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ANNEX

ANNEX

to the

Proposal for a Council Decision

on the conclusion of the Sustainable Investment Facilitation Agreement between the European Union and the Republic of Ecuador

SUSTAINABLE INVESTMENT FACILITATION AGREEMENT

BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ECUADOR

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PREAMBLE

THE EUROPEAN UNION, hereinafter referred to as "the Union",

and

THE REPUBLIC OF ECUADOR, hereinafter referred to as "Ecuador",

hereinafter jointly referred to as "the Parties" or individually referred to as "Party",

CONSIDERING their wish to further strengthen their economic links and establish close and lasting relations based on partnership and cooperation with the aim of promoting sustainable development,

DESIRING to mobilise and retain investment, create new employment opportunities, and improve living standards in their territories,

RECOGNISING the need to facilitate investment by enhancing transparency and predictability, streamlining authorisation procedures and involving stakeholders to improve the investment climate,

CONVINCED that investment facilitation measures enhance investment in and by micro, small and medium enterprises (hereinafter referred to as "MSMEs"), RECOGNISING that investment can support sustainable development, economic growth, diversification of economic activities, and contribute to the achievement of the goals defined under the outcome document entitled "Transforming our world: the 2030 Agenda for Sustainable Development" and its Sustainable Development Goals, adopted by the United Nations General Assembly on 25 September 2015 (hereinafter referred to as "UN2030 Agenda"),

RECOGNISING the importance of technical assistance and capacity building for the implementation of this Agreement,

AFFIRMING their commitment to the Charter of the United Nations and having regard to the principles enshrined in the Universal Declaration of Human Rights,

BEARING IN MIND the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador, signed in Brussels on 11 November 2016,

AFFIRMING their steadfast commitment to the implementation of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, which was applied on a provisional basis from 1 January 2017 for Ecuador and entered into force on 1 November 2024, including their commitment to strengthen their engagement for an ambitious outcome on sustainable development,

HAVE AGREED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

Objectives

This Agreement aims at facilitating the attraction, retention and expansion of foreign direct investment between the Parties for the purposes of economic diversification and sustainable development.

ARTICLE 2

Scope

1. With the aim of facilitating foreign direct investment, this Agreement applies to measures adopted or maintained by a Party affecting investment activities of investors of the other Party.

2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including action against climate change, or public morals, social protection, consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.

3. This Agreement does not create or modify commitments relating to the liberalisation of investments, nor does it create or modify rules on the protection of established investors in the territories of the Parties, or of their investments, or on investor-state dispute settlement.

ARTICLE 3

Definitions

For the purposes of this Agreement the following definitions apply:

(1) "investment activities" means the establishment, acquisition, expansion, operation, management, maintenance, and sale or other disposal of an investment;

(2) "authorisation" means the permission by a competent authority to pursue investment activities, resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements;

(3) "competent authority" means a central, regional or local government or authority or a non-governmental body exercising powers delegated by a central, regional or local government or authority that is entitled to grant an authorisation;

(4) "investor of a Party" means a natural or legal person of a Party that seeks to engage or is engaging in investment activities in the territory of the other Party;

(5) "legal person" means any legal entity duly constituted or otherwise organised under the applicable law, whether for profit or otherwise and whether privately or publicly owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(6) "legal person of a Party" means:

(a) for the European Union, a legal person constituted or organised under the law of the European Union or its Member States and engaged in substantive business operations[1] in the territory of the European Union; and

(b) for Ecuador, a legal person constituted or organised under the law of Ecuador and engaged in substantive business operations in the territory of Ecuador;

(7) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(8) "measure of a Party" means any measure adopted or maintained by[2]:

(a) central, regional or local governments or authorities; or

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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[1] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations".

[2] For greater certainty, "measures of a Party" covers measures by entities listed under points (8)(a) and (8)(b), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

(9) "natural person of a Party" means:

(a) for the Union, a national of a Member State of the Union according to its law[3]; and

(b) for Ecuador, a national of Ecuador according to its law;

and

(10) "publish" means to make available in an official publication, such as an official journal, or an official website.

ARTICLE 4

Most-favoured-nation treatment

1. Each Party shall accord immediately and unconditionally to investors of the other Party and their investments treatment no less favourable than that it accords, in like situations, to investors of any other country and their investments, in applying the provisions set out in this Agreement in its territory.

[3] The definition of natural person also includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or their investments the benefit of any treatment resulting from:

(a) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the Annex on Financial Services to the General Agreement on Trade in Services set out in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994; or

(b) any bilateral, regional or multilateral agreement which includes commitments to abolish substantially all barriers to investment among the parties or requires the approximation of legislation of the parties in one or more economic sectors.

