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EU-Singapore Investment Protection Agreement (resolution)

European Parliament non-legislative resolution of 13 February 2019 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 Republic of Singapore, of the other part (07979/2018 – C8-0447/2018 – 2018/0095M(NLE))

The European Parliament,

– having regard to the draft Council decision (07979/2018),

– having regard to the draft Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part (07980/2018),

– 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) (C8-0447/2018),

– having regard to the negotiating directives of 23 April 2007 for a free trade agreement (FTA) with Member States of the Association of Southeast Asian Nations (ASEAN),

– having regard to the Council decision of 22 December 2009 to pursue bilateral FTA negotiations with individual ASEAN Member States, starting with Singapore,

– having regard to its resolution of 6 April 2011 on the future European international investment policy[1],

– having regard to the modifications of 12 September 2011 of the initial negotiating directives in order to authorise the Commission to negotiate on investment,

– 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

[1] OJ C 296E, 2.10.2012, p. 34.

investment agreements between Member States and third countries[1],

– having regard to its resolution of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment[2],

– having regard to the Commission communication of 14 October 2015 entitled 'Trade for all – Towards a more responsible trade and investment policy' (COM(2015)0497),

– having regard to the opinion of the Court of Justice of 16 May 2017 in procedure 2/15[3], requested by the Commission on 10 July 2015, pursuant to Article 218(11) TFEU,

– having regard to its resolution of 4 October 2018 on the EU's input to a UN Binding Instrument on transnational corporations and other business enterprises with transnational characteristics with respect to human rights[4],

– having regard to the Rules on Transparency in Treaty-based Investor-State Arbitration of the UN Commission on International Trade Law (UNCITRAL),

– having regard to the Treaty on European Union, and in particular Title V thereof on the Union's external action,

– having regard to TFEU, in particular Part Five, Titles I, II and V thereof, specifically Article 207, in conjunction with Article 218(6)(a)(v),

– having regard to its legislative resolution of 13 February 2019[5] on the draft decision,

– having regard to Rule 99(2) of its Rules of Procedure,

– having regard to the report of the Committee on International Trade (A8-0049/2019),

A. whereas the EU and Singapore share the same fundamental values, including democracy, the rule of law, respect for human rights, cultural and linguistic diversity and a strong commitment to rules-based trade within the multilateral trading system;

B. whereas the EU is the leading recipient and source of foreign direct investment worldwide;

C. whereas Singapore is the eighth largest destination for EU foreign direct investment and the first in the ASEAN region;

D. whereas Singapore is by far the EU's largest partner in Southeast Asia, accounting for just under one third of EU-ASEAN trade in goods and services, and roughly two thirds of all investments between the two regions; whereas more than 10 000 European companies have their regional offices in Singapore and operate as normal, in a context of legal security and certainty;

E. whereas Singapore is the number one location for European investment in Asia, with

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1 OJ L 351, 20.12.2012, p. 40.
2 OJ C 101, 16.3.2018, p. 30.
3 Opinion of the Court of Justice of 16 May 2017, 2/15, ECLI:EU:C: 2017:376.
4 Texts adopted, P8_TA(2018)0382.
5 Texts adopted, P8_TA-PROV(2019)0090.

bilateral investment stocks reaching EUR 256 billion in 2016;

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 first 'investment protection only' agreement concluded between the EU and a third country following discussions among the institutions on the new architecture of EU FTAs on the basis of ECJ opinion 2/15 of 16 May 2017;

H. whereas in the light of the EU's new approach to investment protection and its enforcement mechanism, the investment court system (ICS), in 2017 Singapore agreed to review the investment protection provisions negotiated in 2014, thereby re-opening a closed agreement;

I. 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;

J. whereas on 6 September 2017, Belgium requested an ECJ opinion on the compatibility of CETA's ICS provisions with the EU treaties;

K. whereas developed economies with properly functioning judiciaries render the need for investor-state dispute settlement mechanisms less important, although these mechanisms may ensure a quicker resolution of disputes; whereas, nonetheless, the establishment of an independent multilateral investment court would enhance trust in the system and legal certainty;

L. whereas the agreement will replace the existing bilateral investment treaties between 13 EU Member States and Singapore, which do not include the EU's new approach to investment protection and its enforcement mechanism (ICS);

M. whereas the Parties committed to pursuing a multilateral investment court, an initiative strongly supported by Parliament;

