


# Procedure file

Basic information		
INI - Own-initiative procedure	<a href="#">1997/2298(INI)</a>	Procedure completed
OECD: multilateral investment agreement, recommendations to the EC for the negotiations		
Subject 6.40.13 Relations with/in the context of international organisations: UN, OSCE, OECD, Council of Europe, EBRD		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>RELA</b> External Economic Relations		08/10/1997
		V <a href="#">KREISSL-DÖRFLER Wolfgang</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		21/01/1998
		PPE <a href="#">GARCÍA-MARGALLO Y MARFIL José Manuel</a>	
	<b>JURI</b> Legal Affairs, Citizens' Rights		06/01/1998
	V <a href="#">AHERN Nuala</a>		
<b>ENVI</b> Environment, Public Health and Consumer Protection	The committee decided not to give an opinion.		
<b>DEVE</b> Development and Cooperation			
<b>PECH</b> Fisheries			02/12/1997
	V <a href="#">MCKENNA Patricia</a>		

Key events			
18/12/1997	Committee referral announced in Parliament		
25/02/1998	Vote in committee		Summary
25/02/1998	Committee report tabled for plenary	<a href="#">A4-0073/1998</a>	
10/03/1998	Debate in Parliament		
11/03/1998	Decision by Parliament	T4-0141/1998	Summary
11/03/1998	End of procedure in Parliament		
06/04/1998	Final act published in Official Journal		

Technical information	
Procedure reference	1997/2298(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 114
Stage reached in procedure	Procedure completed
Committee dossier	RELA/4/09598

Documentation gateway					
Committee report tabled for plenary, single reading		<a href="#">A4-0073/1998</a> <a href="#">OJ C 104 06.04.1998, p. 0005</a>	25/02/1998	EP	
Text adopted by Parliament, single reading		T4-0141/1998 <a href="#">OJ C 104 06.04.1998, p. 0103-0143</a>	11/03/1998	EP	Summary

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

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 are essential 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. ?

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

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 expressed 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. ?