3. For greater certainty, provisions included in other international agreements concluded by a Party do not in themselves constitute "treatment" as referred to in paragraph 1 and thus cannot be taken into account when assessing a breach of this Agreement.

ARTICLE 5

Measures against corruption and other illegal activities

1. The Parties recognise the negative impact of corruption, money laundering, terrorism financing, tax fraud and tax evasion on economies and societies, including the impeding of sustainable development and discouraging of investment.

2. Each Party confirms its commitment to take adequate measures to prevent and fight corruption, money laundering, terrorism financing, tax fraud and tax evasion, with regard to matters covered by this Agreement, in accordance with internationally agreed standards that have been endorsed or are supported by that Party, such as the United Nations Convention against Corruption adopted by the United Nations General Assembly on 31 October 2003 and the Organisation for Economic Co-operation and Development (hereinafter referred to as "OECD") Guidelines for Multinational Enterprises on Responsible Business Conduct, as well as the current standards in the field of international taxation.

CHAPTER II

TRANSPARENCY AND PREDICTABILITY

ARTICLE 6

Administration of measures of general application

Each Party shall ensure that all measures of general application falling within the scope of this Agreement are administered in a reasonable, objective and impartial manner.

ARTICLE 7

Publication requirements

Each Party shall promptly publish or otherwise make publicly available in writing and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application falling within the scope of this Agreement in such a manner as to enable investors to be informed of them.

ARTICLE 8

Publication in advance and opportunity to comment

1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party[4] shall publish in advance:

(a) the proposals for laws and regulations of general application to be adopted in relation to matters falling within the scope of this Agreement; or

(b) documents that provide sufficient details about the proposals referred to in point (a) to allow investors and other interested persons to assess whether and how their interests might be significantly affected.

[4] The Parties understand that paragraphs 1 to 4 recognise that the Parties have different systems to consult on certain measures before they are final, and that the alternatives set out in paragraph 1 reflect different legal systems.

2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to apply paragraph 1 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of this Agreement.

3. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall provide investors and other interested persons, on a non-discriminatory basis, a reasonable opportunity to comment on proposed measures or documents published pursuant to paragraph 1 or 2.

4. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall consider comments received pursuant to paragraph 3[5].

5. In publishing a law or regulation of general application referred to in paragraph 1, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall endeavour to explain the purposes and rationale of that law or regulation.

6. Each Party shall, to the extent practicable, endeavour to allow a reasonable time between the publication of a law or regulation referred to in paragraph 1 and the date of its application to investors.

[5] This provision does not impose any obligation on a Party in regard to the final decision concerning the adoption or maintenance of any measure for authorisation of an investment.

ARTICLE 9

Transparency of the investment framework

1. Each Party shall make available via electronic means such as a website and, where practicable, accessible through a single portal, and update to the extent possible and as appropriate, the following:

(a) laws and regulations specifically concerning investment;

(b) restrictions and conditions applying to investment; and

(c) contact information of relevant competent authorities.

2. Each Party shall make available, where practicable, via electronic means such as a website and accessible through the single portal referred to in paragraph 1, and update to the extent possible and as appropriate, a description that informs investors and other interested persons of the practical steps needed to invest in its territory including the requirements and procedures related to:

(a) company establishment and business registration;

(b) connecting to essential infrastructure such as electricity and water supply;

(c) the acquisition and registering of property such as land ownership rights;

(d) construction permits;

(e) capital transfers and payments;

(f) convertibility of currency;

(g) the payment of taxes;

(h) access to finance, especially for MSMEs; and

(i) resolving insolvency.

3. No fee shall be imposed on any investor for access to the information provided pursuant to this Article or Article 7.

ARTICLE 10

Transparency of investment incentives

1. Each Party shall make available via electronic means such as a website and, where practicable, accessible through a single portal, and update to the extent possible and as appropriate, information on investment incentives.

2. The information referred to in paragraph 1 shall cover all the incentives available to investors, including financial incentives, fiscal incentives and in-kind transfers, including non-financial incentives.

3. The information referred to in paragraph 1 shall include the following elements:

(a) the legal basis of the incentive;

(b) the form of the incentive;

(c) the eligibility requirements of the incentive;

(d) the application process for the incentive, including the required forms and documents; and

(e) contact information of the competent authority.

ARTICLE 11

Disclosure of confidential information

Nothing in this Agreement shall require a Party to provide confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

CHAPTER III

STREAMLINING OF AUTHORISATION PROCEDURES

ARTICLE 12

Scope

This Chapter applies to measures of the Parties relating to the authorisation of investment.

