OECD: multilateral investment agreement, recommendations to the EC for the negotiations

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In adopting by a large majority the report drafted by Mr Wolfgang KREISSL-DÖRFLER (Greens, D), the Committee has become the first parliamentary body anywhere in the world to take a stand on the negotiations that have been taking place in the Château de la Muette in Paris. The majority of the committee members were concerned by the fact that no study is yet available in the EU on the impact of the MAI on such crucial areas as social and environmental policy, intellectual property, development policy and regional agreements. They therefore call on the parliaments and governments of the Member States not to sign the MAI until a thorough analysis, accessible to the public, has been carried out on the impact of this agreement on the EU's legislation and policies. The committee endorsed an amendment tabled by the Legal Affairs Committee, which calls on the Commission, the Council and the Member States to submit the definitive draft of the MAI to the Court of Justice for full examination, under Article 228(6) of the EC Treaty. Pursuant to Article 228(3), second paragraph, of the Treaty, the Council is required to obtain Parliament's assent to the conclusion of the MAI. The committee acknowledges that, compared to the multitude of bilateral agreements that endeavour to establish general conditions for foreign direct investment (FDI), a multilateral framework of binding legal rules provides generally greater certainty and offers an opportunity for creating a general framework for world trade. In the absence of such rules, FDI would continue to be subject to numerous constraints and relocation might get out of control. However, the committee is concerned about an imbalance in the draft MAI: the rights and obligations of investors are fully guaranteed, while the signatory states are taking on burdensome obligations which might leave their populations unprotected. The committee regrets the fact that the negotiations have been conducted in the utmost secrecy and emphasizes the need for a broader public debate and ongoing parliamentary monitoring of the negotiations, bearing in mind that any agreement will concern national parliaments, the European Parliament and the Council. It further believes that FDI issues should be brought within the sphere of the EU as part of the common commercial policy and that co-decision and supervision by Parliament should therefore be guaranteed. The Commission is called upon to carry out an independent and thorough impact assessment in the social, environmental and development fields, to investigate to what extent the draft MAI is in conflict with relevant international agreements and previously agreed OECD guidelines as well as regional, national and EU legislation designed to promote sustainable development. The committee has endorsed amendments tabled by the Development Committee which call for investment protection to be examined in a multilateral context involving all developing countries. UNCTAD and the WTO would be the appropriate fora for these negotiations and the interests of the developing countries and their national policies should be taken into account as well as the interests of investors. The committee considers non-discrimination, the right to freedom of establishment, transparency and protection against arbitrary expropriation to be essential principles of the MAI. Most-favoured nation treatment and national treatment are fundamental to the agreement but foreign investors must not enjoy more favourable treatment than national investors. The committee considers that the proposed provisions on investment protection and in particular on expropriation, compensation and the transfer of capital and profits are too far-reaching; governments must make sure that they cannot be condemned to make compensatory payments if they establish standards on the environment, labour, health and safety. Moreover, contracting parties should not be able to impose obligations or prohibitions on another contracting party on account of investments in a third country, as in the case of the US Helms-Burton and d·Amato Acts. The motion for a resolution calls for a balanced system of legal protection, which enables both the investor to enforce the rights he derives from the agreement and the contracting state to ensure compliance with its environmental and social legislation. The committee has further incorporated in its motion for a resolution a series of amendments tabled by the Culture Committee asserting that adherence to the MAI agreement in the cultural sector would prevent the proper implementation of European Union legislation and would undermine the functioning of various initiatives

in the cultural and audiovisual sector which areessential for the EU to continue to meet its legal obligations under Article 128 of the Treaty. It is therefore proposed to introduce a derogation in respect of the application of the MAI to the EU's cultural industry by ensuring that no contracting party can be prevented from taking measures to regulate investment by foreign companies in the case of policies designed to preserve and promote cultural and linguistic diversity. The committee believes that the MAI should contain an exemption for the audiovisual sector. It also stresses that the multilateral agreements already in place on the regulation of intellectual property (at EU, WIPO and TRIPs level) are legally binding and make further multilateral agreements on these issues unnecessary. Finally, the EU and its Member States are urged not to sign or ratify the MAI until it is certain that fishing communities throughout the EU have been provided with ample opportunity to discuss the implications of MAI for their industry. The ability of the EU to establish and implement policies for the conservation of fish stocks and the management of Community fisheries should under no circumstances be compromised.