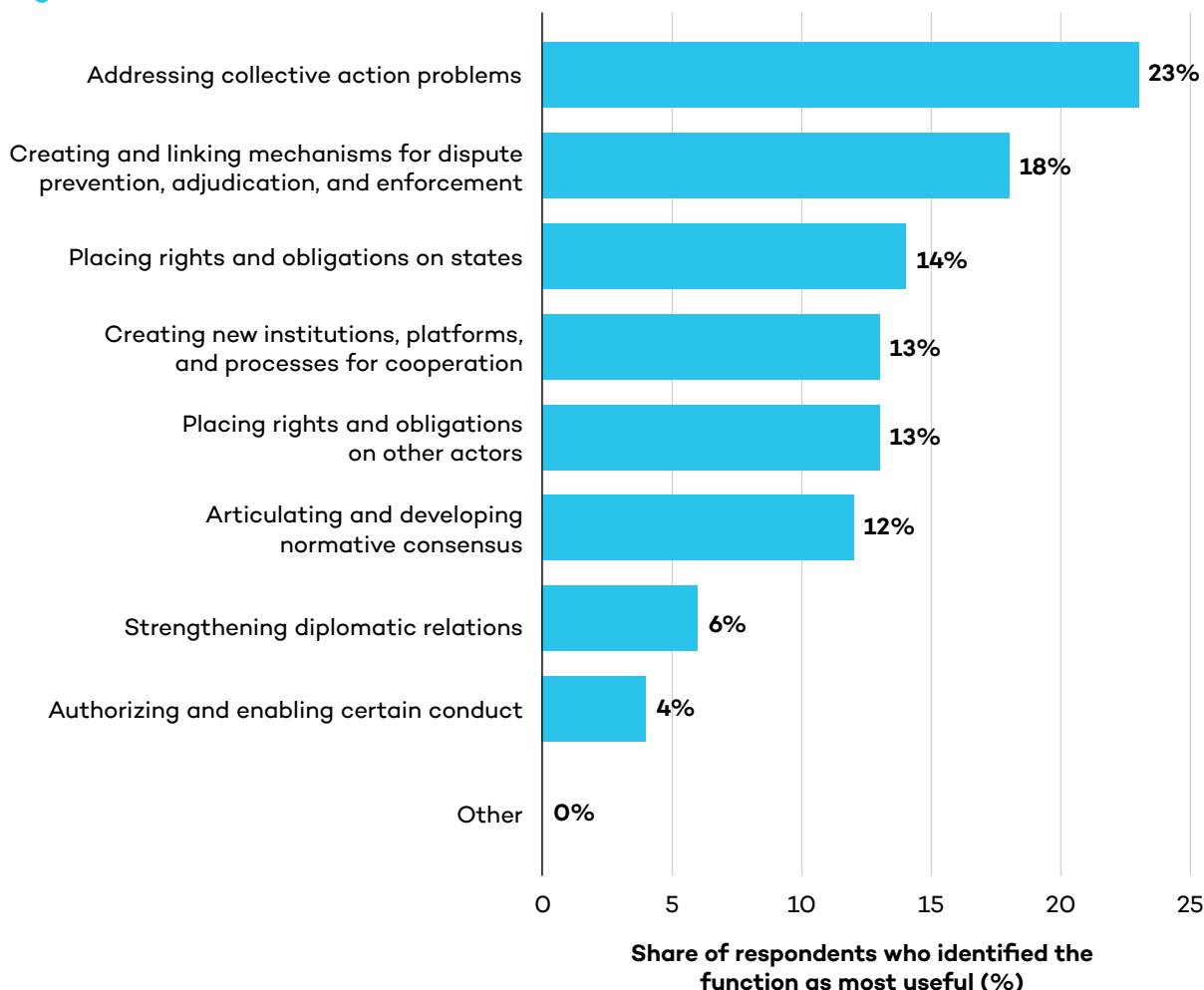


With respect to “Setting up appropriate investment dispute settlement, resolution, and management,” many respondents noted the need to reform the investor–state dispute settlement (ISDS) regime as it stands currently. For instance, two respondents noted a preference for replacing ISDS with state-to-state dispute settlement. Others noted a need to narrow down access to ISDS. Multiple respondents favoured a standing tribunal that would hold investors accountable for misconduct and allow a greater scope for counterclaims. Some highlighted a need for more frequent use of mediation.

## Ideal Roles for Treaties

We asked the respondents to select a maximum of three functions for which they consider a treaty a useful instrument, in general. This question was not linked specifically to investment policy. The respondents picked the following three treaty functions as ideal.

**Figure ES2.** Ideal functions for treaties





## Results of Follow-Up Survey

The total of 26 respondents completed the follow-up survey. The survey focused on the following four topics:

1. **How** can treaties support specifically sustainable investment?
2. **Whether** the number of treaty parties makes a difference, and if so, how?
3. **What** are the ideal treaty compliance mechanisms in the field of investment governance?
4. **What** could be a role of treaties in scaling up renewable energy?

## Treaties and Support of Sustainable Investment

On sustainable investment support, respondents most frequently found that treaties can be helpful in the following areas:

- imposing sustainable-development-related investor obligations
- strengthening of national legal frameworks
- defining what is sustainable investment.

While using treaties to **add investor-specific obligations** to support sustainable development was the most common suggestion, few respondents specified what the content or function of these obligations should be.

With respect to the role of treaties in **strengthening national legal frameworks**, some suggested more specific examples, such as ensuring transparency of investor–state contracts, supporting the implementation of energy transition plans, or incorporating international standards like the [Extractive Industries Transparency Initiative](#), [Initiative for Responsible Mining Assurance](#), or [Organization for Economic Cooperation and Development Foreign Direct Investment Qualities Indicators](#) into national law.

When it comes to **defining sustainable investment**, multiple respondents thought it was a useful and necessary preoccupation for treaties. Some respondents did not clarify to what end it should serve, whereas others considered that such definitions would be needed to differentiate any support that a treaty may convey. Other respondents would use treaties to align investment with the Sustainable Development Goals and Paris Agreement, and to further avoid greenwashing.

## Role of the Number of Treaty Parties

We asked whether answers change depending on whether a treaty is a bilateral agreement as opposed to a multilateral or regional one. Most respondents stated that it did not.



## Treaty Compliance Mechanisms

We asked about which compliance mechanisms the respondents favour in an investment treaty. Compliance was understood broadly, as either non-adjudicatory, monitoring, and compliance mechanisms, as well as reporting obligations and adjudication. The top three mechanisms were

- independent compliance review mechanisms (non-adjudicatory)
- self-assessment and reporting
- international court or tribunal (adjudication).

## Scaling Up Renewable Energy

The final question asked about what roles a treaty can play in scaling up renewable energy. The top three selected options were as follows:

- encourage international cooperation between treaty parties, multilateral development banks (MDBs), and the private sector
- incentivize investment in energy infrastructure
- address the regulatory environment in emerging market and developing economies (EMDEs).

## Main Lessons and Takeaways

There are several takeaways from the Rethinking Investment Treaties consultations.

First, while the consultations have provided important input and directions for future work, the results should not be overestimated, given the number of respondents who participated. The next steps in the Rethinking Investment Treaties project will take this into account and adjust based on the developments in the field.

Second, based on the responses received, the priority problems in investment governance are managing the negative impacts of investment projects and maximizing their positive impacts. It is worth noting that neither of these two policy issues is the main preoccupation of the existing investment treaty regime.

Third, while treaties are considered useful tools for some policy problems, there is recognition among the respondents that national law is the most appropriate instrument to address these priorities. To the extent that future investment treaties address the main policy problems of investment governance, the way they interact with national regulation must be given sufficient attention.

Fourth, there is little support for the traditional focus of investment treaties in the consultation responses, with the exception of the interest in dispute settlement functions. However, the responses regarding dispute settlement showed a preference for alternatives to arbitration and the current ISDS regime.



Finally, there is openness to the idea of investment treaties addressing “collective action” problems, but little shared understanding of what that would mean.

These considerations will inform the next steps in the Rethinking Investment Treaties project, which consists of working with experts and policy-makers to develop transformative models to replace outdated treaty instruments. Rethinking Investment Treaties is part of a broader project on [Rethinking International Investment Governance](#) that aims to assist in reforming the main tools of investment governance—treaties, [investment laws](#), and contracts.



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# 1.0 Introduction

If we were building the investment treaty regime from scratch today, what policy problems should the regime seek to solve, and how should it contribute to solving them?

This was the question that inspired the 2023 IISD report [\*Rethinking Investment Treaties: A Roadmap\*](#). Instead of tinkering with the existing 20th-century model of investment treaties that has [failed in delivering on its promise](#), the answer to this core question will point to various problems of international investment governance; issues where cooperation between states is both desirable and necessary.

The report divided investment governance policy problems into three categories:

- issues related to the encouragement and support of sustainable investment
- issues related to the impacts of investment projects
- issues of investment governance, institutions, and international cooperation.

For each category, the report assessed whether a treaty could play a useful role and highlighted questions that require further consideration, investigation, and clarification.

As a roadmap, the document did not provide conclusive answers but rather prompted policy-makers to ask different and, we think, more important questions. This document was a step toward designing future investment treaties that respond to the most pressing policy problems of investment governance.

The next step in this endeavour was to determine where such further consideration, investigation, and clarification are needed. To this end, IISD launched a public consultation on the Rethinking of Investment Treaties in June 2025 that ran until September, seeking input on policy priorities and design from policy-makers, investors, experts, academics, and other members of the investment community. In these consultations, we received more than 60 responses.

The output from the consultations will feed into follow-up workshops with experts and policy-makers in which we will aim to elaborate specific ways in which treaties can address the top policy problems of investment governance. These workshops will take place in 2026.

Our initiative to think about novel roles for treaties in investment governance appears at a time when multiple actors recognize the increasingly varied functions and roles treaties perform in international investment governance. For instance, the United Nations Trade & Development (UNCTAD) has been documenting the [growing dichotomy](#) between the so-called old- and new-generation treaties and recently launched a [new database](#) dedicated to investment facilitation in investment treaties. Following the IISD consultations, the [Organisation for Economic Co-operation and Development \[OECD\] Future of Investment Treaties, Track 1](#) recently also conducted a public consultation on possible positive contributions of investment agreements to achieving climate and environmental goals. Finally, [scholars](#) have called for a refocus of academic debates from the traditional domains of protection and dispute settlement to novel areas, such as facilitation and liberalization.