ARTICLE 13

Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

ARTICLE 14

Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

ARTICLE 15

Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent possible, accept applications in electronic format; and

(b) accept copies of documents, that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

ARTICLE 16

Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, provide an indicative timeframe for the processing of the application;

(b) upon request of the applicant, provide, without undue delay, information concerning the status of the application;

(c) to the extent practicable, ascertain, without undue delay, the completeness of the application for processing under the Party's laws and regulations;

(d) if they consider an application complete for the purposes of processing under the Party's laws and regulations[6], within a reasonable period of time after the submission of the application ensure that:

(i) the processing of the application is completed; and

(ii) the applicant is informed of the decision concerning the application, to the extent possible, in writing[7];

(e) if they consider an application incomplete for the purposes of processing under the Party's laws and regulations, within a reasonable period of time after the submission of the application, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) upon request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance as to why the application is considered incomplete;

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[6] Competent authorities may require that all information is submitted in a specified format to consider it "complete for the purposes of processing".

[7] Competent authorities may meet the requirement set out in point (ii) by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application. The reference to "in writing" shall be understood as including in electronic format.

(iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application[8]; and

(iv) if none of the actions referred to in points (i), (ii) and (iii) is practicable, and the application is rejected due to incompleteness, inform the applicant within a reasonable period of time; and

(f) if an application is rejected, inform the applicant, either upon their own initiative or upon request of the applicant, of the reasons for rejection and of the timeframe for an appeal, and, if applicable, the procedures for resubmission of an application; an applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.

2. Each Party shall ensure that its competent authorities grant an authorisation as soon as it is established, in light of an appropriate examination, that the applicant meets the conditions for obtaining it.

3. Each Party shall ensure that an authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions[9].

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[8] Such "opportunity" does not require a competent authority to provide extensions of deadlines.

[9] Competent authorities are not responsible for delays due to reasons outside their responsibility.

ARTICLE 17

Fees

1. For all economic activities other than financial services, each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable and transparent and do not in themselves restrict investment activities.

2. Each Party shall ensure that its competent authorities, with respect to the authorisation fees they charge regarding financial services, provide an applicant with a schedule of fees or information on how fee amounts are determined. A Party shall not use such fees as a means of avoiding the Party's commitments or obligations.

3. Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

4. Except in urgent circumstances, each Party shall allow adequate time between the publication and the entry into force of new or amended fees related to authorisation procedures for investment, or between the publication of information enabling investors to understand the calculation of those fees and their entry into force. Those fees shall not be applied until that information has been published.

5. Each Party shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for fees collected by relevant competent authorities for the authorisation of investments.

ARTICLE 18

Objectivity, impartiality and independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that the competent authority concerned processes an application, and reaches and administers its decisions objectively and impartially and in a manner independent from the undue influence of any person carrying out the investment activity for which authorisation is required.[10]

ARTICLE 19

Publication and information available if authorisation is required

1. If a Party requires authorisation, it shall promptly publish the information necessary for investors to comply with the requirements, technical standards and procedures for obtaining, maintaining, amending or renewing that authorisation. That information shall include, to the extent that it exists:

(a) the requirements, including the relevant technical regulations and standards, applicable to the investment;

[10] For greater certainty, this provision does not require a particular administrative structure; it refers to the decision-making process and administering of decisions.

(b) the relevant forms;

(c) procedures;

(d) indicative timeframes for the processing of an application;

(e) authorisation fees;

(f) opportunities for public involvement, such as through hearings or comments;

(g) procedures for appeal or review of decisions concerning applications;

(h) procedures for monitoring or enforcing compliance with the terms and conditions of authorisations; and

(i) contact information of relevant competent authorities.

2. Each Party is encouraged to consolidate electronic publications into a single portal.

ARTICLE 20

Development of measures

If a Party adopts or maintains measures relating to authorisations, it shall ensure that:

(a) those measures are based on clear, objective, and transparent criteria, which may include the competence and ability to pursue the authorised investment activity, including in compliance with a Party's regulatory requirements such as health and environmental requirements, it being understood that competent authorities may assess the weight to be given to each criterion;

(b) the procedures are impartial, easily accessible to all applicants, and adequate to allow applicants to demonstrate whether they meet the requirements; and

(c) the procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

CHAPTER IV

FOCAL POINTS AND INVOLVEMENT OF STAKEHOLDERS

ARTICLE 21

Investment facilitation focal points

1. In a manner consistent with its legal system, each Party shall maintain or establish appropriate investment facilitation focal points to serve as first points of contact for investors regarding measures affecting investment.

2. Each Party shall ensure that investment facilitation focal points respond to inquiries from investors, as well as from investment facilitation focal points established by the other Party pursuant to this Article in order to contribute to the effective application of this Agreement.

3. If an investment facilitation focal point is unable to respond to an enquiry pursuant to paragraph 2, it shall endeavour to provide the necessary assistance to the inquirer to obtain the relevant information.

4. Each Party shall ensure that inquiries and information pursuant to this Article can be submitted via electronic means.

