**Follow up to the European Parliament non-legislative resolution on the draft Council decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part**

1. **Rapporteur:** David MARTIN (S&D / UK)
2. **Reference numbers:** 2018/0095M (NLE) / A8-0049/2019 / P8\_TA-PROV(2019)0091
3. **Date of adoption of the resolution:** 13 February 2019
4. **Competent Parliamentary Committee:** Committee on International Trade (INTA)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

On 13 February 2019, the European Parliament gave its consent to the conclusion of the Investment Protection Agreement between the EU and its Member States, on the one part, and the Republic of Singapore (Singapore), on the other part (Agreement). In parallel, it adopted a non-legislative resolution setting out its views on the Agreement and its expectations as regards its implementation (resolution).

In view of the Court of Justice of the European Union (CJEU)’s Opinion no. 2/15 of 16 May 2017 and in light of the wide-ranging discussions that followed on the architecture of EU trade and investment agreements, the text initially negotiated with Singapore was adjusted to create two separate agreements: a Free Trade Agreement and the Investment Protection Agreement. The latter will be the EU’s first stand-alone investment protection agreement.

In its resolution, the European Parliament welcomes the EU’s reformed approach to investment protection and its enforcement mechanism – the Investment Court System (ICS) – as this new approach will replace the controversial investor-to-state dispute settlement (ISDS) contained in many of the 12 old-style bilateral investment treaties (BIT) that EU Member States have in place with Singapore.

In this regard, the European Parliament stresses the strategic importance of the Agreement, underlining that it is an essential step towards the reform of international rules on investment protection and dispute settlement. The European Parliament further emphasises the regional relevance of the Agreement, as it will constitute a pathfinder for the EU to negotiate similar agreements with other Member States of the Association of Southeast Asian Nations (ASEAN). The European Parliament’s resolution also highlights the economic rationale for the Agreement, considering Singapore is the EU’s largest investment partner in Southeast Asia.

In more detail, the resolution welcomes that the Agreement:

(i) guarantees that EU investors in Singapore will not be discriminated vis-a-vis Singaporean investors in similar situations and will be protected from illegitimate expropriation;

(ii) ensures high level of investment protection, transparency and accountability, while safeguarding, at all government levels, the right to regulate in the pursue of legitimate public policy objectives; and

(iii) clarifies that investors’ profit expectations would not amount, as such, to a breach of investment protection standards and hence would not require any compensation.

In addition, the resolution recalls that the ICS envisages the establishment of a Permanent Investment Tribunal of First Instance and an Appellate Tribunal. Tribunal members will have comparable qualifications to those held by judges of the International Court of Justice, the European Court of Human Rights and the CJEU, and will satisfy strict rules on independence, integrity and ethical behaviour.

The resolution also welcomes the fact that transparency rules will apply to proceedings before tribunals, case documents will be made publicly available, and hearings will be held in public. The improved clarity regarding the grounds for the submission of a claim by investors will ensure additional transparency and fairness of the process. The resolution also emphasises that forum shopping and multiple and parallel proceedings will be avoided.

Lastly, the resolution further considers the Agreement as a crucial stepping stone towards the establishment of the Multilateral Investment Court and strongly supports the Parties’ commitment to this end, as an independent body will enhance trust in the system and legal certainty.

In its resolution, the European Parliament makes calls for action on the Commission, the EU Member States and the Singaporean side on certain matters.

In relation to **investors’ responsibilities**, the resolution regrets the lack of provisions regulating this field and calls on the Commission to consider legislation similar to that on conflict minerals and timber, in particular for the garment industry.

In relation to the **corporations’ compliance with human rights law and of available remedy mechanisms**, the resolution encourages the Commission and the EU Member States to engage constructively with the United Nations (UN)’ open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights for the establishment of a binding UN instrument.

Furthermore, the resolution encourages the Commission to continue its work on **making the** **ICS more accessible**, particularly to small and medium sized enterprises (SMEs) and, jointly with Singapore, **to agree on stronger sanctions in the event that tribunal members do not comply with the code of conduct**.

Finally, the resolution makes a more general call on the Commission to continue its efforts in reaching out to third countries to establish the **Multilateral Investment Court** at a suitable time.

1. **Response to requests and overview of the actions taken or intended to be take, by the Commission:**

The Commission welcomes the European Parliament’s favourable view on the EU-Singapore Investment Protection Agreement and its consent to the conclusion of the Agreement.

In relation to **investors’ responsibilities** (**paragraph 12**), the Commission would like to recall that the Agreement provides protection only for investments that are made in accordance with the applicable legislation (cf. Article 2.1). This means that EU and Singaporean investors will have to fully comply with *all domestic laws* of Singapore and of the EU and the Member State where the investment is made respectively, in order to benefit from the rights granted by the Agreement. Article 3.13 of the Agreement also stipulates that the tribunal shall apply and interpret the protection standards in accordance with the rules and principles of *international law* applicable between the Parties, including environmental and labour standards and respect human rights. Similarly, investments involving serious abuses, such as fraud or corruption, would not be protected as this could be considered as contrary to the rules and principles of international law.