This report summarizes the input from the 2025 IISD Rethinking Investment Treaties Public consultations.

IISD Rethinking Investment Treaties is part of a broader project on [Rethinking International Investment Governance](#) that aims to assist in reforming the main tools of investment governance—treaties, [investment laws](#), and contracts.



## 2.0 Methodology and Respondents

### 2.1 About the Surveys

The IISD Rethinking Investment Treaties public consultation was designed as a two-part survey. Apart from questions about the respondents' profile, the main survey first asked the respondents to choose and rank what they considered to be the most pressing policy problems of investment governance, before asking them questions about the best tools to address these issues, as well as about the potential role of treaties in solving them. Most questions in the main survey were formulated as multiple-choice questions.

The second survey was optional; the respondents who participated in the main survey had the option to decide whether they wanted to participate in the follow-up survey. The follow-up survey was designed to focus on more technical aspects of investment treaty reform, and as a result, some of the questions were formulated as open questions. The topics addressed were as follows: a) support of specifically sustainable investment, b) impact of the number of parties on the treaty's content, c) compliance mechanisms, and d) treaties' role in helping scale up renewable energy investments. More details about the surveys' content are presented in Sections 3.0 and 4.0.

Both the main and follow-up surveys were available in English, French, and Spanish. The Rethinking Investment Treaties public consultations were promoted on our website, through our newsletters, social media channels, as well as through outreach to individual networks, selected organizations, and contacts.

### 2.2 About the Respondents

The main survey had the following number of responses:

**Table 1.** Total responses

Language	Main Survey	Follow-Up Survey
English	63	24
French	6	2
Spanish	0	0
<b>Total</b>	<b>69</b>	<b>26</b>

Source:

While we provided the surveys in three languages to cater to the respondents' language capacities and to increase turnout, we received no responses in Spanish. However, geographical participation (see below) shows that multiple respondents were from South America and the Caribbean, meaning that they likely chose to respond in English despite having a Spanish version available.



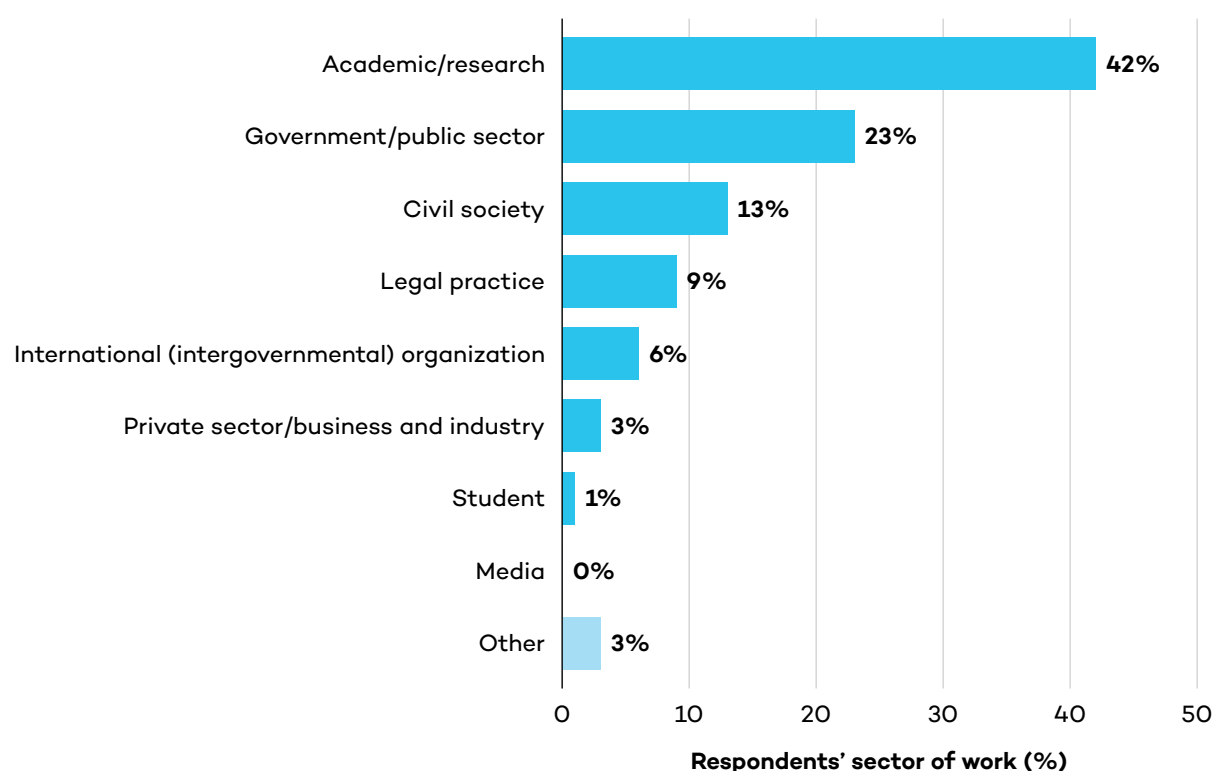
In the following analysis, we are referring to the total, combining the responses across all three languages (technically, two, as we recorded no survey responses in Spanish).

At the beginning of the survey, we asked the respondents about their professional profile, region in which they work, and their gender.

## Sectors of Work

Most respondents to the consultations hailed from academia and research, 29 (42%), followed by the government and public sector, 16 (23.2%), and civil society, 9 (13%).

**Figure 1.** Sectors of work



Source: Authors, based on survey data.

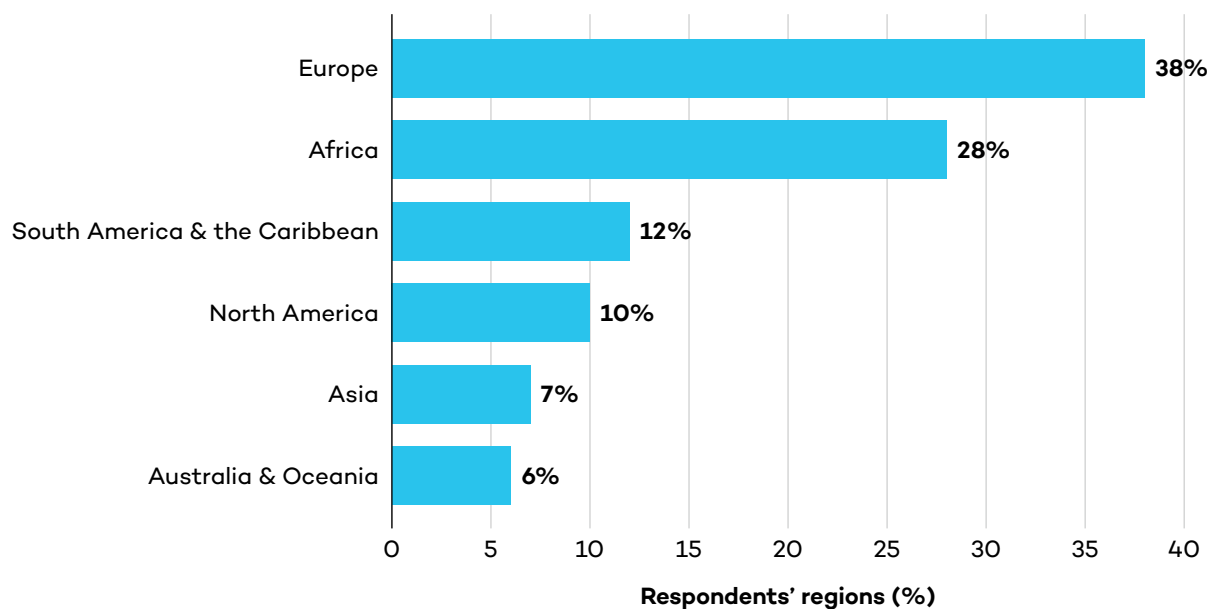
Out of the 16 respondents in the **government/public sector** category, seven worked at Administrative/Executive branches, whereas seven worked as “Other” government/public sector employees. However, when prompted to specify what they meant by “other,” four out of seven specified they worked at an investment promotion agency, which we would normally count as part of the Administrative/Executive branches. One respondent per category specified themselves as either “service,” “trade and investment,” or “economic cooperation” respectively.



## Geography and Regions

In terms of regions, the highest number of respondents were based in Europe (37.7%), followed by Africa (27.5%), and South America and the Caribbean (11.60%).

**Figure 2.** Geography and regions

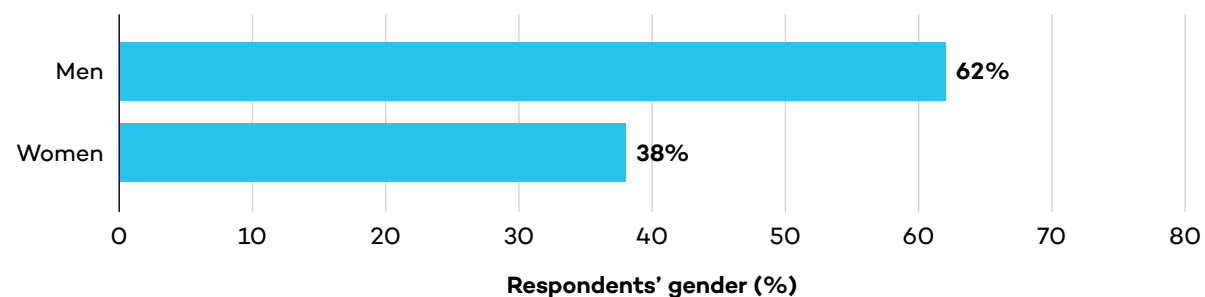


Source: Authors, based on survey data.

## Gender

In terms of gender, most respondents identified themselves as **men (62%)**, whereas a minority identified as **women (38%)**.

**Figure 3.** Gender



Source: Authors, based on survey data.