5. Information provided pursuant to this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 22

Linkages with the host economy

Each Party is encouraged to make available to investors information on domestic suppliers with a view to strengthening linkages with the local economy, increasing the competitiveness of domestic suppliers and enhancing the contribution of investment to sustainable development.

ARTICLE 23

Problem-solving mechanisms

1. Each Party shall endeavour to establish or maintain appropriate mechanisms to resolve problems for investors that may arise from the application of any measure of general application covered by this Agreement.

2. The mechanisms referred to in paragraph 1 shall be easily accessible, including for MSMEs, time-bound and transparent. They shall be without prejudice to any appeal or review procedures which a Party establishes or maintains or to the dispute settlement mechanism established pursuant to Chapter VI of this Agreement.

ARTICLE 24

Domestic inter-agency coordination

1. The Parties recognise the importance of close domestic coordination of the authorities and

agencies responsible for the regulation and implementation of measures and procedures related to investment as a means to facilitate, attract, retain and expand investment.

2. Each Party shall endeavour to establish or maintain mechanisms to coordinate activities with the aim of:

(a) facilitating investment;

(b) encouraging regulatory coherence and predictability of government measures and procedures; and

(c) promoting the coherence of central, regional and local investment measures and procedures.

3. To facilitate the task of coordination, each Party is encouraged to designate a lead agency in a manner consistent with its legal system.

ARTICLE 25

Regulatory coherence and impact assessments

1. The Parties recognise the importance of an effective, consistent, transparent and predictable regulatory framework for investment.

2. Each Party is encouraged to carry out, in accordance with its respective rules and procedures, an impact assessment of major[11] measures of general application it is preparing that fall within the scope of this Agreement.

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[11] Each Party may determine what constitutes "major" measures of general application for the purposes of this Agreement.

3. The Parties acknowledge that, when conducting the impact assessments referred to in paragraph 2, the potential impact of proposed measures on MSMEs and on sustainable development should be taken into account.

ARTICLE 26

Stakeholder consultation and periodic reviews

1. Each Party is encouraged to review, at intervals it deems appropriate, its measures of general application covered by this Agreement in order to determine whether specific measures it has implemented should be modified, streamlined, expanded or repealed, so as to make the Party's investment framework more effective in achieving its policy objectives and in addressing the specific needs of MSMEs.

2. Each Party is encouraged to periodically review its authorisation fees with a view to reducing their number and diversity.

3. Each Party is encouraged, in its review exercises, to consider stakeholder feedback and make use of relevant international performance indicators.

4. The Parties are invited to share in the Committee on Investment Facilitation referred to in Article 43 their experiences in carrying out periodic reviews and policy recommendations resulting therefrom.

ARTICLE 27

Non application of dispute settlement

Chapter VI does not apply to Articles 24, 25 and 26.

CHAPTER V

INVESTMENT AND SUSTAINABLE DEVELOPMENT

ARTICLE 28

Objectives

1. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to facilitate investment in a way that contributes to the objective of sustainable development, including the Sustainable Development Goals of the UN 2030 Agenda.

2. The objective of this Chapter is to enhance the investment relationship between the Parties in a way that contributes to sustainable development, notably in its labour and environmental dimensions that are relevant to investment, including through strengthening dialogue and cooperation.

ARTICLE 29

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its relevant law and policies accordingly. Such levels of protection, law and policies shall be consistent with each Party's commitments to the internationally recognised standards and agreements referred to in this Chapter.

2. Each Party shall strive to ensure that its relevant law and policies provide for and encourage high levels of environmental and labour protection and shall strive to continue improving them.

3. A Party shall not weaken or reduce the levels of protection afforded in its environmental or labour law in order to encourage investment.

4. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental or labour law in order to encourage investment.

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour law in order to encourage investment.

ARTICLE 30

Multilateral labour standards and agreements

1. The Parties affirm their commitment to promote the development of investment in a way that is conducive to decent work for all, in line with their respective obligations under the International Labour Organisation (hereinafter referred to as "ILO") Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference (hereinafter referred to as "ILC") in Geneva on 10 June 2008.

2. In accordance with the ILO Constitution, adopted on 28 June 1919, and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the ILC in Geneva on 18 June 1998, as amended in 2022, each Party shall respect, promote and realise the principles concerning the fundamental rights at work, as defined in the fundamental ILO Conventions, and effectively implement the ILO Conventions ratified by the Member States of the European Union and by Ecuador respectively.

3. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions to which they are not yet party.

4. Each Party shall promote investment policies which advance the objectives of the ILO Decent Work Agenda, in accordance with the ILO Declaration on Social Justice for a Fair Globalization, and the ILO Centenary Declaration for the Future of Work, adopted by the ILC at Geneva on 21 June 2019.

