The future of EU international investment policy

2021/2176(INI) - 23/06/2022 - Text adopted by Parliament, single reading

The European Parliament adopted by 436 votes to 69, with 71 abstentions, a resolution on the future of EU international investment policy.

The EU is a global leader in investment policy reform. Significant reform of investment policy has been undertaken at European and international level since the entry into force of the Lisbon Treaty, at the insistence and with the support of Parliament. The EU has launched and concluded IIAs with partner countries, reformed investment protection provisions, replaced investor-state dispute settlement (ISDS) with the investment court system (ICS), launched multilateral negotiations for an investment court, proposed legislation to regulate foreign subsidies, and adopted legislation for the screening of inward foreign direct investment. While these developments are significant steps in the right direction for a modernised and sustainable investment policy, Parliament stated that the EU's international investment policy reform path needs to be further reformed and reinforced in order to address the current challenges.

The resolution underlined that investment can and should have a positive impact on sustainable economic growth, job creation and sustainable development, and contribute to the Sustainable Development Goals (SDGs). In this respect, the Commission should review the EU's investment policy to ensure consistency with the European Green Deal and the SDGs, as well as with EU values, including respect for human rights and the social standards as defined by the European Pillar of Social Rights.

Parliament considered that international investment agreements (IIAs) should facilitate green, gender-sensitive and inclusive sustainable investments, adequately protect investors, contribute to the resilience of the single market while safeguarding policy space in host states, and encourage the exchange of best practices, skills and know-how, in accordance with the Organisation for Economic Co-operation and Development (OECD) Guidelines for multinational enterprises on corporate social responsibility.

Members considered that EU companies need **adequate protection** for their investments abroad. Protected investments should not include speculative forms of investment, financial instruments or portfolio investments that can be held for speculative purposes. Moreover, financial instruments which can be withdrawn at any time do not require protection. The Commission is asked to continue its endeavours to improve the definition of protected investments so as to make sure that IIAs protect only investments that make a substantial commitment of capital or other resources for a minimum number of years, for which there is an assumption of risk and expectation of profit.

The EU's investment policy should also help developing countries, notably African countries, to attract foreign direct investment (FDI) and to reduce the funding gap to achieve the SDGs.

Market access

According to Parliament, recent investment agreements have a positive focus on market access and investment liberalisation and seek the removal of barriers to the establishment and operation of EU investors in foreign markets. The Commission should seek conditions for EU investors abroad that **reflect the level of openness that foreign investors enjoy in the EU**. IIAs should safeguard the ability of states to regulate foreign investments in their jurisdiction. Members also called on the Commission to monitor barriers to the establishment and operation of EU investors in foreign markets, including discriminatory practices. The Commission is urged to strictly protect the policy spaces of the EU and the Member States, notably on energy, agriculture, fisheries, audiovisual, telecommunication and digital issues, as well as public services, when liberalising investments.

Investment facilitation

Stressing that investment facilitation can contribute to unlocking investment opportunities in developing countries, Parliament called on the Commission to support developing countries in improving the investment climate in their jurisdiction, both through development cooperation tools and through bilateral agreements.

The Commission and the Member States should engage in negotiations at WTO level with a view to tackling distortions of competition, particularly in the area of industrial subsidies.

Compatibility of IIAs with EU priorities

The resolution noted that an increasing number of legal proceedings before investment tribunals target **environmental measures**. Members deplored the fact that various countries, including the Member States, are being sued in relation to policies on climate, the phasing out of fossil fuels, or the just transition.

The Energy Charter Treaty (ECT) is the most litigated investment agreement in the world today. Parliament supports the efforts to modernise the ECT and the EU's position to exclude protection for most fossil fuel investments. It believes, however, that the EU position should not grant protection to investments in economic activities considered to be 'significantly harmful' according to EU law, and that the timeframe for phasing out the protection of existing investments in fossil fuels should be significantly shortened in order not to undermine the achievement of the EU's climate objectives.

IIA ratification

Parliament pointed out that delays to Member States' ratification of EU IIAs delay the replacement of bilateral investment treaties (BITs) with more transparent and modern provisions that protect equally all EU investors in third countries. It called on the Member States to ratify the concluded EU investment agreements.