## 3.0 Results of Main Survey

### 3.1 Main Policy Problems of Investment Governance

We asked the respondents to rank their top three investment policy problems out of the following the options:

1. **Ensuring the positive impact of foreign investment** (e.g., new technologies, decent jobs, economic linkages)
2. Issues related to **attracting sustainable investment**
3. Issues related to **investment governance and processes, international cooperation** (e.g., transparency, participation, international cooperation)
4. Issues related to the **regulatory environment for investment** (e.g., administrative capacity, regulatory instability, and complexity)
5. Lack of appropriate **investment dispute settlement, resolution, and management**
6. Lack of **support to foreign investment/investors** (e.g., issues related to investment incentives, taxation, access to information)
7. **Negative impact of investment projects** and the lack of investor accountability

The categories of investment policy problems are not mutually exclusive; there are overlaps between what can be included under different categories. For instance, issues relating to the attraction of foreign investment are often closely linked to the investment regulatory environment. Similarly, ensuring that investment projects have their positive impact maximized and negative impact minimized is also a function of the regulatory environment (as are the available mechanisms for settling disputes and their parameters). The proposed categories, however, frame the issue around a central topic or perspective. By selecting a given category, the respondent prioritizes the given topic or perspective.

The respondents also had the option to choose the “**Other**” option with an open text box.

#### Scores for the Top Three Ranked Policy Problems

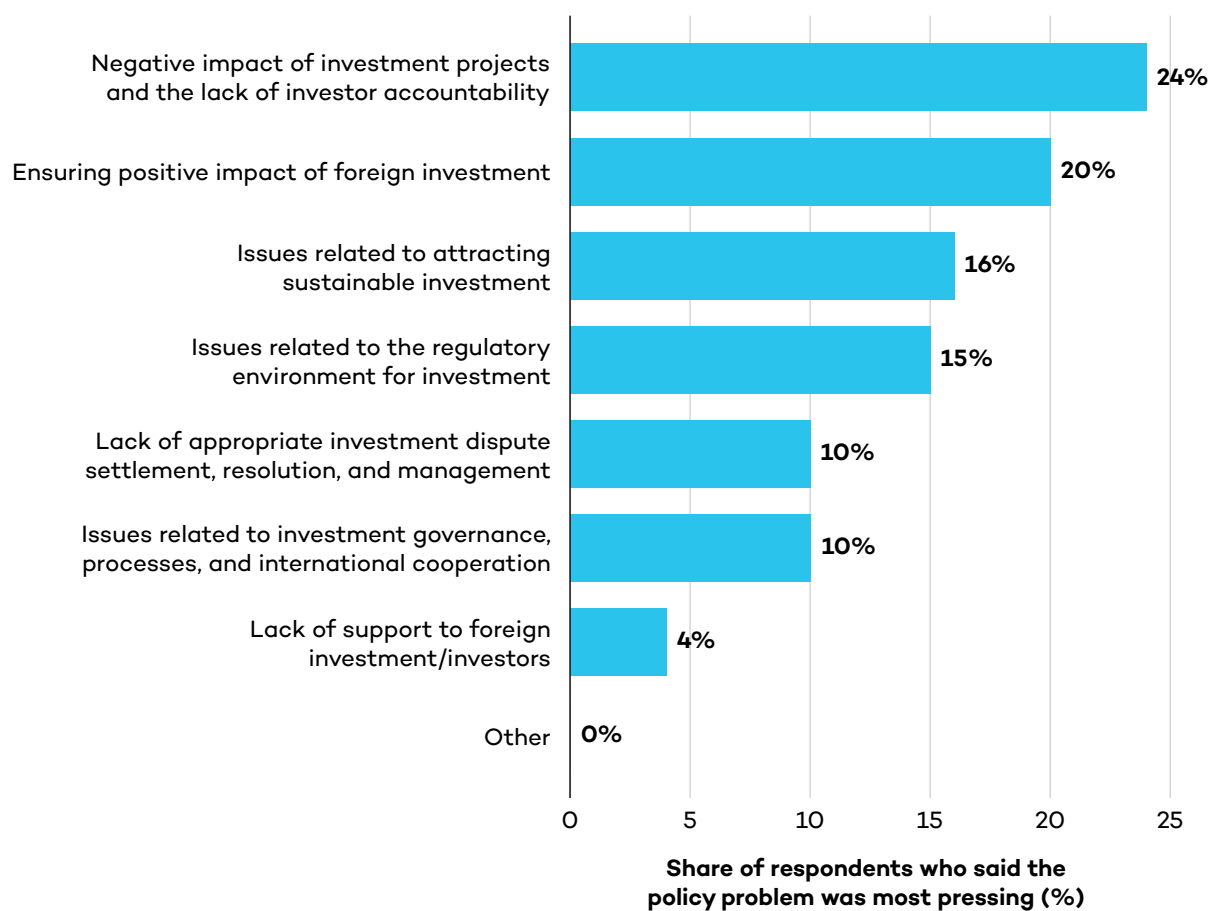
In order to analyze the results and identify the ranking, we have assigned a score of 2 for the 1st-ranked policy problem, a score of 1.5 for the 2nd-ranked policy problem, and a score of 1 for the 3rd-ranked policy problem. As a result, **each respondent had 4.5 points to distribute across three selected policy problems in their individual rankings.**

While we are transparent here about how we arrived at the total aggregate rankings in this report, the respondents themselves were not communicated the points for the top three policy problems when answering the survey; they were simply asked to rank the policy problems in their subjective order of importance.

After counting the weighted score, the order of policy problems based on the main survey is presented in Figure 4.



**Figure 4.** Top-ranked policy problems of investment governance<sup>1</sup>



Source: Authors, based on survey data.

## More Specific Examples of the Selected Policy Problems

Given that each of the main categories of investment policy problems was relatively general, the respondents were asked to identify a more specific example or expression of the general category.

<sup>1</sup> The “Other” options recorded only 1 hit, specifying “Excessive rights granted to international investors through BITs and ISDS,” hence framing the policy problem around the existing investment treaty regime, rather than independently of it.



## **Box 2. Subcategories of surveyed policy problems of investment governance**

### **Ensuring positive impacts of foreign investment (e.g., new technologies, decent jobs, economic linkages)**

- Lack of administrative capacity to monitor and oversee investment projects
- Limited tools to ensure that foreign investment has positive spillovers for the host economy (e.g., technology transfers, decent jobs, economic linkages)
- Ensuring the benefits of foreign investment to the local community and economy

### **Issues related to attracting sustainable investment**

- Lack of investment to achieve national development goals
- Limited tools to attract needed investment (e.g., investments of a specific nature, in specific sectors, in specific regions)
- International competition for foreign investment (race to the bottom)

### **Issues related to regulatory cooperation, investment governance, and processes (e.g., transparency, participation, international cooperation)**

- Lack of inter-governmental platforms for effective regulatory cooperation on investment (e.g., in renewable energy, fossil fuel phase-outs)
- Lack of transparency regarding investment projects
- Lack of tools for affected stakeholders, individuals, and communities to have their voices taken into account regarding investment projects
- Lack of tools to address bargaining power and information asymmetry between foreign investors and governments

### **Issues related to the regulatory environment for investment (e.g., capacity, regulatory instability, and complexity)**

- Complexity of regulation in host states and ground-level administrative obstacles (red tape)
- Lack of coherence and coordination between government agencies dealing with foreign investment
- Regulatory and political instability, inconsistency, and lack of legal certainty
- Lack of administrative capacity
- Corruption

### **Lack of appropriate investment dispute settlement, resolution, and management**

- Lack of appropriate avenues to settle investment (investor–state) disputes
- Lack of effective mechanisms for dispute prevention
- Costs and duration of investor–state dispute settlement treaty disputes



- Bias, capacity, and independence of local courts
- Lack of effective accountability mechanisms for investor misconduct

**Lack of support to foreign investment/investors (e.g., issues related to investment incentives, taxation, access to information)**

- Lack of effective investment legal protection
- Issues related to granting, administering, and monitoring investment incentives
- Lack of special regulatory regimes for foreign investors
- Lack of investment facilitation measures

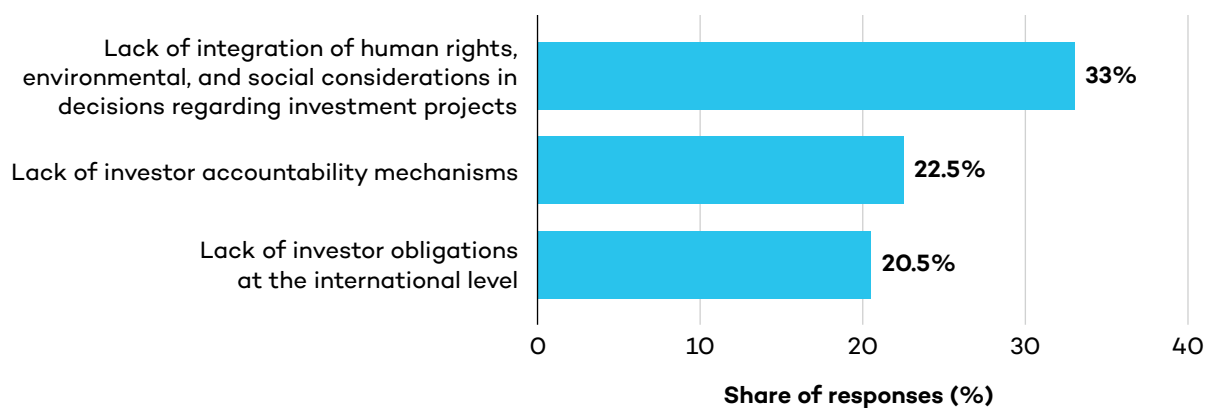
**Negative impacts of investment projects and the lack of investor accountability**

- Lack of investor accountability mechanisms
- Lack of investor obligations at the international level
- Lack of integration of human rights, environmental, and social considerations in decisions regarding investment projects

While the respondents were given the option to specify subcategories through examples, they did not always do so. In other words, they sometimes selected only the general category without specification.

