



**2018/0358M(NLE)**

14.10.2019

## **DRAFT REPORT**

containing a motion for a non-legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (05931/2019 – C9-0020/2019 – 2018/0358M(NLE))

Committee on International Trade

Rapporteur: Jan Zahradil

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## MOTION FOR A EUROPEAN PARLIAMENT NON-LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (05931/2019 – C9-0020/2019 – 2018/0358M(NLE))**

*The European Parliament,*

- having regard to the draft Council decision (05931/2019),
- having regard to the proposed Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (05932/2019),
- having regard to the request for consent submitted by the Council in accordance with Articles 207(4) and 218(6), second subparagraph, point (a)(v), of the Treaty on the Functioning of the European Union (TFEU) (C9-0020/2019),
- having regard to the negotiating directives of 23 April 2007 for a free trade agreement (FTA) with the member states of the Association of Southeast Asian Nations (ASEAN), which were supplemented in October 2013 to include investment protection,
- having regard to the decision of 22 December 2009 to pursue bilateral FTA negotiations with individual ASEAN member states,
- having regard to the Framework Agreement on Comprehensive Partnership and Cooperation (PCA) between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, signed in Brussels on 27 June 2012, which entered into force in October 2016<sup>1</sup>,
- having regard to its resolution of 6 April 2011 on the future European international investment policy<sup>2</sup>,
- having regard to Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries<sup>3</sup>,
- having regard to its resolution of 28 June 2016 on a new, forward-looking and innovative future strategy for trade and investment<sup>4</sup>,
- having regard to the Commission communication entitled ‘Trade for all – towards a more responsible trade and investment policy’<sup>5</sup>,
- having regard to the opinion of the Court of Justice of the European Union of 16 May

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<sup>1</sup> OJ L 329, 3.12.2016, p. 8.

<sup>2</sup> OJ C 296E, 2.10.2012, p. 34.

<sup>3</sup> OJ L 351, 20.12.2012, p. 40.

<sup>4</sup> OJ C 101, 16.3.2018, p. 30.

<sup>5</sup> [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

- 2017 in procedure 2/15<sup>6</sup>, pursuant to Article 218(11) TFEU, requested on 10 July 2015 by the Commission,
- having regard to its resolution of 9 June 2016 on Vietnam<sup>7</sup>,
  - having regard to its resolution of 14 December 2017 on freedom of expression in Vietnam, notably the case of Nguyen Van Hoa<sup>8</sup>,
  - having regard to its resolution of 15 November 2018 on Vietnam, notably the situation of political prisoners<sup>9</sup>,
  - having regard to the decision of the European Ombudsman of 26 February 2016 in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam FTA<sup>10</sup>,
  - having regard to its resolution of 4 October 2018 on the EU’s input on a UN binding instrument on transnational corporations with respect to human rights<sup>11</sup>,
  - having regard to the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency in Treaty-based Investor-State Arbitration<sup>12</sup>,
  - having regard to the Treaty on European Union (TEU), and in particular Title V thereof on the Union’s external action,
  - having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Part Five, Titles I, II and V thereof, and specifically Article 207 in conjunction with Article 218(6)(a)(v),
  - having regard to its legislative resolution of ...<sup>13</sup> on the proposal for a Council decision,
  - having regard to Rule 105(2) of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade (A9-0000/2019),
- A. whereas the EU is the leading recipient and source of foreign direct investment (FDI) in the world;
- B. whereas the EU ranks fifth out of 80 foreign direct investors in Vietnam;
- C. whereas Vietnam is a vibrant economy with the fastest growing middle class in ASEAN and has a young and dynamic workforce, a high literacy rate, high education levels, comparatively low wages, good transport connections and a central location within

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<sup>6</sup> Opinion of the Court of Justice of 16 May 2017, 2/15, ECLI:EU:C: 2017:376.

<sup>7</sup> OJ C 86, 6.3.2018, p. 122.

<sup>8</sup> OJ C 369, 11.10.2018, p. 73.

<sup>9</sup> Texts adopted, P8\_TA(2018)0459.

<sup>10</sup> <https://www.ombudsman.europa.eu/en/decision/en/64308>

<sup>11</sup> Texts adopted, P8\_TA(2018)0382.

<sup>12</sup> <https://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/Rules-on-Transparency-E.pdf>

<sup>13</sup> Texts adopted, P8\_TA(0000)0000.