5. Consistent with its commitments under the ILO, each Party shall establish, if it has not yet done so, and maintain an effective labour inspection system for all economic sectors, including for agriculture and mining activities.

6. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, including in the ILO, as appropriate.

ARTICLE 31

Multilateral environmental governance and agreements

1. The Parties recognise the importance of international environmental governance, in particular the role of the United Nations Environment Assembly (hereinafter referred to as "UNEA") of the United Nations Environment Programme (hereinafter referred to as "UNEP"), as well as multilateral environmental agreements (hereinafter referred to as "MEAs") as a response of the international community to global or regional environmental challenges, and underline the need to enhance the mutual supportiveness between investment and environment policies, rules and measures.

2. Each Party shall effectively implement the MEAs and their protocols to which it is party. The Parties affirm their commitment to promote the development of investment in a way that is conducive to high levels of environmental protection.

3. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, including in the United Nations High-level Political Forum for Sustainable Development, the UNEP, the UNEA, with respect to MEAs, and in the World Trade Organization (hereinafter referred to as "WTO").

ARTICLE 32

Investment and climate change

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of investment in pursuing this objective, consistent with the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as "UNFCCC"), with the Paris Agreement, done at Paris on 12 December 2015 (hereinafter referred to as "Paris Agreement"), and with other MEAs and multilateral instruments in the area of climate change.

2. Each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to its nationally determined contributions; and

(b) promote the mutual supportiveness of investment and climate policies and measures, thereby contributing to the transition to a low greenhouse gas emission economy, to a resource-efficient and circular economy and to climate-resilient development.

3. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, including under the UNFCCC, the Paris Agreement and the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 16 September 1987, as well as in the WTO, in the International Civil Aviation Organization and in the International Maritime Organization.

ARTICLE 33

Investment contributing to sustainable development

1. In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, the Parties shall facilitate and encourage investment in sustainable production and consumption, in environmental goods and services, and investment of relevance for climate change mitigation and adaptation, such as investment in renewable energy and energy efficiency.

2. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of investment in pursuing these objectives, consistent with relevant MEAs to which they are party, including the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (hereinafter referred to as "CBD") and its protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as "CITES"), and the decisions adopted thereunder.

3. Each Party shall facilitate investment for the sustainable use of biological resources and the conservation of biodiversity, and take measures to conserve biological diversity when it is subject to pressures linked to investment.

4. The Parties recognise the importance of the conservation and sustainable management of forests and the role of investment in pursuing these objectives. Accordingly, each Party shall facilitate investment in a way that is consistent with the conservation and sustainable management of forests.

5. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems, as well as of promoting responsible and sustainable aquaculture, and the role of investment in pursuing these objectives. Accordingly, each Party shall facilitate investment in a way that is consistent with the conservation and sustainable management of marine biological resources and marine ecosystems, as well as with the promotion of responsible and sustainable aquaculture.

6. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, including under the CBD and the CITES.

ARTICLE 34

Responsible business conduct

1. The Parties recognise the importance of responsible business conduct and the role of investment in pursuing this objective.

2. Each Party shall promote the uptake by enterprises and investors of practices aligned with responsible business conduct.

3. Each Party shall support the dissemination and use of relevant international instruments, such as the United Nations Guiding Principles on Business and Human Rights, the United Nations Global Compact, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and related due diligence guidance.

4. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, among others through the exchange of information, best practices and outreach initiatives.

ARTICLE 35

Investment and gender equality

1. The Parties recognise that inclusive investment policies contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the UN 2030 Agenda and the objectives of the Joint Declaration on Trade and Women’s Economic Empowerment on the Occasion of the WTO Ministerial Conference, held in Buenos Aires in December 2017. The Parties acknowledge the important contribution by women to economic growth through their participation in economic activity, including investment. The Parties underline their intention to implement this Agreement in a manner that promotes and enhances gender equality.

2. The Parties shall work together to strengthen their cooperation on investment-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, among others through activities to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.

CHAPTER VI

DISPUTE AVOIDANCE AND SETTLEMENT

ARTICLE 36

Consultations

1. The Parties shall endeavour to resolve any dispute between them concerning the interpretation and application of this Agreement, except as otherwise provided for in this Agreement, by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the measures at issue and the obligations under this Agreement that it considers the other Party to have failed to fulfil.

3. The Party to which the request for consultations is made shall reply to the request within 10 days after the date of its delivery.

4. Unless the Parties agree otherwise, consultations shall be held no later than 30 days after the date of delivery of the request and take place in the territory of the Party to which the request is made.

5. During consultations, each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could breach the relevant obligations under this Agreement.

6. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter subject to the consultations.