Within the top three categories, the respondents specified the following subcategories with the following frequency, counting the weighted score:

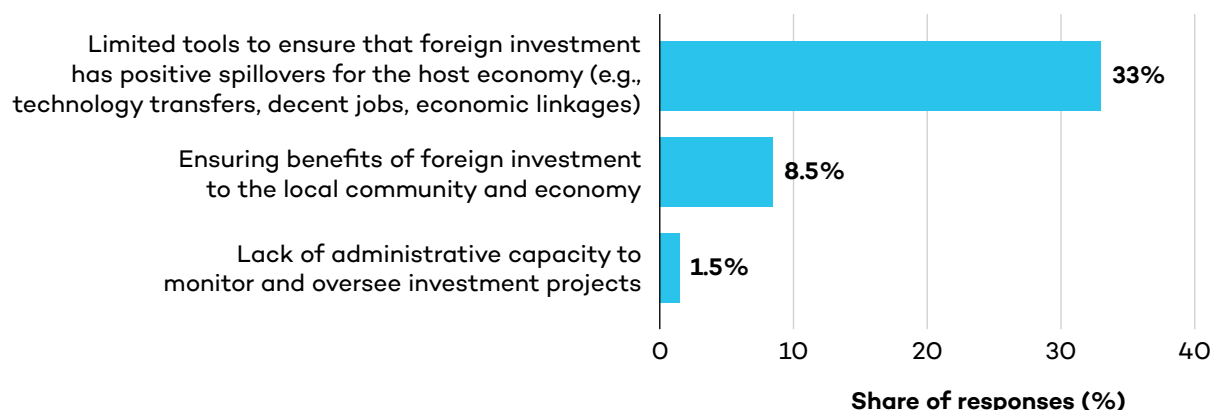
**Figure 5.** Negative impacts of investment projects and the lack of investor accountability



Source: Authors, based on survey data.

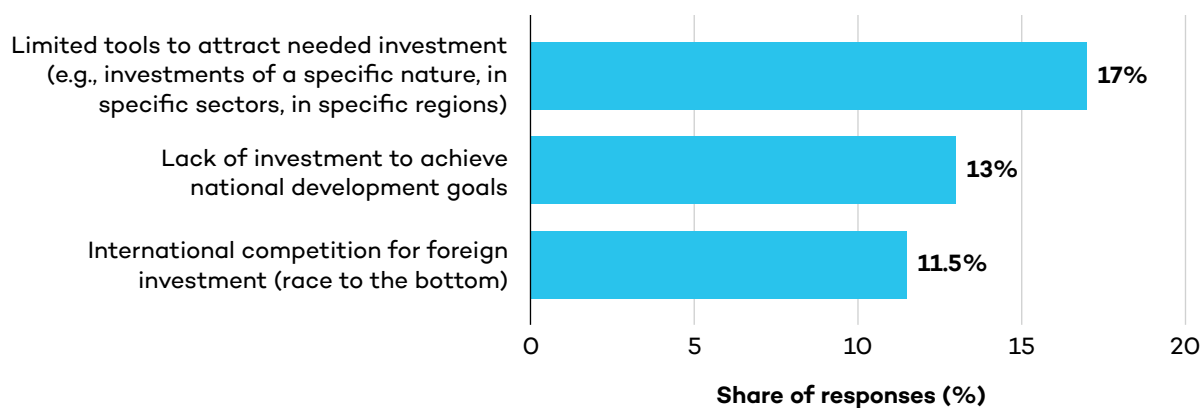


**Figure 6.** Ensuring positive impacts of foreign investment



Source: Authors, based on survey data.

**Figure 7.** Issues related to attracting sustainable investment



Source: Authors, based on survey data.

## Investment Protection and Dispute Settlement: How did the traditional bilateral investment treaty policy issues score?

A reader well-versed in academic and policy discussions about investment treaty reform might wonder about the lack of discussion about the policy issues addressed by the traditional model of investment treaties: investment protection and dispute settlement. The issue of dispute settlement features more in the results than investment protection. However, neither of the two scored particularly high. The respondents did not identify the problems addressed by the current traditional investment protection models as the most pressing policy issues.

As seen in Figure 4, **lack of appropriate investment dispute settlement, resolution, and management** scored 32 points of weighted score (10%), and **lack of support to foreign investors/investment**, scored 13.5 of weighted score (4%).

Significantly, among the broader category of lack of support to foreign investors/investment, **no respondent picked “lack of effective investment legal protection” as a specific sub-category of the broader policy problem.** Rather, “Issues related to granting, administering, and monitoring investment incentives” with a weighted score of 7.5, and “lack of investment



facilitation measures” with a weighted score of 3, were seen as relevant manifestations of the broader category “lack of support to foreign investors/investment.”

Out of 23 respondents who selected **lack of appropriate investment dispute settlement, resolution, and management** as a pressing problem, six respondents were from academia, five from the government/public sector, and four each from legal practice and civil society. As to the specific manifestations of this general policy problem, respondents selected, first, “costs and duration of investor–state dispute settlement treaty disputes” (weighted score 10), followed by “lack of effective accountability mechanisms for investor misconduct” and “lack of appropriate avenues to settle investment (investor–state) disputes” (weighted score 4 each).

Out of seven respondents who picked **lack of support to foreign investors/investment** as a pressing policy problem, three were from legal practice and the private sector (two and one, respectively). The remaining were from the public sector (two respondents), academia, and consultancy (one each). As stated, these respondents tended to choose issues related to granting, administering, and monitoring investment activities as the most pressing issue within this policy problem.

Two further considerations may help contextualize the results. First, in line with our framing question (“If we were building the investment treaty regime from scratch today, what policy problems should the regime seek to solve, and how should it contribute to solving them?”), the survey was designed to proceed with the identification of a policy issue, first, and only then to consider whether a treaty can helpfully address it.

Second, we did not treat legal protection of foreign investment (or the lack thereof) as a general category of policy problems. Rather, we considered it as a specific manifestation or example of a broader category “lack of support to foreign investors/investment”. In other words, legal protection was considered an example of support to investors. Investment dispute settlement, on the other hand, was treated as a general category on its own (see Table 3).

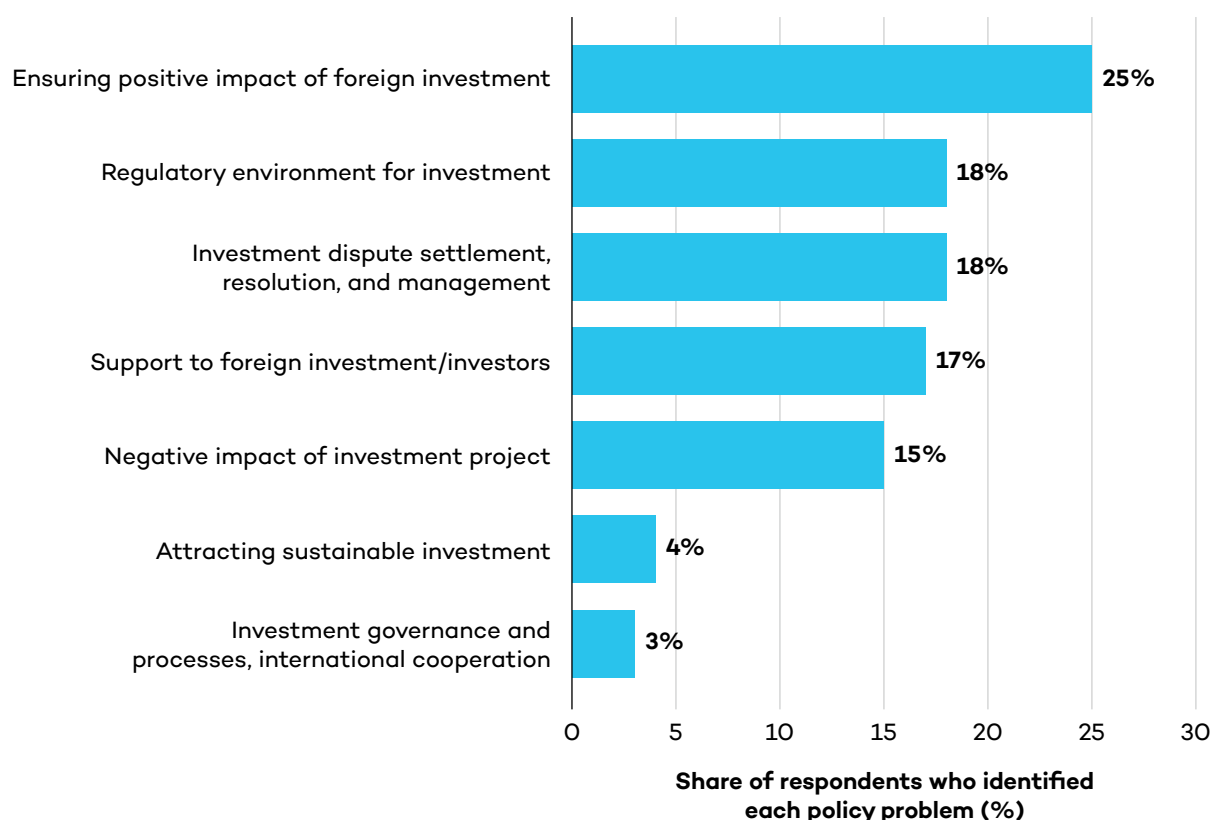
## What did respondents from the private sector and legal practice pick?

Given the prominent role of lawyers in the current investment treaty regime, it is interesting to examine how legal practitioners responded in our survey. At the outset, we note that we have **only recorded six respondents from legal practice** (five of them from law firms, one in-house counsel). As to the top three policy problems selected by practising lawyers, we have a tie on the podium: the respondents gave a weighted score of 5.5 each to “Ensuring positive impact of foreign investment,” “Lack of appropriate investment dispute settlement, resolution, and management,” and “Negative impact of investment projects.” While one may expect that a practising lawyer will likely pick “Lack of appropriate investment dispute settlement, resolution, and management” as the main policy issue, this expectation was not borne out by our results; two other policy problems were selected as equally important. At the same time, no practising lawyer selected “Lack of appropriate investment dispute settlement, resolution, and management” as their number one pressing problem.



Similarly, within the two responses received from the private sector, only one listed lack of appropriate investment dispute settlement as a pressing issue, and in the third position, at that. Analyzing these responses, the weighted scale ranked the four options chosen as follows: first, “Ensuring positive impact of foreign investment” with a score of 3.5; second, “Issues related to the regulatory environment for investment,” with a score of 2.5; third, “Lack of support to foreign investors,” with a score of 2; and lastly, “Lack of appropriate investment dispute settlement,” with a score of 1.

