Basic information

2010/2203(INI) INI - Own-initiative procedure	Procedure completed
Future European international investment policy **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 6.20.06 Foreign direct investment (FDI) 6.30.02 Financial and technical cooperation and assistance	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	ARIF Kader (S&D)	14/07/2010
	Shadow rapporteur ZALEWSKI Paweł (PPE) SCHLYTER Carl (Verts /ALE) ZAHRADIL Jan (ECR) SCHOLZ Helmut (GUE /NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	NEWTON DUNN Bill (ALDE)	09/12/2010
ECON Economic and Monetary Affairs	CASA David (PPE)	19/10/2010

European Commission

Commission DG	Commissioner
Trade and Economic Security	DE GUCHT Karel

Key events

Date	Event	Reference	Summary
07/07/2010	Non-legislative basic document published	COM(2010)0343	Summary

23/09/2010	Committee referral announced in Parliament		
16/03/2011	Vote in committee		Summary
22/03/2011	Committee report tabled for plenary	A7-0070/2011	
04/04/2011	Debate in Parliament		
06/04/2011	Decision by Parliament	T7-0141/2011	Summary
06/04/2011	Results of vote in Parliament		
06/04/2011	End of procedure in Parliament		

Technical information

Procedure reference	2010/2203(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/7/03376

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE454.567	20/12/2010	
Committee opinion	DEVE	PE456.806	08/02/2011	
Amendments tabled in committee		PE458.494	09/02/2011	
Committee opinion	ECON	PE454.474	02/03/2011	
Committee report tabled for plenary, single reading		A7-0070/2011	22/03/2011	
Text adopted by Parliament, single reading		T7-0141/2011	06/04/2011	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2010)0343	07/07/2010	Summary
Commission response to text adopted in plenary	SP(2011)5857	19/09/2011	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary

Contribution	CZ_SENATE	COM(2010)0343	05/11/2010	
Contribution	PT_PARLIAMENT	COM(2010)0343	11/01/2011	

Future European international investment policy

2010/2203(INI) - 06/04/2011 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the future European international investment policy in response to the Commission communication entitled 'Towards a comprehensive European international investment policy'.

The resolution notes that as a result of the Treaty of Lisbon, foreign direct aid (FDI) now falls under the **exclusive competence of the EU**. This new competence, which has significant consequences, throws up a double challenge both for managing the more than 1 200 bilateral investment treaties (BIT) already concluded by the Member States (MS) and to define a future European investment policy which meets the expectations of investors and beneficiary states, while at the same time respecting the objectives of the EU's external action.

Members call on the Commission and the Member States to seize this opportunity to build with Parliament an **integrated and coherent investment policy** which promotes high-quality investments and makes a positive contribution to worldwide economic progress and sustainable development.

The Commission is urged to develop the EU's investment strategy in a careful and coordinated manner drawing on the best practices of BITs and to provide a **strong EU template for investment agreements**. It is also called upon to issue non-mandatory guidance as expediently as possible, e.g. in the form of a template for BITs, that may be used by Member States to enhance certainty and consistency.

(1) Definitions and scope: the resolution recalls that Articles 206 and 207 TFEU do not define FDI and that the Court of Justice of the European Union has specified its understanding of the term FDI, on the basis of three criteria: it should be considered as a long-lasting investment, representing at least 10% of the affiliated company's equity capital / shares and providing the investor with managerial control over the affiliated company's operations, whereas this definition is in line with those of the IMF and the OECD and is opposed to, in particular, portfolio investments and intellectual property rights. In this context, Members ask the Commission to provide a clear definition of the investments to be protected, including both FDI and portfolio investment. They consider, however, that speculative forms of investment, as defined by the Commission, shall not be protected.

Recalling that the standard EU Member State BIT uses a broad definition of '**foreign investor**', Members ask the Commission to assess where this has led to abusive practices and to provide a **clear definition of a foreign investor**. They call for the introduction of the term '**EU investor**' which would, reflecting the spirit of Article 207 TFEU, underline the significance of promoting investors from all Member States on equal terms, ensuring them conditions of functioning and protection of their investments on equal footing.