7. As part of consultations on matters related to the multilateral environmental or labour agreements or instruments referred to in this Agreement, the Parties shall take into account information from the ILO or relevant bodies or organisations established under multilateral environmental agreements in order to promote coherence between the work of the Parties and those bodies or organisations. Where relevant, the Parties shall seek advice from those bodies or organisations, or any other expert or body they deem appropriate.

8. Each Party may seek, if appropriate, the view of civil society as referred to under Article 46.

9. Consultations, and in particular all information disclosed and positions taken by the Parties during consultations, shall be confidential.

ARTICLE 37

Mutually agreed solutions

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 36.

2. Each Party shall adopt the measures necessary to implement the mutually agreed solution. If immediate implementation is not possible, the Parties shall agree on a reasonable time period for implementation.

3. No later than on the expiry of the agreed time period referred to in paragraph 2, the implementing Party shall inform the other Party, in writing, of any measure that it has adopted to implement the mutually agreed solution.

4. If the Parties are unable to reach a mutually agreed solution within 120 days of the date of the request for consultations, or if the mutually agreed solution is not implemented within the time period referred to in paragraph 2, the Party that requested consultations pursuant to Article 36 may request the establishment of a panel to settle the dispute. The request for the establishment of a panel ("panel request") shall be made by means of a written request delivered to the other Party.

ARTICLE 38

Panel procedure

1. The Parties shall endeavour to agree on the composition of the panel referred to in Article 37(4). If no such agreement has been reached within 30 days after the delivery of the panel request pursuant to Article 37(4), each Party shall appoint a panellist within an additional period of 30 days.

The panellists appointed by the Parties shall jointly appoint the chairperson of the panel, who shall not have the nationality of either Party.

2. If one Party fails to appoint a panellist within the time limit provided for in paragraph 1, the other Party may request the Secretary-General of the Permanent Court of Arbitration to appoint a panellist.

If the panellists fail to appoint a chairperson within 30 days after their appointment pursuant to paragraph 1, either Party may request the Secretary-General of the Permanent Court of Arbitration to appoint a chairperson.

3. The panel shall make an objective assessment of the matter before it. Unless the Parties agree otherwise, the panel shall determine the applicable rules of procedure.

4. If the panel concludes that the measure at issue is not in conformity with the provisions of this Agreement, the Party complained against shall take any measure necessary to promptly bring itself into compliance.

5. Without prejudice to paragraph 4, the Parties shall discuss, at the request of a Party, the measures to be implemented taking into account the report of the panel.

6. The Committee on Investment Facilitation shall monitor the follow-up to the report of the panel.

ARTICLE 39

Transparency

Each Party shall promptly make public:

(a) a request for consultations pursuant to Article 36;

(b) a mutually agreed solution pursuant to Article 37; and

(c) measures taken pursuant to Article 38.

ARTICLE 40

Time periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following the act to which they refer, unless otherwise specified.

2. Any time period set out in this Chapter may be modified by mutual agreement of the Parties.

ARTICLE 41

Mediation Procedure

1. A Party may at any time request to enter into a mediation procedure with respect to any measure of a Party alleged to adversely affect investment between the Parties.

2. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by a mediator appointed by the Parties.

3. The Parties shall endeavour to reach a mutually agreed solution within 90 days of the date of the appointment of the mediator.

4. Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. A Party may disclose to the public the fact that mediation is taking place.

5. The mediation procedure is without prejudice to the Parties' rights and obligations pursuant to Articles 36 and 38 or under dispute settlement procedures under any other agreement.

CHAPTER VII

COOPERATION AND INSTITUTIONAL PROVISIONS

ARTICLE 42

Technical assistance and capacity-building for investment facilitation

1. The Parties recognise the importance of technical assistance and capacity-building and commit to cooperate on strengthening the investment climate in Ecuador and supporting the implementation of this Agreement.

2. The activities referred to in paragraph 1 shall be carried out within the framework of the rules and relevant procedures of the European Union development cooperation and instruments.

3. Requests for assistance should be based on needs identified and in accordance with domestic investment facilitation reforms. Assistance shall be subject to mutually agreed terms and conditions.

4. The Parties in the framework of the Committee on Investment Facilitation shall:

(a) exchange information and review progress on technical assistance and support for capacity building on the implementation of this Agreement; and

(b) identify needs for technical assistance and capacity-building.

ARTICLE 43

Committee on Investment Facilitation

1. In order to ensure that this Agreement operates properly and effectively, the Parties hereby establish a Committee on Investment Facilitation comprising representatives of both Parties.

2. The Committee on Investment Facilitation shall hold its first meeting no later than six months after the date of entry into force of this Agreement. Thereafter, the Committee on Investment Facilitation shall meet on an annual basis, unless otherwise agreed by the representatives of the Parties, or without undue delay upon request of either Party.