**Figure 8.** Policy problems of investment governance selected by lawyers and the private sector



Source: Authors, based on survey data.

## 3.2 Ideal Tools to Address the Selected Policy Problems

After the respondents identified their most pressing investment policy problems and ranked them, we asked them about the ideal tools to use when solving these problems. Given that the consultations were geared toward obtaining information that is, ultimately, useful to policy-makers, the tools to choose from were drawn from the traditional policy-makers’ toolkit. The options to choose from were:

- national laws (statutes, decrees, regulations)
- contracts
- treaties



- soft law guidelines, memoranda of understanding, and other non-binding instruments
- other

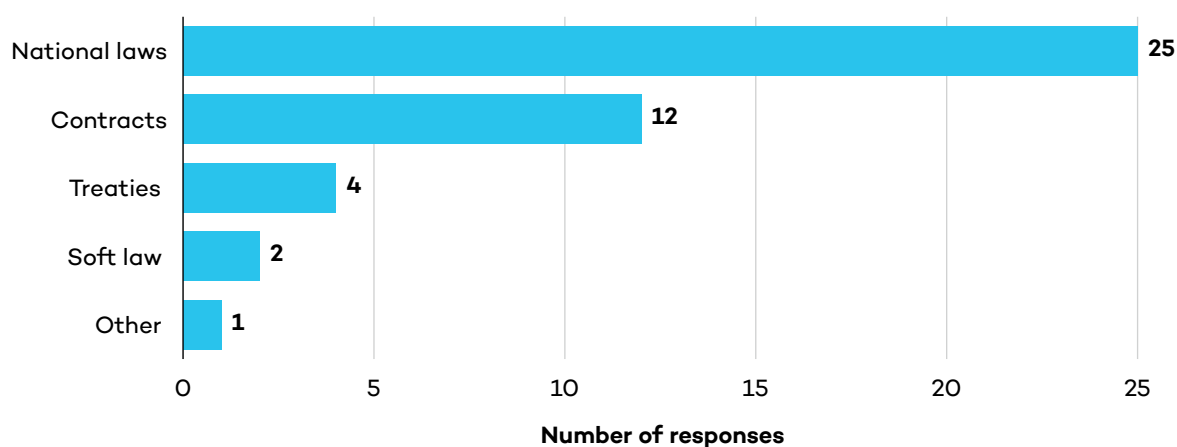
We asked the respondents to pick their ideal tool to address the selected policy problems in the order of their ranking. Only when the respondents picked “treaty” as a tool did we ask them to specify how they think a treaty should address the problem in an open text box.

In the following, we are displaying the most frequently selected tools for the policy problems in the order of their ranking (for the order see Section 3.1 Main policy problems of investment governance, Figure 6). Under each policy problem, we note some of the themes that the respondents added as specific roles for treaties in solving the selected problem. Not all respondents, however, opted to add this qualitative information.

It should be noted that while we used weighted scores for the ranking of the investment policy problems in Section 3.1 (Main policy problems of investment governance), we do not use any weighted scores here and rely on absolute numbers instead. The **assumption is that the respondent would pick the same tools regardless of the ranking of the policy problem**. We assume that it is the nature of the policy problem that is determinative when the respondents pick their ideal tools, not the problem’s ranking.

## Negative Impact of Investment Projects and the Lack of Investor Accountability

**Figure 9.** Ideal tools to address the negative impact of investment projects



Source: Authors, based on survey data.

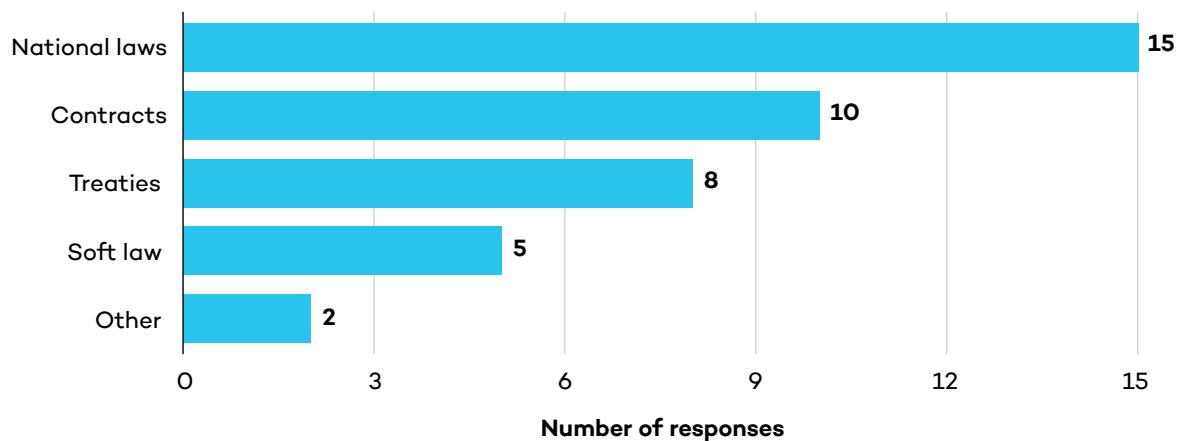
Twelve out of 44 respondents (27%) picked treaties as tools to address the negative impact of investment projects. However, not all of them specified how exactly treaties should go about doing this. Some respondents highlighted that treaties may be useful in putting clear, binding international obligations on foreign investors, such as those related to human rights, corporate social responsibility, environmental, social, and governance principles, and the do-no-harm principle, and in establishing mechanisms to hold investors accountable, in particular, by allowing redress against parent companies. One respondent highlighted that if such obligations in treaties are widely applicable, this could boost less powerful and smaller countries in



applying international standards at home without watering them down. Another respondent noted that treaties can condition any benefits on investors' environmental and social impact.

## Ensuring the Positive Impact of Foreign Investment

**Figure 10.** Ideal tools to ensure positive impact of foreign investment

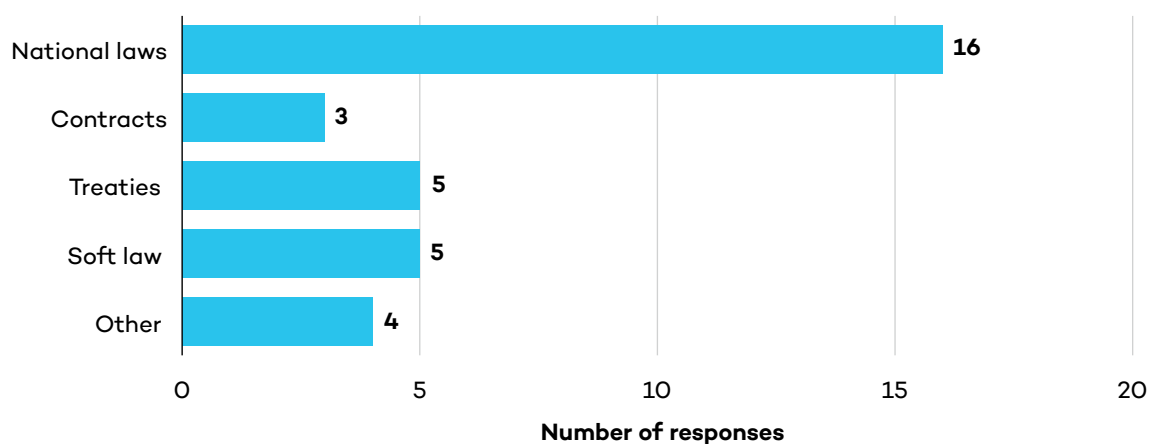


Source: Authors, based on survey data.

Eight out of 40 respondents (20%) selected a treaty as an ideal tool to ensure the positive impact of foreign investment. Regarding more specific ways of treaties ensuring this impact, some respondents believed that an investment treaty should create a **commitment to a particular number of jobs created**. Two respondents noted that treaties should specifically **encourage the use of policy space and performance requirements**, for instance, in the area of technology transfers and innovation. Some respondents echoed points mentioned under the previous category (**establishing mechanisms to hold investors accountable**), for instance, by creating ex post oversight and compliance mechanisms.

## Issues Related to Attracting Sustainable Investment

**Figure 11.** Ideal tools to attract sustainable investment



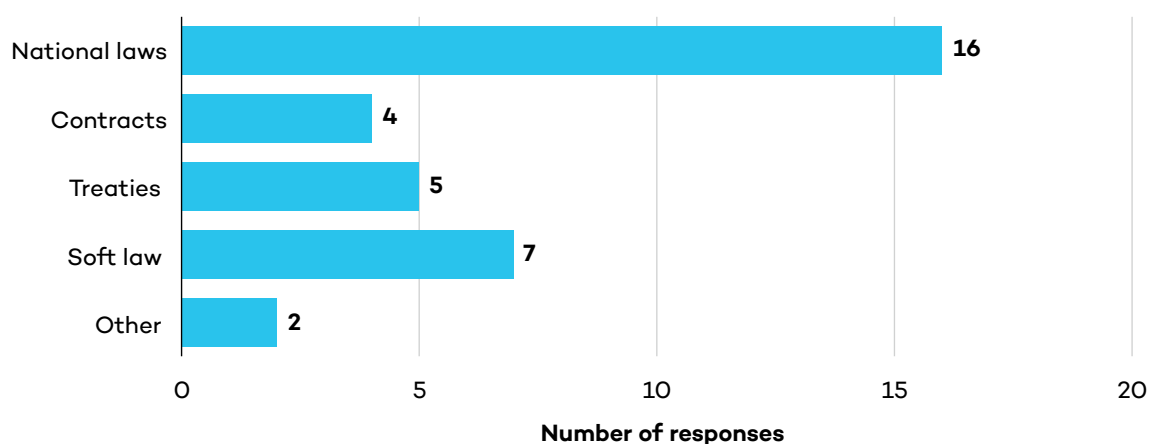
Source:



Five out of 33 respondents (15%) selected a treaty as an ideal tool to attract foreign investment; however, the level of specificity of suggestions for this category was comparably lower. Some respondents noted the need **to clarify that specifically sustainable investment is needed and to define its characteristics in the treaty**. These definitions should then serve as a basis for the award of incentives and the availability of risk-sharing mechanisms. It was less clear, however, whether and how a treaty should implement such mechanisms.