(2) Investor protection: the resolution stresses that investor protection for all EU investors must remain the **first priority** of investment agreements. Members consider that the request made by the Council in its conclusions on the Communication – that the new European legal framework should not negatively affect investor protection and guarantees enjoyed under the existing agreements – could create a risk of having any new agreement opposed, and could lead to the necessary balance between investor protection and the protection of the right to regulate – in an era of increased inward investment – being put at risk. They believe that the need to **identify best practices** is a more sensible and more effective option, enabling the development of a consistent European investment policy.

Members consider that future investment agreements concluded by the EU should be based on the best practices drawn from Member State experiences and include the following standards: (i) non-discrimination (national treatment and most favoured nation); (ii) fair and equitable treatment, defined on the basis of the level of treatment; (iii) protection against direct and indirect expropriation.

The Commission is asked to **ensure reciprocity** when negotiating market access with its main developed trading partners and the major emerging economies.

(3) Protecting the right to regulate: the resolution stresses that future investment agreements concluded by the EU must **respect the capacity for public intervention**. The Commission is invited to:

- include in all future agreements specific clauses laying down the right of parties to the agreement to regulate, inter alia, in the areas of protection of national security, the environment, public health, workers' and consumers' rights, industrial policy and cultural diversity;
- decide on a case-by-case basis on sectors not to be covered by future agreements, for example sensitive sectors such as culture, education, public health and those sectors which are strategically important for national defence. The Parliament should be informed about the mandate it received in each case.

(4) Inclusion of social and environmental standards: the EU's future policy must also promote investment which is sustainable, respects the environment (particularly in the area of extractive industries) and encourage good quality working conditions in the enterprises targeted by the investment. The Commission is asked to include, in all future agreements, a reference to the updated OECD Guidelines for Multinational Enterprises.

(5) Dispute settlement mechanism and EU responsibility: Members believe that changes must be made to the present dispute settlement regime, in order to include greater transparency, the opportunity for parties to appeal, the obligation to exhaust local judicial remedies where they are reliable enough to guarantee due process, the possibility to use *amicus curiae* briefs and the obligation to select one single place of investor-state arbitration. Members request that the Commission and the Member States take up their responsibility as major international players to work towards the necessary

reforms of the International Centre for Settlement of Investment Disputes (ICSID) and United Nations Commission on International Trade Law (UNCITRAL) rules.

(6) Choice of partners and powers of Parliament: the resolution endorses the principle that priority partners for future EU investment agreements shall be countries that have great market potential but where foreign investments need better protection. It notes that investment risk is generally higher in developing and least developed countries and that strong, effective investor protection in the form of **investment treaties** are key to protecting European investors and can improve governance, thereby bringing about the stable environment needed to increase FDI into these countries. It urges **Parliament' s position to be taken fully into account by the Commission and the Member States** before investment negotiations are initiated, as well as during such negotiations. It stresses the need to include the role of the EEAS delegations in the strategy of the future investment policy, acknowledging their potential and local know-how as strategic assets in achieving the new policy goals.

Future European international investment policy

2010/2203(INI) - 07/07/2010 - Non-legislative basic document

PURPOSE: to present a Communication in which it explores how the Union may develop an international investment policy that increases EU competitiveness

CONTENT: the Lisbon Treaty's attribution of EU exclusive competence on Foreign Direct Investment (FDI) integrates FDI into the common commercial policy. It also allows the EU to affirm its own commitment to the open investment environment which has been so fundamental to its prosperity and to continue promoting investment, both direct investment and portfolio investment, as a tool of economic development. This Communication explores how the Union may develop an international investment policy that increases EU competitiveness and thus contributes to the objectives of smart, sustainable and inclusive growth, as set out in the Europe 2020 Strategy.It looks at the main orientations of an EU investment policy for the future, as well as the main parameters for immediate action in this area.

In parallel to this Communication, the Commission has adopted a proposal for a Regulation that would establish transitional arrangements relating to investment agreements between Member States and third countries.The proposed Regulation and this Communication are only first steps in the development of a European international investment policy, which will be gradual and targeted and will also take into account responses to this Communication.