3. The meetings of the Committee on Investment Facilitation shall take place in the Union or Ecuador alternately, unless otherwise agreed by the representatives of the Parties. The Committee on Investment Facilitation may meet in person or by other appropriate means of communication, as agreed by the representatives of the Parties.

4. The Committee on Investment Facilitation shall be co-chaired by, for Ecuador, the Minister of Production, Trade and Investments, and, for the Union, the Member of the European Commission responsible for Trade, or their respective designees.

ARTICLE 44

Functions of the Committee on Investment Facilitation

1. The Committee on Investment Facilitation shall:

(a) consider ways to further enhance investment relations between the Parties;

(b) supervise and facilitate the implementation and application of this Agreement, and advance its general aims;

(c) seek appropriate ways and methods of preventing or solving problems that may arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

(d) consider any other matter of interest relating to an area covered by this Agreement, as the representatives of the Parties may agree;

(e) upon request of a Party, consider inquiries as referred to in Article 21 and requests for administrative assistance; and

(f) discuss possible improvements of this Agreement, in particular in the light of experience and developments in other international fora and under other agreements concluded by the Parties.

2. The Committee on Investment Facilitation shall adopt at its first meeting its own rules of procedure.

ARTICLE 45

Decisions and recommendations of the Committee on Investment Facilitation

1. For the purposes of attaining the objectives of this Agreement, the Committee on Investment Facilitation shall have the power to take decisions where provided for in this Agreement. Those decisions shall be binding upon the Parties. The Parties shall adopt measures necessary to implement those decisions.

2. For the purposes of attaining the objectives of this Agreement, the Committee on investment Facilitation may make appropriate recommendations in respect of all matters covered by this Agreement.

3. The Committee on Investment Facilitation shall take its decisions and make its recommendations by consensus.

ARTICLE 46

Dialogue with civil society

1. The Parties shall organise a dialogue with civil society (hereinafter referred to as the "dialogue") to discuss the implementation of this Agreement.

2. The Parties shall promote in the dialogue a balanced representation of relevant stakeholders, including non-governmental organisations, business and employers' organisations and trade unions, active on economic, sustainable development, social, environmental and other matters.

3. The dialogue shall take place on an annual basis, in conjunction with the meeting of the Committee on Investment Facilitation, unless otherwise agreed by the Parties.

4. For the purposes of the dialogue, the Parties shall provide information to the participants in the dialogue on the implementation of this Agreement.

5. The views and opinions expressed during the dialogue may be submitted to the Committee on Investment Facilitation and may be made publicly available.

6. The Parties may choose to organise the dialogue through existing mechanisms established by the Parties for involving civil society, as appropriate.

CHAPTER VIII

FINAL PROVISIONS

ARTICLE 47

General exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against, or a disguised restriction on investors of the other Party and their investment activities in like situations[12], nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order[13];

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

  (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

12 This reflects the Parties' intent to ensure consistency with the chapeau of Article XX of GATT and Article XIV of GATS.

13 The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

ARTICLE 48

Security exceptions

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE 49

Duration

This Agreement is concluded for an unlimited period of time.

ARTICLE 50

Termination

1. Either Party may notify in writing the other Party of its intention to terminate this Agreement. A notification to the Union shall be sent to the Secretary-General of the Council of the European Union and a notification to Ecuador shall be sent to the Ministry of Foreign Affairs and Human Mobility.

2. The termination of this Agreement shall take effect six months after the date of receipt by the other Party of the notification referred to in paragraph 1, unless the Parties agree otherwise.

ARTICLE 51

Territorial application

1. This Agreement applies:

(a) with respect to the Union, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable, and under the conditions laid down in those Treaties; and

(b) with respect to Ecuador, to the territory consisting of its continental and maritime areas, adjacent islands, territorial sea, the Galápagos Archipelago, soil, submarine platform, subsoil, and the continental, insular, and maritime airspace above, whose limits have been set in the treaties signed by Ecuador.

2. References to "territory" in this Agreement shall be understood in the sense referred to in paragraph 1.

3. For greater certainty, references to the treaties signed by Ecuador in point 1(b) of paragraph 1 include, in particular, the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982. In case of an inconsistency between domestic law and international law, the latter shall prevail.

ARTICLE 52

Amendments

The Parties may amend this Agreement by written agreement. Such amendments shall enter into force in accordance with Article 57.

ARTICLE 53

Accession of new Member States to the European Union

1. The Union shall inform Ecuador of any request for accession of a third country to the Union.

2. The Union shall notify Ecuador of the entry into force of any Treaty concerning the accession of a third country to the Union.

ARTICLE 54

Private rights

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in a Party's legal system.

ARTICLE 55

References to laws and other Agreements

1. Unless otherwise specified, where reference is made to laws and regulations of a Party, those laws and regulations shall be understood to include amendments thereto.