## Issues Related to the Regulatory Environment for Investment

**Figure 12.** Ideal tools to improve the regulatory environment for investment



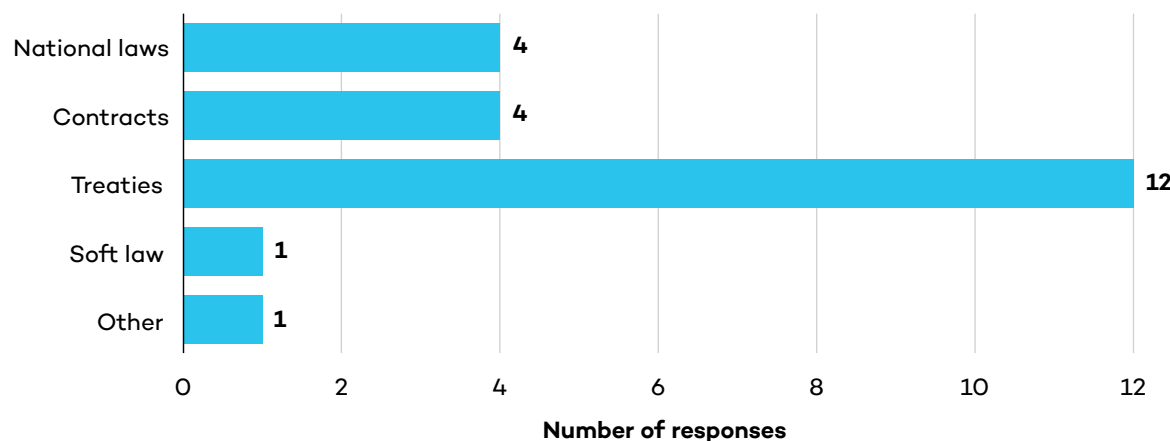
Source: Authors, based on survey data.

Five out of 34 respondents (15%) selected a treaty as an ideal tool to improve the regulatory environment for investment. The level of specificity of suggestions for this category was comparably low as well. Some respondents highlighted the **use of a treaty to improve regulatory transparency**. Others noted that a treaty should clearly specify the normative superiority of certain public interest regulatory objectives, such as environmental protection and climate change. With the idea of investment protection in mind, one respondent highlighted the need to clarify that it is the **national law that determines the content of investor property and contractual rights**.



## Lack of Appropriate Investment Dispute Settlement, Resolution, and Management

**Figure 13.** Ideal tools to set up appropriate investment dispute settlement, resolution, and management

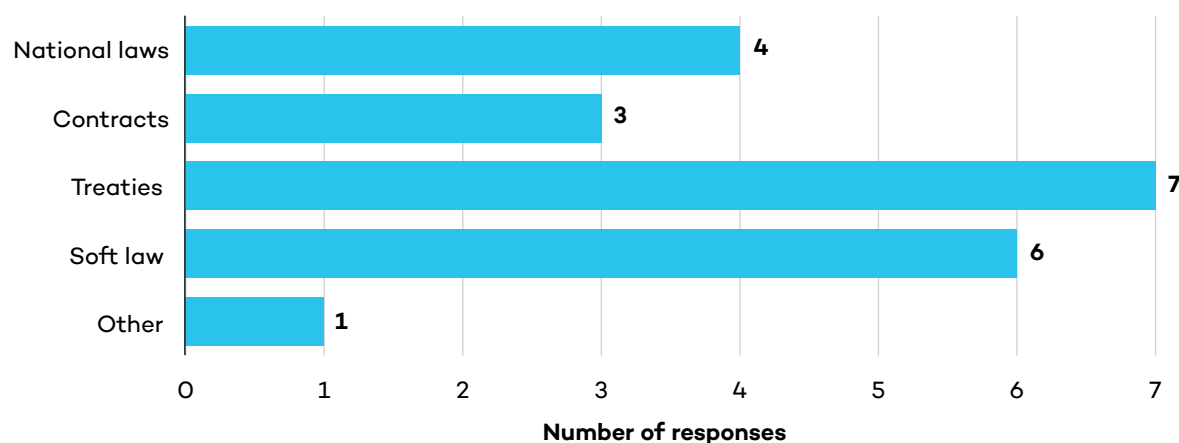


Source: Authors, based on survey data.

For most respondents, treaties appeared to be an ideal tool to set up appropriate investment dispute settlement, resolution, and management. Twelve of 22 respondents (54%) selected a treaty as an ideal tool here. However, when asked about details, many respondents noted the **need to reform the ISDS regime as it currently stands**. For instance, two respondents noted a preference for replacing ISDS with state-to-state dispute settlement. Others noted a need to narrow down access to ISDS. Multiple respondents favoured a standing tribunal that would allow investors to be held accountable for misconduct and provide a greater scope for counterclaims. Some highlighted a need for more frequent use of mediation.

## Issues Related to Investment Governance, Processes, and International Cooperation

**Figure 14.** Ideal tools to solve issues related to investment governance, processes, and international cooperation



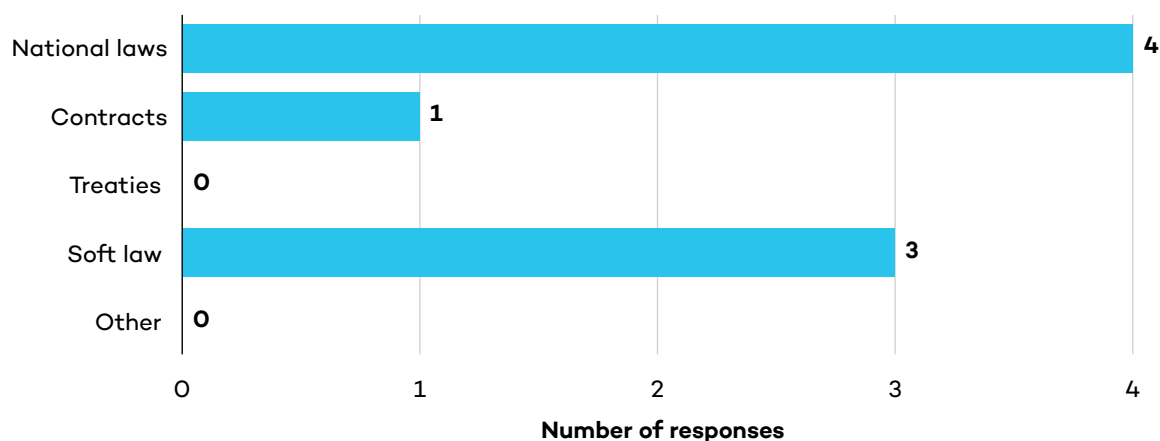
Source: Authors, based on survey data.



Seven out of 21 respondents (33%) considered treaties ideal for addressing issues related to investment governance, processes, and international cooperation. However, the level of detail in the responses was not significant. Some respondents highlighted the usefulness of treaties in creating **processes and institutions for cooperation between home and host states** to publish certain information, such as public procurement, i.e., improving transparency of investment-related measures and information. Some respondents discussed using treaties to improve the regulation of practices for securing “social licence” from local communities by investors and to create better links with local companies. Others noted that treaties should be used to help implement international normative standards at the national level. Finally, some respondents echoed elements mentioned above under different categories, such as improving accountability mechanisms.

## Lack of Support to Foreign Investment/Investors

**Figure 15.** Ideal tools to support foreign investment/investors



Source: Authors, based on survey data.

No respondent out of eight (0%) selected treaties as an ideal tool to support foreign investment/investors.

### 3.3 Ideal Roles for Treaties

In the final question of the Main Questionnaire, we asked the respondents to select a maximum of three functions for which they consider a treaty—in general—to be a useful instrument. This question was not linked specifically to investment policy. The options to choose from are presented below:

- Strengthening diplomatic relations
- Addressing collective action problems, i.e., problems that states cannot address on their own
- Placing rights and obligations on states
- Placing rights and obligations on other actors