ASEAN;

- D. whereas in 2017, Vietnam received FDI worth 8 % of its GDP – more than double the rate received by economies of a similar scale in the region;
  - E. welcoming the fact that the trade, business and investment environment has improved significantly in Vietnam over the last few decades;
  - F. whereas there are currently more than 3 000 international investment treaties in force, and EU Member States are party to some 1 400;
  - G. whereas this is the second ‘standalone investment protection agreement’ concluded between the EU and a third country following discussions by the European institutions on the new architecture of EU FTAs, on the basis of the opinion of the Court of Justice of the European Union (CJEU) 2/15 of 16 May 2017;
  - H. whereas the agreement builds on the investment protection provisions included in the EU-Canada Comprehensive Economic and Trade Agreement (CETA), which was ratified by Parliament on 15 February 2017;
  - I. whereas the agreement will replace and supersede the existing bilateral investment treaties between 21 EU Member States and Vietnam, which do not include the EU’s new approach to investment protection and its enforcement mechanism, the Investment Court System (ICS);
  - J. whereas on 30 April 2019 the CJEU ruled that the mechanism for the resolution of disputes between investors and States provided for by CETA is compatible with EU law<sup>14</sup>;
  - K. whereas the Parties have stated their commitment to pursuing a Multilateral Investment Court (MIC) – an initiative strongly supported by Parliament;
  - L. whereas on 20 March 2018 the Council adopted the negotiating directives, which authorised the Commission to negotiate, on behalf of the EU, a convention establishing an MIC; whereas these negotiating directives have been made public;
1. Welcomes the EU’s new approach to investment protection and its enforcement mechanism (ICS), which has replaced the investor-to-state dispute settlement (ISDS); underlines the fact that ICS represents a modern, innovative and reformed investment resolution mechanism; notes that it marks significant change in the level of substantive protection afforded to investors and the manner in which investor-state disputes are resolved;
  2. Notes that the agreement will ensure a high level of investment protection and legal certainty while safeguarding the right of the Parties to regulate and pursue legitimate public policy objectives, such as public health and environmental protection; emphasises that the agreement will ensure transparency and accountability;
  3. Stresses that the agreement guarantees that EU investors in Vietnam will get fair and

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<sup>14</sup> Opinion of the Court of Justice of 30 April 2019, 1/17.

equitable treatment and will suffer no discrimination in relation to Vietnamese investors; notes that the agreement properly protects EU investors from illegitimate expropriation;

4. Recalls that the ICS plans to establish a Permanent Investment Tribunal of First Instance and an Appeal Tribunal, whose members will have to possess comparable qualifications to those held by judges of the International Court of Justice, and will have to demonstrate expertise in public international law and not just commercial law, in addition to satisfying strict rules of independence, impartiality, integrity and ethical behaviour through a binding code of conduct designed to prevent direct or indirect conflicts of interests;
5. Welcomes the transparency rules applying to proceedings before the tribunals, which include provisions guaranteeing that case documents will be publicly available, hearings will be held in public, and interested parties will be allowed to make submissions; believes that increased transparency will help to instil public trust in the system, as well as ensuring that all human rights and sustainable development aspects are effectively heard by the investment tribunals;
6. Stresses that third parties such as labour and environmental organisations can contribute to ICS proceedings through *amicus curiae* briefs;
7. Underlines that forum shopping will not be possible and that multiple and parallel proceedings will be avoided;
8. Recalls that the agreement represents an improvement on the investment protection provisions in CETA, as it incorporates provisions on obligations for former judges, a code of conduct to prevent conflicts of interests, and a fully functioning Appeal Tribunal at the time of its conclusion;
9. Believes that the establishment of an Appeal Tribunal could improve the quality and consistency of decisions as compared to the current situation;
10. Notes that the EU-Vietnam Investment Protection Agreement (EVIPA) does not contain a separate trade and sustainable development (TSD) chapter, as the latter applies to investment by virtue of the EU-Vietnam Free Trade Agreement (EUVFTA) that liberalises it; stresses that the EVIPA also contains a provision establishing a legal link to the PCA, as well as specific references in its preamble to the TSD values and principles as enshrined in the EUVFTA and to the Universal Declaration of Human Rights;
11. Welcomes the Council's decision to make public the negotiating directives of 20 March 2018 on the MIC, and calls on the Council to make public all previous trade and investment agreement negotiating directives;
12. Highlights that the agreement will replace the existing 21 bilateral investment treaties between EU Member States and Vietnam; considers that this constitutes an important step in increasing the legitimacy and acceptance of the international investment regime;
13. Encourages the Commission to continue its work on making the ICS more accessible to

small and medium-sized enterprises (SMEs);

14. Considers that the approval of this agreement will robustly protect investors and their investments on both sides while safeguarding the governments' rights to regulate;
15. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service, the governments and parliaments of the Member States and the government and parliament of the Socialist Republic of Viet Nam.