2. Where international agreements are referred to in this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on the date of signature of this Agreement or thereafter. If any matter arises regarding the implementation or application of this Agreement as a result of such amendments or successor agreements, the Parties may, upon request of either Party, consult with each other with a view to finding a mutually satisfactory solution.

ARTICLE 56

Annex to this Agreement

The Annex on Sustainable Energy and Raw Materials to this Agreement constitutes an integral part thereof.

ARTICLE 57

Entry into force

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have exchanged written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement.

2. The written notifications referred to in paragraph 1 shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs and Human Mobility of Ecuador.

ARTICLE 58

Languages and authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each of these texts being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

Done at …, this … day of … in the year …

For the European Union

For the Republic of Ecuador

ANNEX ON SUSTAINABLE ENERGY AND RAW MATERIALS

ARTICLE 1

Objectives

1. The objective of this Annex is to facilitate investment between the Parties in the areas of sustainable energy and raw materials with a view to favouring the energy transition and improving environmental sustainability.

2. This Annex complements the Agreement in the areas of sustainable energy and raw materials.

ARTICLE 2

Sustainable energy investments

1. Each Party shall promote the establishment of open, competitive and functioning energy markets through transparent legal and regulatory frameworks that facilitate investments in sustainable energy[1] and energy efficiency.

2. For the purposes of paragraph 1, each Party shall:

(a) publish the conditions and requirements for governance, access and use of energy grids (electricity and gas), including the terms, conditions and tariffs for access and use of energy grids, as well as possible derogations from those conditions and requirements;

(b) administer in a reasonable, objective and impartial manner the conditions, requirements, and derogations referred to in point (a);

[1] This includes renewable energy as well as other forms of clean energies.

(c) endeavour to develop transparent and competitive support mechanisms for sustainable energy;

(d) to the extent practicable, streamline authorisation procedures for investments in sustainable energy, such as for the construction of energy generation, transmission and distribution infrastructure; and

(e) promote in its market and internationally, regulatory frameworks conducive to investments in the production, use and trade of sustainable energy, renewable fuels as well as in the sector of energy efficiency and related technologies.

ARTICLE 3

Sustainability of raw materials value chains

1. The Parties recognise the importance of fair, responsible, undistorted sourcing and sustainable production of raw materials[2] throughout the entire value chain of related extractive, processing and recycling industries.

2. For the purposes of paragraph 1, each Party shall facilitate investments in raw materials in a manner that contributes to the objective of sustainable development, fully respects the sovereignty of each Party over its natural resources, and upholds the rights of those affected based on internationally recognised standards.

3. Each Party shall promote the establishment of open, competitive and functioning markets of raw materials through transparent regulatory and legal frameworks that facilitate investments in raw materials’ extractive, processing and recycling industries, notably ensuring transparency of authorisations, permits and, where appropriate, terms and conditions of access to geological data.

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[2] "Raw materials" means substances used in the manufacturing of industrial products including ores, concentrates, slags, ashes and chemicals, and other substances, extracted, processed, unwrought, and refined, including recycled.

4. Each Party shall promote sustainable and responsible practices in the raw materials' extractive, processing and recycling industries.

5. For the purposes of paragraph 4, each Party shall:

(a) support national, regional and international initiatives to promote responsible business conduct in accordance with international standards;

(b) promote transparency and accountability in the use and management of raw materials, including by promoting relevant initiatives on the responsible and sustainable extraction and sourcing of raw materials, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and the Extractive Industry Transparency Initiative; and

(c) promote the values of responsible sourcing and mining as well as maximise the contribution of its raw materials sectors and associated industrial value chains to the fulfilment of the Sustainable Development Goals of the UN 2030 Agenda.

ARTICLE 4

Assessment of environmental impact

1. A Party shall ensure that an environmental impact assessment is carried out before that Party grants authorisation for a project related to the production or exploration of energy goods or the production of raw materials, if the project may have a significant impact on the environment relating to any of the aspects listed in paragraph 2.

2. The environmental impact assessment referred to in paragraph 1 shall identify and assess, as appropriate, the effect of a project on:

(a) population and human health;

(b) biodiversity;

(c) land, soil, water, air and climate; and

(d) cultural heritage and landscape, including the expected effect deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

3. With respect to the environmental impact assessment referred to in paragraph 1, a Party shall:

(a) ensure that all interested persons, including non-governmental organisations, have an early and effective opportunity, and an appropriate time period, to participate in the environmental impact assessment as well as an appropriate time period to provide comments on the environmental impact assessment report;

(b) take into account the findings of the environmental impact assessment relating to the effects of the project on the environment; and

(c) make the results of the environmental impact assessment available to the public prior to granting an authorisation for the project.