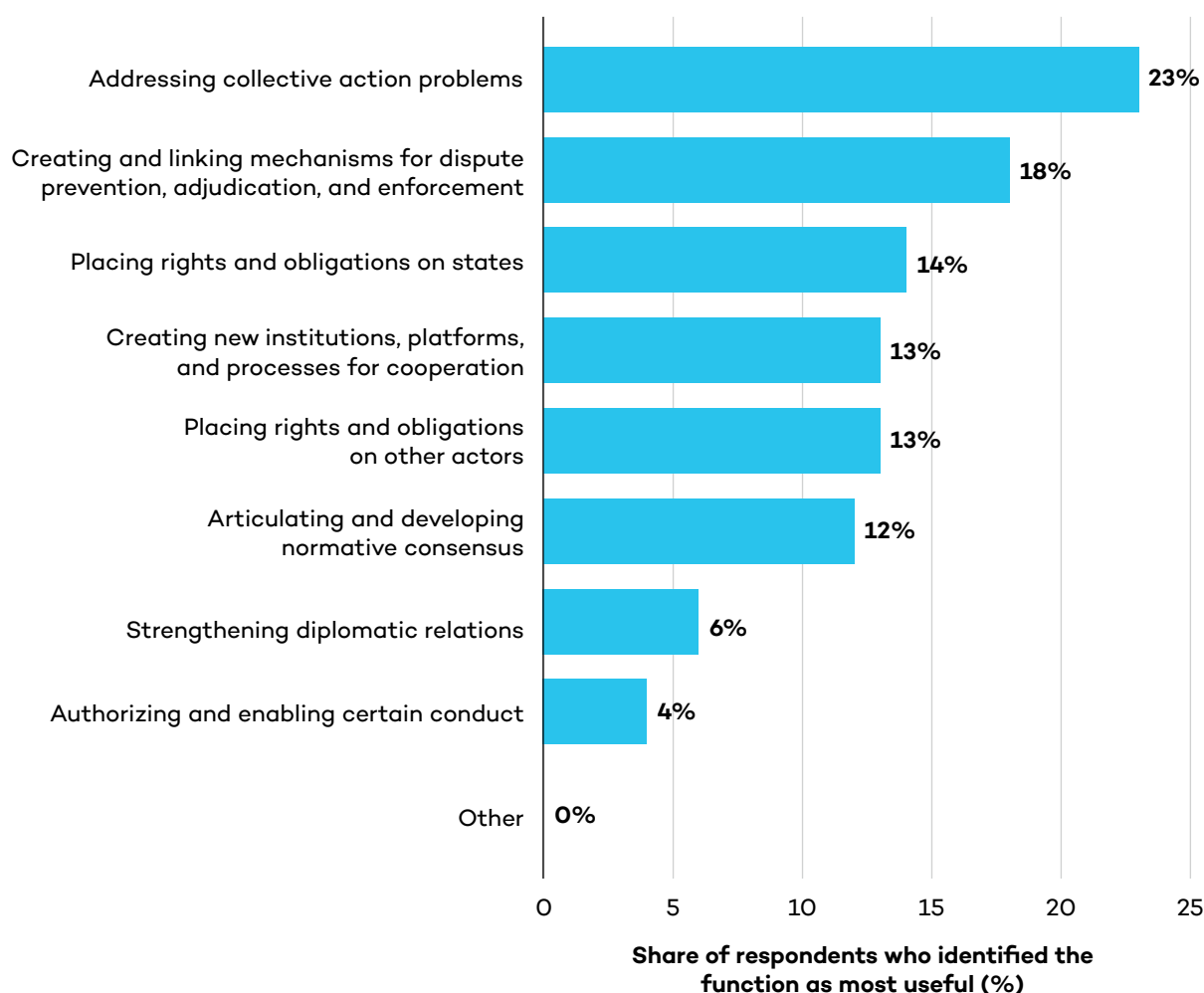


- Creating and linking mechanisms for dispute prevention, adjudication, and enforcement
- Authorizing and enabling certain conduct
- Creating new institutions, platforms, and processes for cooperation
- Articulating and developing normative consensus
- Other

The respondents picked the following three functions as ideal ones to be performed by treaties:

- addressing collective action problems (45 out of 200 votes, 23%)
- creating and linking mechanisms for dispute prevention, adjudication, and enforcement (35 out of 200 votes, 18%)
- placing rights and obligations on states (27 out of 200, 14%).

**Figure 16.** Ideal functions for treaties



Source: Authors, based on survey data.



## 4.0 Results of Follow-up Questionnaire

We asked all the respondents to the main questionnaire whether they are interested in sharing their views on other, more technical aspects of investment treaty reform. While we collected information on respondents' sectors, regions, and gender in the main survey, we did not do so again in the follow-up survey.

Twenty-four respondents filled in the follow-up survey in English and two in French, for a total of 26 respondents.

The follow-up questionnaire focused on four topics:

- How can treaties support specifically sustainable investment?
- Whether the number of treaty parties makes a difference, and if so, how?
- What are the ideal treaty compliance mechanisms in the field of investment governance?
- What could be a role of treaties in scaling up renewable energy?

While the first two topics were open-ended questions that required the respondents to elaborate, the last two were multiple-choice questions.

### Treaties and Sustainable Investment

We asked the respondents: “In your view, how should a treaty deal with supporting and attracting sustainable investment?” and gave them a maximum of 500 characters to respond.

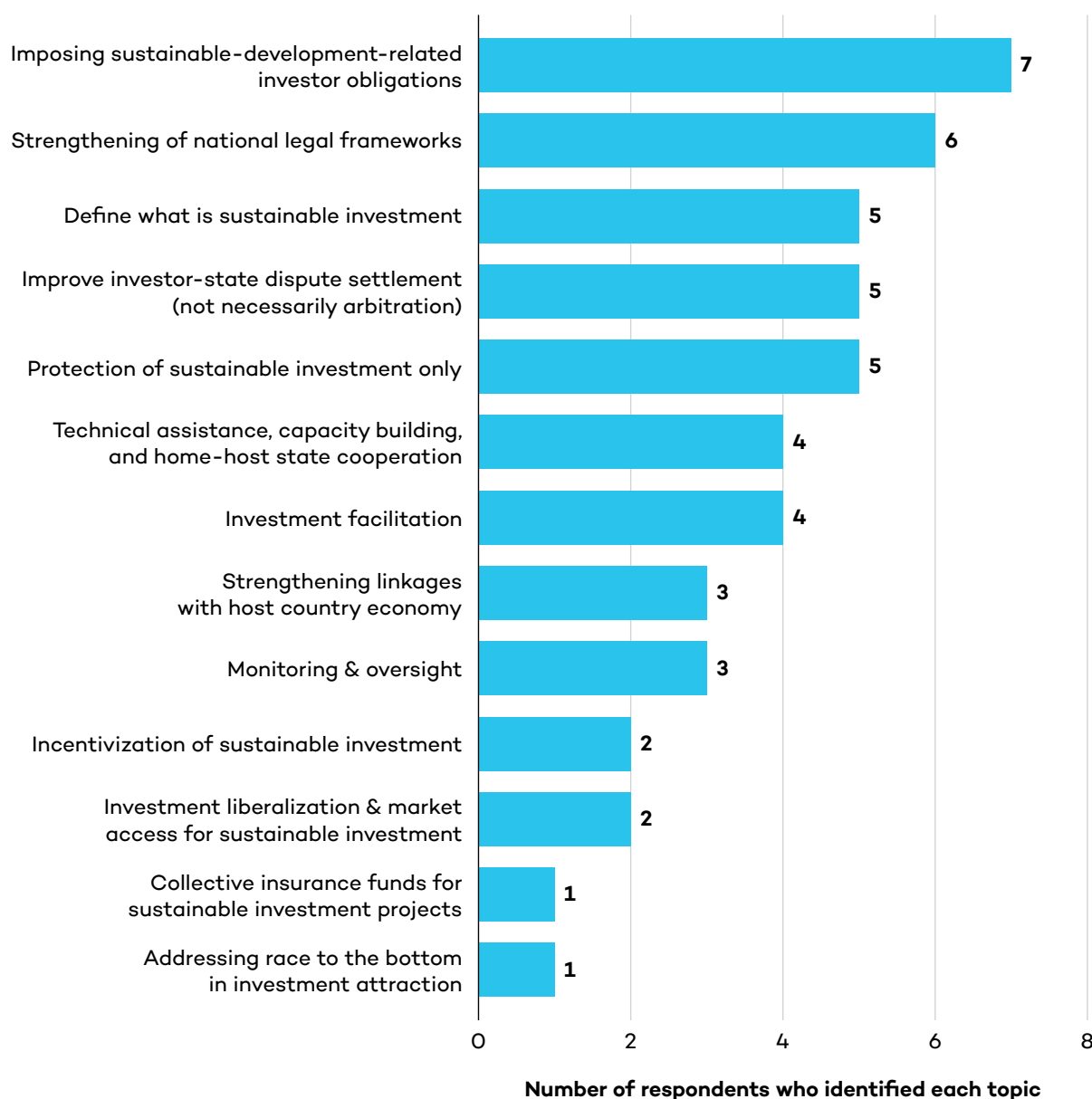
Given that responses were open text, we cannot expect total alignment in the way the respondents formulated their issues and treaty solutions. However, certain topics have appeared frequently. Respondents found that treaties may help with the support and attraction of sustainable investment in the following way.

Within these topics, there were important differences in the level of specificity with which the respondents described the solutions. Two examples of how the respondents went about it will help add some texture to the above broad categories.

Many respondents believe that treaties should be used to **strengthen national regulatory frameworks** for investment. Some respondents stayed at a more general level, stating that they should contribute by creating a more investment-conducive environment, addressing roadblocks for private capital, or promote good governance, others suggested more specific examples, such as ensuring transparency of investor–state contracts, supporting the implementation of energy transition plans, or incorporating international standards like [Extractive Industries Transparency Initiative](#), [Initiative for Responsible Mining Assurance](#), or [Organization for Economic Cooperation and Development Foreign Direct Investment Qualities Indicators](#) into national law.



**Figure 17.** Ways in which treaties can support and attract sustainable investment



Source: Authors, based on survey data.

The theme of **linkages with the local economy** was also represented in various sub-topics, such as the use of treaties to encourage participation of local communities, to strengthen local competitiveness and industrialization.

In terms of defining sustainable investment, multiple respondents thought it was a useful and necessary focus for treaties. The underlying texture of the responses was varied, however. Some respondents did not clarify what end this might serve, whereas others considered that such definitions would be needed to differentiate any support that a treaty may convey. Other respondents would use treaties to align investment with the SDGs and the Paris Agreement, and to further avoid greenwashing.



Interestingly, while using treaties to **add investor-specific obligations** to support sustainable development was the most common suggestion, virtually no respondent specified what the content or function of these obligations should be. The results were similar in respect to **dispute settlement mechanisms**, with only the specification that such mechanisms would not have to be in the form of arbitration.

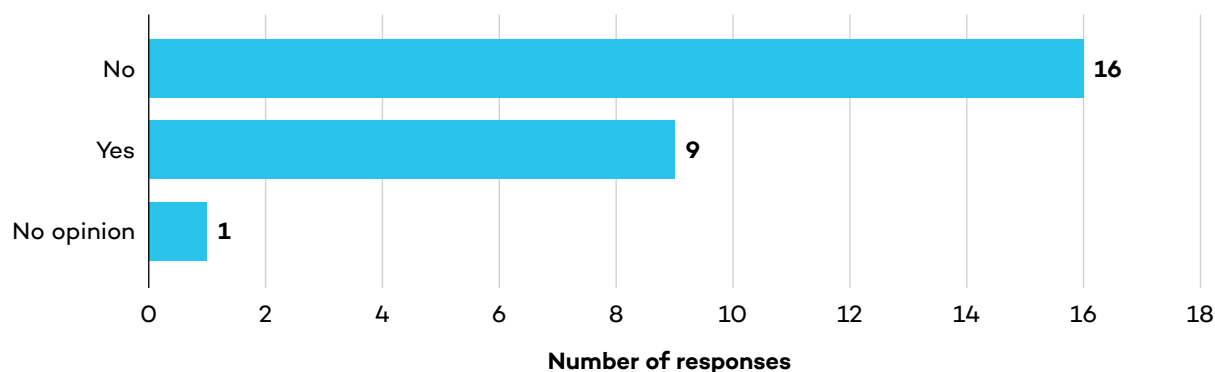
Less numerous, but with a limited level of detail, were also the responses regarding **investment liberalization and market access, and investment facilitation**. What the responses with these two themes shared was an insistence on the need to condition access to these treaty benefits on the sustainable nature of the investment.