Until now, the Union and the Member States have built separately around the common objective of **providing investors with legal certainty** and a stable, predictable, fair and properly regulated environment in which to conduct their business. While Member States have focused on the promotion and protection of all forms of investment, the Commission elaborated a liberalisation agenda focused on market access for direct investment. In this respect, a clear and complementary division of labour in the field of investment has resulted in a rather large and atomised universe of investment agreements.

With a view to ensuring external competitiveness, uniform treatment for all EU investors and maximum leverage in negotiations, a common international investment policy should address all investment types and notably assimilate the area of **investment protection**. The Union should follow the best practices available to ensure that no EU investor would be worse off than they would be under Member States' Bilateral Investment Treaties (BITs).

A **key question relates to the substantive rules** the Union would seek to introduce in trade and investment agreements. Currently in investment negotiations, the Union relies mostly on the principle of non-discrimination, which is the cornerstone of the global trading system. Non-discrimination is usually implemented through two basic standards, ‘most-favoured-nation treatment’ and ‘national treatment’, which are both relative standards, because they involve making a comparison between the treatment provided based on origin, rather than defining an absolute standard of treatment. Consequently, their content is determined on the basis of the treatment that a country grants to its foreign investors and investments and to its own investors and investments

While non-discrimination should continue to be a key ingredient of EU investment negotiations, BITs employ other standards as well, such as “fair and equitable treatment” after admission and “full security and protection” treatment. These standards do not imply a comparison to the manner in which comparable investments are treated. Moreover, a number of Member State BITs provide for the protection of contractual rights granted by a host government to an investor ("umbrella clause"). They have been traditionally used in Member States BITs and are an important element among others that should inspire the negotiation of investment agreements at the EU level.

An important cornerstone of Member State best practices are clauses which place certain conditions upon the exercise of the host country's right to expropriate. While it follows from Article 345 TFEU that the Treaty does not affect a Member State's right to decide whether a given asset should be in public or private ownership, the Court of Justice's case law shows that this does not have the effect of exempting expropriation measures from the fundamental rules of the Treaty, including those on freedom of establishment and free movement of capital. Accordingly, expropriation measures in the EU should be non discriminatoryand proportionate to attain their legitimate objective (e.g. by providing for adequate compensation). Hence, the Union should include precise clauses covering this issue into its own future investment or trade agreements. A clear formulation of the balance between the different interests at stake, such as the protection of investors against unlawful expropriation or the right of each Party to regulate in the public interest, needs to be ensured. Similarly, EU clauses ensuring the free transfer of funds of capital and payments by investors should be included.

The communication goes on to recall that the Union's trade and investment policy has to fit with the way the EU and its Member States regulate economic activity within the Union and across our borders. Investment agreements should be consistent with the other policies of the Union and its Member States, including policies on the protection of the environment, decent work, health and safety at work, consumer protection, cultural diversity, development policy and competition policy. Investment policy will continue to allow the Union, and the Member States to adopt and enforce measures necessary to pursue public policy objectives.

A common investment policy should also be guided by the principles and objectives of the Union's external action more generally, including the promotion of the rule of law, human rights and sustainable development (Article 205 TFEU and Article 21 TEU). In this respect, the OECD Guidelines for Multinational Enterprises, which are currently being updated, are an important instrument to help balance the rights and responsibilities of investors.

While **investment protection and liberalisation become key instruments of a common international investment policy**, there will remain significant scope for Member States to pursue and implement investment promotion policies that complement and fit well alongside the common international investment policy. In general, a common policy will require more, rather than less, cooperation and coordination among the Union and Member States. Through investment negotiations, which in principle would be conducted as part of broader trade negotiations, the EU should seek to obtain binding commitments from its partners that guarantee and protect the free flow of all forms of investment. Stand-alone investment negotiations would also remain an option. In the short term, the Commission will seek the adaptation of negotiating directives to enlarge the scope of negotiations for a number of countries with whom trade negotiations are ongoing, where strong interests exist and where requests have been formulated. While the principles and parameters for such negotiations will be inspired by ‘best practices’ that Member States have developed, this Communication already submits some broad contours of the scope and standards the Union should be setting through international investment negotiations.