As to the specific reference to the garment industry, the Commission refers to its response to the European Parliament resolution of 27 April 2017 on the EU flagship initiative on the garment sector[[1]](#footnote-1) and wishes to recall that it is already involved in strengthening responsible business practices in this sector. For instance, the Commission is supporting the uptake of the Organisation for Economic Co-operation and Development (OECD) due diligence guidance for responsible supply chains in the garment sector[[2]](#footnote-2). The Commission has launched specific programmes to support the implementation of the guidance as well as on key challenges for conducting due diligence in the sector such as traceability, as highlighted in the Staff Working Document “Sustainable garment value chains through EU development action”[[3]](#footnote-3). Existing EU legislation should also be borne in mind, notably the Non-Financial Reporting Directive, which requires large companies to disclose information on policies, results and risks concerning environmental aspects, social and employee-related matters, respect for human rights, as well as anti-corruption and bribery issues. At this stage, the Commission is focusing on obtaining the best results from the current approach and related instruments. The Commission will be monitoring and analysing these results and, at a later stage in line with Better Regulation agenda[[4]](#footnote-4), will evaluate the need to complement its current approach.

Moreover, pursuant to the EU-Singapore Free Trade Agreement (FTA), the Parties shall not relax their environmental and labour legislations in order to unduly attract investment, thus keeping investors’ duties in this regard high (cf. Article 12.12 of the EU-Singapore FTA). By virtue of the EU-Singapore FTA, the Parties have also committed to promote companies’ uptake of internationally agreed principles and guidelines on corporate social responsibility. These practices include the OECD Guidelines for Multinational Enterprises, which fully integrate the UN Guiding Principles on Business and Human Rights and provide for a network of National Contact Points (NCPs) in adhering countries. The NCPs’ role is to promote the Guidelines and offer a government-led grievance mechanism to provide mediation and conciliation to address and resolve cases of potential non-compliance with the OECD Guidelines.

The respect of human rights is a fundamental obligation that applies to all governments, investors and companies, either transnational or locally based. To advance the business and human rights agenda, the Commission supports a large number of initiatives[[5]](#footnote-5). Among others, it has participated constructively in the work initiated in the UN by the **open-ended intergovernmental working group on transnational corporations with respect to human rights** (**paragraph 13**). A decision on whether to seek formal negotiating authorisation as a basis for the EU’s engagement in text-based negotiations will be taken by the next Commission.

The Commission would also like to recall that investment agreements contribute and complement the efforts and initiatives undertaken in other fora. The Agreement itself reaffirms the commitments taken in the UN Charter and principles articulated in the Universal Declaration of Human Rights. Moreover, differently from other international conventions, the Agreement requires all tribunal members to have “specialised knowledge of, or experience in, public international law”, which includes international human rights law. Additionally, EU investors would be expected to value and protect human rights, especially as they often include corporate social responsibility and responsible business conduct practices in their business operations.

With regard to the recommendation to **improve the accessibility of the ICS** (**paragraph 14**), the Commission wishes to note that the Agreement already contains numerous provisions that will reduce the costs and duration of the proceedings. The Agreement also encourages recourse to mediation as a more expedient and less cost intensive means of dispute resolution. In addition, it foresees the possibility to submit claims to a single tribunal member when claims are initiated by SMEs or are relatively small. The EU and Singapore have also agreed to work together on the adoption of supplemental rules on fees for claims brought by SMEs or natural persons that should be ready within one year after the entry into force of the Agreement.

The Agreement already includes several effective **sanction mechanisms** (**paragraph 15**) in the event that a member of the Tribunal of First Instance or of the Appellate Tribunal does not comply with the ethic provisions of the Agreement or with the annexed Code of Conduct. First, tribunal members can be disqualified through a decision of the President upon request of a disputing party. Second, they can be permanently removed from the Tribunal or the Appeal Tribunal if their behaviour is incompatible with their continued membership of the ICS. Finally, also former members must comply with ethics rules and any disrespect thereof is subject to a dedicated sanction mechanism.

The Commission welcomes the European Parliament’s strong support for the **establishment of the Multilateral Investment Court** (**paragraph 9**) and agrees with the points the resolution puts forward in relation to said initiative. The Commission confirms its continued efforts to reach out to third countries in this respect.

On a more general note, the Commission would like to underline that work is underway to ensure the smooth entry into force of the Agreement and its proper implementation. The Commission looks forward to continue working together with the European Parliament also in the implementation phase of the Agreement.

1. 2016/2140 (INI) [↑](#footnote-ref-1)
2. <http://www.oecd.org/industry/inv/mne/responsible-supply-chains-textile-garment-sector.htm> [↑](#footnote-ref-2)
3. <https://ec.europa.eu/europeaid/sites/devco/files/garment-swd-2017-147_en.pdf> [↑](#footnote-ref-3)
4. <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en> [↑](#footnote-ref-4)
5. Many of these initiatives are described in a March 2019 Commission Staff Working Document “Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress” (SWD(2019) 143 final) [↑](#footnote-ref-5)