At the same time, some solutions were already quite specific and innovative. For instance, the proposal to use treaties to establish a **collective insurance fund** that would be used to support specific sustainable investment projects, such as in green energy or infrastructure, was much more specific than an abstract call to use treaties to define what sustainable investment is.

## Role of the Number of Treaty Parties

The next question asked respondents whether their previous answers changed depending on whether a treaty was a bilateral agreement rather than a multilateral or regional one. Most respondents stated that it did not.

**Figure 18.** Does the multilateral or bilateral nature of the treaty matter?



Source: Authors, based on survey data.

These answers may possibly mean two things. First, either the respondents did not believe that the role a treaty must play to support and attract foreign investment was a collective action issue that would necessitate a particular critical mass to be effective. Second, they could have considered multilateral treaty-making the default, which could be replicated in a bilateral setting.

Those who believed that the number of treaty parties matters offered various reasons. A few believe that for some issues, a **critical mass is necessary to address collective action problems** (e.g., fossil fuel subsidies reform), while others believe that regional treaties may be more ambitious and set examples. Others believed instead that it is the negotiation dynamics of multilateral versus bilateral that influence the treaty content. In line with



this thinking, respondents believed that the need for a multilateral consensus leads to less ambitious outcomes. Finally, respondents also highlighted the costs of negotiating multilateral instruments and the risks of inconsistencies with a multiplicity of bilateral treaties.

## Compliance Mechanisms

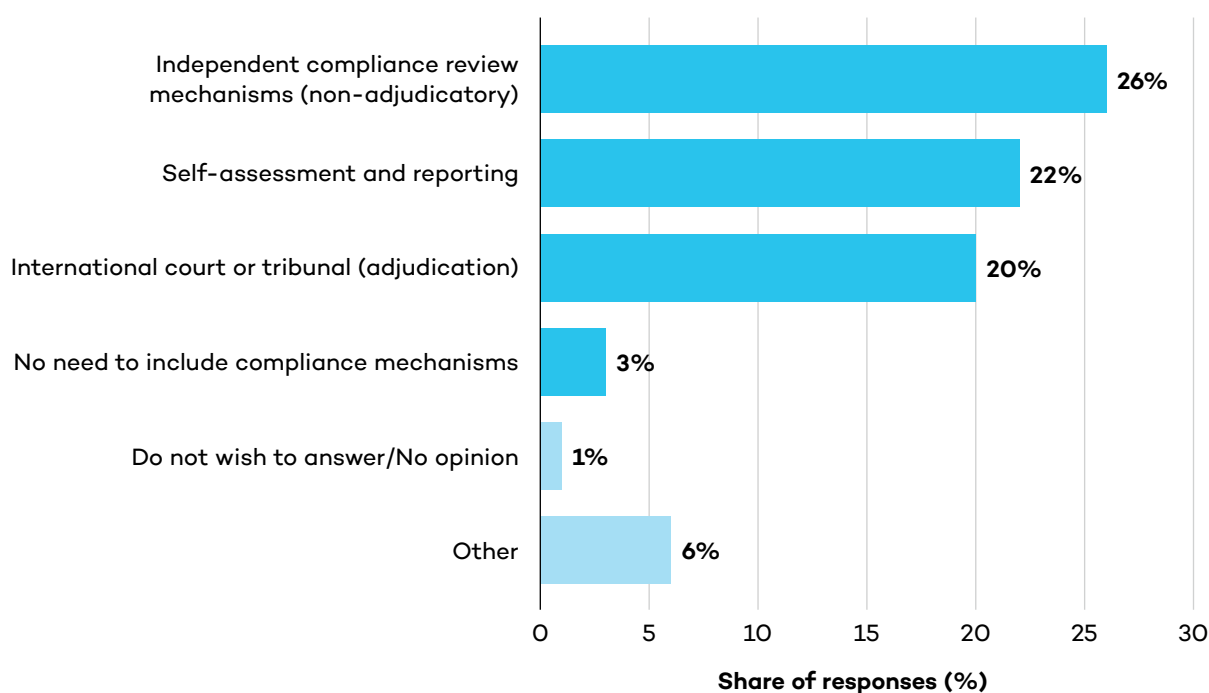
The next question asked about compliance mechanisms that the respondents favour in an investment treaty. Here, the respondents were given a multiple-choice question with a maximum of three answers, without ranking. **Compliance was understood broadly** to encompass non-adjudicatory monitoring and compliance mechanisms, reporting obligations, and adjudication.

- Independent compliance review mechanisms (non-adjudicatory)
- Self-assessment and reporting
- International court or tribunal (adjudication)
- No need to include compliance mechanisms
- Do not wish to answer/No opinion

The top three selected compliance mechanisms were as follows:

- **independent compliance review mechanisms (non-adjudicatory)** with 26 votes (33%)
- **self-assessment and reporting** with 22 votes (28%)
- **international court or tribunal (adjudication)** with 20 votes (26%).

**Figure 19.** Preferred treaty compliance mechanisms



Source: Authors, based on survey data.



## Scaling Up Renewable Energy

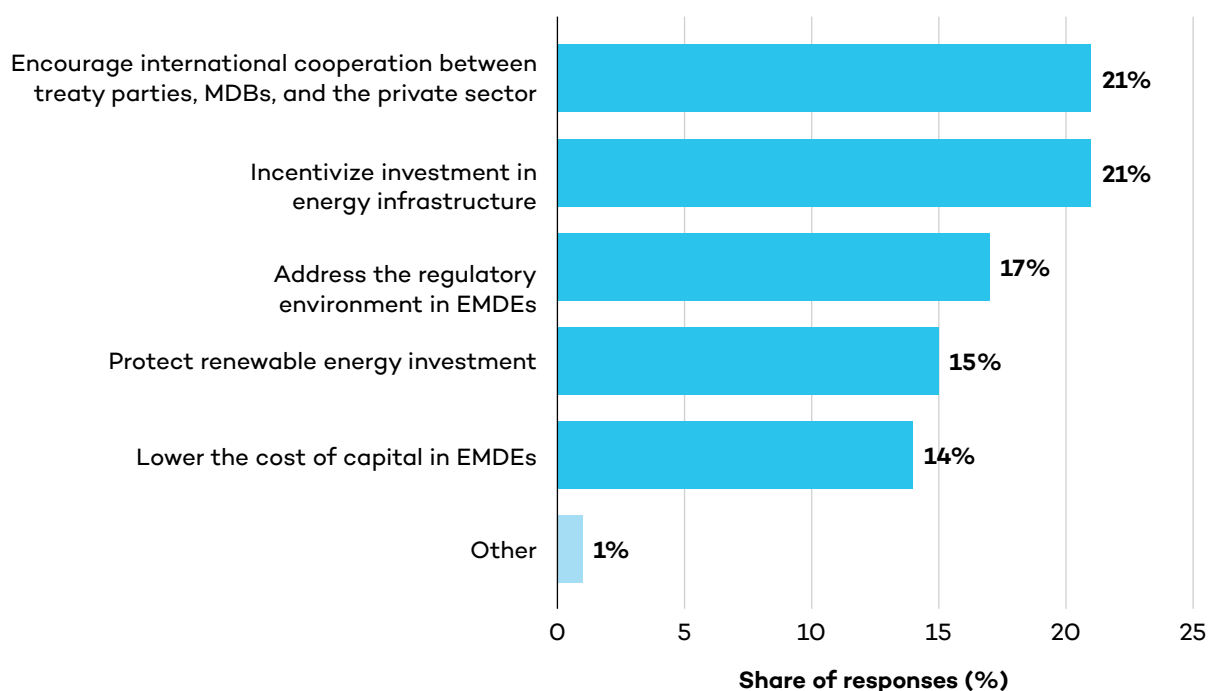
The final question asked about what roles a treaty can play in scaling up renewable energy. As with the previous question, the respondents were given a multiple-choice question with a maximum of three answers, without ranking.

- Share of responses
- Lower the cost of capital in EMDEs
- Incentivize investment in energy infrastructure
- Protect renewable energy investment
- Address the regulatory environment in EMDEs
- Encourage international cooperation between treaty parties, MDBs, and the private sector
- Do not wish to answer/No opinion

The top three selected options were as follows:

- **encourage international cooperation** between treaty parties, MDBs, and the private sector,
- **incentivize investment in energy infrastructure**, both with 21 votes (24%), and
- **address the regulatory environment in EMDEs**, with 17 votes (18%).

**Figure 20.** Preferred ways to scale up renewable energy



Source: Authors, based on survey data.



## 5.0 Main Lessons and Takeaways

There are several takeaways from the Rethinking Investment Treaties consultations.

First, while the consultations have provided important input and directions for future work, the results should not be overestimated, given the number of respondents who participated. The next steps in the Rethinking Investment Treaties project will take this into account and be adjusted based on the developments in the field.

Second, based on the responses received, the priority problems in investment governance are managing the negative impacts of investment projects and maximizing their positive impacts. It is worth noting that neither of these two policy issues is the main preoccupation of the existing investment treaty regime.

Third, while treaties are considered useful tools for some policy problems, there is recognition among the respondents that national law is the most appropriate instrument to address these priorities. To the extent that future investment treaties address the main policy problems of investment governance, their interaction with national regulation must receive sufficient attention.

Fourth, there is little support for the traditional focus of investment treaties in the consultation responses, with the exception of the interest in dispute settlement functions. However, the responses regarding dispute settlement showed a preference for alternatives to arbitration and the current ISDS regime.

Finally, there is openness to the idea of investment treaties addressing “collective action” problems, but little shared understanding of what that would mean.

These considerations will inform the next steps in the Rethinking Investment Treaties project, which consist of working with experts and policy-makers to develop transformative models to replace outdated treaty instruments. Rethinking Investment Treaties is part of a broader project on [Rethinking International Investment Governance](#) that aims to assist in reforming the main tools of investment governance: treaties, [investment laws](#), and contracts.



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