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

1997/2298(INI) - 11/03/1998 - Text adopted by Parliament, single reading

In adopting the report by Mr Wolfgang KREISSL-DÖRFLER (V, D) on the Multilateral Agreement on Investments (MAI), Parliament expressed its concern at the fact that no study was yet available in the Union on the impact of the MAI in such essential fields as social and environmental policy, intellectual property, development policy and regional agreements. By 447 votes to 54, with 5 abstentions, it therefore called on the parliaments and governments of the Member States not to sign the MAI in its present form and to initiate a broad public debate on the issue. Parliament called on the Commission, Council and Member States to submit the definitive draft of the MAI to the Court of Justice for full examination, pursuant to Article 228(6) of the Treaty. It called on the Council to consult Parliament on the possible conclusion of the MAI on behalf of the EU under the assent procedure. It considered that Foreign Direct Investment (FDI) issues should be brought within the sphere of responsibilities of the EU as part of the common commercial policy and that the codecision procedure and supervision by the European Parliament should therefore be guaranteed. Parliament acknowledged that, in comparison with the numerous bilateral agreements laying down general conditions for FDI, a multilateral framework of legally binding rules would generally provide greater certainty and offer 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 there was a danger that relocation might also get out of control. Nonetheless, it express some concern about the imbalance in the draft MAI: while the rights and obligations of investors were fully guaranteed, the signatory states were taking on burdensome obligations which might leave their populations unprotected. Parliament called for investment protection to be examined in a multilateral context in which all the developing countries were involved. UNCTAD and the WTO would be the appropriate forum for these negotiations, which must take account of the interests of developing countries and their respective development policies, as well as the interests of investors. Parliament considered that non-discrimination, the right to freedom of establishment, transparency and protection against arbitrary expropriation should be fundamental principles for the MAI. Most-favoured nation treatment and national treatment were of essential importance to the Agreement, but foreign investors must not enjoy more favourable treatment than national investors. The proposed provisions on investment protection, and in particular on expropriation, compensation and the transfer of capital and profits, were too far-reaching; governments should make sure that they could not be condemned to making compensatory payments if they established standards on the environment, labour, health and safety. Contracting parties should not be permitted to impose obligations or prohibitions on other contracting parties, as was the case under the United States' Helms-Burton Act and d'Amato Act. Parliament called for a balanced legal protection system which would enable both the investor to enforce rights derived from the agreement and the contracting state to ensure compliance with its social and environmental legislation. Parliament considered that accession to the MAI in the cultural sector must not be allowed to hamper the correct application of Community legislation and must not undermine the various initiatives adopted in the cultural and audiovisual sector. It therefore called for a derogation in respect of the application of the MAI to the cultural industry in the EU: no contracting party may be prevented 'from taking any measure to regulate investment by foreign companies (...) in the framework of policies designed to preserve and promote cultural and linguistic diversity'. Parliament considered that MAI should include provisions for derogations in the audiovisual sector. It stressed that the multilateral agreements currently governing intellectual property rights (at the level of the EU, the World Intellectual Property Organization (WIPO) and the agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)) were legally binding, and made it unnecessary to adopt any new multilateral agreements on these issues. Parliament urged the EU and its Member States not to sign or ratify the MAI until fishing communities throughout the EU had

been given ample opportunity to debate the implications of the MAI for their industry. On no account must the EU's ability to adopt and implement policies for the conservation of fish stocks and the management of Community fisheries be compromised.