

CONTENT

Background and state of play

The EU hopes that its investment protection agreement (IPA) with Hanoi will boost investment in the country. Vietnam is one of Asia's fastest growing economies, a country of nearly 100 million people with a rapidly expanding middle class. It is also a gateway to the wider Southeast Asia/East Asia region. Vietnam is therefore a promising market, and relative to the size of its economy it has attracted a very high rate of foreign investment.

Negotiations lasted from 2012 to December 2015. The IPA has been approved by the European Parliament, but it still has to be ratified by the Member States before it can come into force.

Content of the agreement

Modelled on the EU-Singapore Investment Protection Agreement, the IPA will replace the 20 existing bilateral investment agreements between Vietnam and 21 EU Member States. The agreement includes a new investment court system (ICS), comprising an Investment Tribunal and Appeal Tribunal to resolve disputes between EU investors and Vietnamese authorities (and vice-versa). The system aims to offer a high level of protection for EU investors in Vietnam, ensuring that they are not targeted by abusive treatment disadvantaging them relative to Vietnamese operators, and that their assets are not expropriated without adequate compensation. At the same time, the agreement confirms the right of governments to 'achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals'.

Criticisms of the agreement

Apart from general concerns about the human rights situation in Vietnam, the Investment Court System has been criticised as a mechanism that potentially gives foreign investors privileged access to justice, enabling them to bypass national courts. Despite the above-mentioned provision confirming EU and Vietnamese governments' right to regulate, there are also concerns that the risk of expensive legal disputes could deter governments from decisions that, albeit having a legitimate purpose (for example, environmental protection), adversely affect investors' business interests.

Status of the procedure to adopt the agreement

The free trade agreement (FTA) and IPA were initially negotiated as a single text, but in 2018 the EU and Vietnam decided to split them, following the approach chosen for the trade and investment agreements with Singapore. The FTA covers exclusive EU competences, and can therefore be ratified by the EU alone, without involving the Member States. The IPA covers non-direct ('portfolio') investment and investor-state dispute settlement mechanisms: these are shared competences, on which the EU shares decision-making powers with Member States, meaning that the agreement must also be ratified by them.

The two texts were signed by the EU and Vietnam in Hanoi on 30 June 2019. On 12 February 2020, the European Parliament gave its consent to both agreements, followed by the Vietnamese National Assembly (Parliament) on 8 June. The IPA must now be ratified by all Member States; to date, the Czech Republic, Estonia, Greece, Hungary, Latvia, Romania and Sweden have done so. Judging by the precedent of the EU-Vietnam Partnership and Cooperation Agreement, for which Member State ratification took over three years, ratification by some other countries will be a lengthy process.

Position of the European Parliament

The debate on the IPA in the European Parliament focused, on the one hand, on the benefits of a stable and predictable environment for foreign investors in Vietnam, both for the investors themselves and the Vietnamese economy; and on the other, the poor human rights situation in Vietnam, together with the perception that the Investment Court System could give foreign investors an unfair advantage. In the end, members voted for the IPA by 407 to 188 with 53 abstentions.

The Investment Protection Agreement was concluded at EU level in June 2019, but ratification by individual Member States may be ongoing (see <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2019015&DocLanguage=en>). Please note: this text is no longer being updated.

References:

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- European Parliament, [Parliament approves EU-Vietnam free trade and investment protection deals](#), Press Release, February 2020
- European Commission, [EU-Vietnam trade and investment agreements](#) (authentic text as of August 2018)

Further reading:

- European Parliament, EPRS, [EU-Vietnam Free Trade Agreement](#), Briefing, October 2018
- European Parliament, EXPO, [An EU-Vietnam FTA within sight, more on the horizon](#), In-Depth Analysis, March 2015

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