N. whereas on 20 March 2018, the Council adopted the negotiating directives authorising the Commission to negotiate, on behalf of the EU, a convention establishing a multilateral investment court; whereas these negotiating directives have been made public;

O. whereas the EU has concluded a similar investment protection agreement with Vietnam, which was adopted by the Commission on 17 October 2018;

1. Welcomes the EU's new approach to investment protection and its enforcement mechanism (ICS), which replace both the controversial investor-to-state dispute settlement (ISDS), addressing some of its flaws in the process, and the individual approaches followed by the EU Member States in existing bilateral investment treaties (BITs);

2. Considers it essential that the agreement will ensure a high level of investment protection, transparency and accountability, while safeguarding the right to regulate at all governmental levels and pursue legitimate public policy objectives for both Parties, such as public health and environmental protection; stresses that if one Party should

regulate in a manner that negatively affects an investment or interferes with an investor's profit expectations, it would not amount in itself to a breach of investment protection standards and hence not require any compensation; highlights that the agreement must not in any way restrict the autonomy of social partners and trade union rights;

3. Stresses that the agreement guarantees that EU investors in Singapore will not be discriminated vis-à-vis Singaporean investors and properly protects them from illegitimate expropriation;

4. Recalls that the ICS envisages the establishment of a Permanent Investment Tribunal of First Instance and an Appellate Tribunal, whose members will have to possess comparable qualifications to those held by judges of the International Court of Justice, including expertise in public international law and not just commercial law, and will have to satisfy strict rules of independence, integrity and ethical behaviour through a binding code of conduct designed to prevent conflicts of interests;

5. Welcomes the fact that transparency rules will apply to proceedings before tribunals, case documents will be publicly available and hearings will be held in public; believes that greater transparency will help to instil public trust in the system; welcomes, moreover, the clarity regarding the grounds on which an investor can submit a claim, which ensures additional transparency and fairness of the process;

6. Stresses that third parties, such as labour and environmental organisations, have no legal standing before the tribunals and therefore cannot participate as affected parties to enforce investors' obligations but can contribute to ICS proceedings through *amicus curiae* briefs; underlines the fact that the investment court still constitutes a separate system for foreign investors only;

7. Emphasises that forum shopping must not be possible and that multiple and parallel proceedings must be avoided;

8. Recalls that the agreement significantly builds 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 Appellate Tribunal at the time of its conclusion;

9. Welcomes Singapore's commitment to the establishment of the multilateral investment court, a public and independent international court which will be empowered to hear disputes on investments between investors and states that have accepted its jurisdiction over their bilateral investment treaties, and whose ultimate goal must be to reform and replace the current unbalanced, costly and fragmented investment protection regime; considers the agreement a crucial stepping stone towards that end; encourages the Commission to continue its efforts in reaching out to third countries to establish the multilateral investment court as soon as possible;

10. Welcomes the Council's decision to make public the negotiating directive of 20 March 2018 on the multilateral investment court, and calls on the Council to make public the negotiating directives for all previous and future trade and investment agreements immediately after they are adopted, in order to increase transparency and public scrutiny;

11. Highlights the fact that the agreement will replace the existing BITs between 13 EU Member States and Singapore and thus provide greater coherence than the BITs, which are based on outdated investment protection provisions and include ISDS; stresses that the agreement will also create new rights for investors' claims in the remaining 15 Member States; emphasises that functional national courts are the primary option to resolve investor disputes, but considers the agreement an important step towards the reform of global rules on investment protection and dispute settlement;

12. Regrets the lack of provisions on investor responsibilities and highlights, in this context, the importance of corporate social responsibility; calls on the Commission to consider legislation similar to that on conflict minerals and timber, such as for the garment industry; recalls the importance of the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights;

13. Notes the lack of a global approach to corporations' compliance with human rights law and of available remedy mechanisms; notes the work initiated in the UN by the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights on the establishment of a binding UN instrument; encourages the Commission and the EU Member States to constructively engage in this initiative;

14. Encourages the Commission to continue its work on making the ICS more accessible, particularly for SMEs and smaller companies;

15. Calls on the Commission and Singapore to agree stronger sanctions in the event that a member of the tribunals does not comply with the code of conduct, and to ensure that they are in place as soon as this agreement enters into force;

16. Considers that the approval of this agreement will give the EU more leverage to negotiate similar agreements with the other ASEAN countries with a view to establishing similar rules on investment protection throughout the region;

17. 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 Republic of Singapore.