



EU investment policy needs to balance investor protection and public regulation, says International Trade Committee

Committees: Committee on International Trade

The fact that the Lisbon Treaty made foreign direct investment (FDI) an exclusive EU competence necessitates striking a delicate balance between protecting investors' rights and the right of public authorities to regulate, argues the International Trade Committee in a report voted on Wednesday. This in turn requires very clear definitions of what types of investors and investments will be protected, it adds.

The current legal framework for FDI consists of over 1,200 bilateral investment treaties between EU Member States and third countries. Since the Lisbon Treaty took effect, however, foreign direct investment has become an exclusively EU competence (Articles 3(1)(e), 206 and 207).

This prompts two questions: first, what should happen to the body of bilateral investment treaties (BITs) in future? This issue will be dealt with in a co-decision report by Carl Schlyter (Greens/EFA, SE), the vote on which was postponed until the next committee meeting.

The second question is what rules will determine how the EU negotiates future investment agreements? The Commission produced a communication on this in July 2010, and on Wednesday the committee set out its views in an own-initiative report by Kader Arif (S&D, FR), approved with 20 votes in favour, none against and 8 abstentions.

Balancing private investor protection and public regulation prerogatives

The Arif report emphasises that the Commission should focus not only on investor protection, but "better address the right to protect the public capacity to regulate and meet the EU's obligation to exercise policy coherence for development." It calls on the Commission to include specific clauses in all future investment agreements that would lay down the rights of parties to regulate in the name of "national security, the environment, public health, workers' and consumer rights, industrial policy and cultural diversity."

MEPs also argue that future investment agreements should include three precisely-defined standards: non-discrimination among foreign and national investors; fair and equitable treatment; and protection against direct and indirect expropriation.

Clear definitions needed

Since the EU Treaties do not explicitly define "foreign direct investment", the committee also stresses the need for a "clear definition of the investments to be protected," and insists that "speculative forms of investment, as defined by the Commission, shall not be protected."

In addition, the report asks for an assessment of past instances in which the broad definition of "foreign investor" may have led to abusive practices - such as domestic investors using BITs to sue their own countries' regulators- and urges that the term be clearly defined.

Press release

"This report sends a strong signal to both the Council and the Commission, which is about to start investment negotiations with third countries such as Canada, India, and, in the near future, China. Therefore it is crucial for the Parliament to ensure the responsible behaviour of European investors abroad, while at the same time protecting the EU's right to regulate in the public interest", commented rapporteur Kader Arif (S&D, FR).

Rapporteur: Kader ARIF (S&D, FR)

Procedure: Own-initiative report

Plenary vote: April 4-7, Strasbourg

In the Chair: Vital MOREIRA (S&D, PT)

Contact :

Lőrinc RÉDEI

INTA

BXL: (+32) 2 28 32379

STR: (+33) 3 881 74912

PORT: (+32) 498 98 34 02

EMAIL: inta-press@europarl.europa.eu