



**2018/0358(NLE)**

16.11.2018

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## **DRAFT RECOMMENDATION**

on the proposal for a Council decision on the conclusion 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 (COM(2018)0693 – C8-0000/2018 – 2018/0358(NLE))

Committee on International Trade

Rapporteur: Jan Zahradil

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion 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  
(COM(2018)0693 – C8-0000/2018 – 2018/0358(NLE))**

### **(Consent)**

*The European Parliament,*

- having regard to the proposal for a Council decision (COM(2018)0693),
  - having regard to draft 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 (0000/2018),
  - having regard to the request for consent submitted by the Council in accordance with Article 207(4), first subparagraph and Article 218(6), second subparagraph, point (a)(v) of the Treaty on the Functioning of the European Union,
  - having regard to its non-legislative resolution of ...<sup>1</sup> on the proposal for a decision,
  - having regard to Rule 99(1) and (4), and Rule 108(7) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on International Trade and (A8-0000/2018),
1. Gives its consent to conclusion of the agreement;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the Socialist Republic of Viet Nam.

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<sup>1</sup> Texts adopted of that date, P8\_TA(0000)0000.

## EXPLANATORY STATEMENT

EU Vietnam Investment Protection Agreement (EVIPA) will help promote high-quality investment between Viet Nam and the EU. The EU's updated approach to investment protection strikes a better balance between boosting as well as protecting job-creating investment whilst also protecting the government's right to pursue policies in the public interest.

Following the entry into force of the Lisbon Treaty and in light of the EU's exclusive competence on foreign direct investment, including investment protection acquired, EU negotiators included investment protection provisions in the EU-Viet Nam and in the EU-Singapore FTAs. Both agreements were to a large extent similar and included an identical legal structure. In 2015, the Commission decided to request the opinion of the Court of Justice of the EU on the EU's competence to sign and conclude the EU-Singapore FTA by itself or whether the participation of Member States was required. The opinion was released on 16 May 2017 and, on that basis, following discussions between the EU institutions on the new architecture of future FTAs, the FTAs with both Viet Nam and with Singapore were split into EU-only free trade agreements and mixed investment protection agreements.

The main elements of the EU Viet Nam Investment Protection Agreement (EVIPA) include:

- Precise **standards on investment** such as: non-discrimination; no expropriation without prompt and adequate compensation; possibility to transfer and repatriate funds relating to an investment; a general guarantee of fair and equitable treatment and physical security; a commitment that governments will respect their own written and legally binding contractual obligations towards an investor; a commitment to compensate for losses in certain circumstances linked to war or armed conflict.
- Effective and, permanent and independent **mechanism for avoiding and settling any dispute** through a standing international and independent Investment Tribunal System. The Members of the Tribunal System will be appointed in advance by the EU and by Viet Nam and will be subject to strict requirements of independence and integrity. In the second instance, it will be possible to appeal to a permanent Appeal Tribunal. Transparency of the proceedings is ensured through the publication of documents and hearings open to the public. A final award must be enforced- domestic courts will not be allowed to intervene or question the decision of the Tribunal to ensure transparency and fair and equitable treatment.
- Precise definitions when governments are in breach of the fair and equitable treatment obligation, which remove the scope for discretionary interpretation.
- Safeguards against potential abuses of the system, like the prohibition of multiple and parallel claims, and provisions allowing for the early dismissal of manifestly unfounded claims. The application of the 'loser-pays principle' applies to the allocation of procedural costs.

The EVIPA is almost identical to the EU-Singapore IPA and goes beyond the investment protection provisions in CETA (fully functioning Appellate Tribunal, a code of conduct for the members of the Tribunals).

Similar to the Singapore IPA, EVIPA does not include a separate TSD chapter. It does contain, however, in the preamble specific references to the PCA and EUVFTA as well as values and principles that are enshrined therein, including in the TSD chapter.

The existing 21 Bilateral Investment Treaties (BITs) in force between Vietnam and EU Member States will be replaced by the EVIPA once it enters into force.

Your rapporteur recommends to give consent to the agreement.