

## UNCTAD's High-level IIA Conference, 9-11 October 2017, Geneva, Switzerland

Statement delivered by Carlo Pettinato, Head of Investment Policy Unit, DG Trade, European Commission

- The EU is at the **forefront of the reform** of the international investment agreements system. In the first phase of the IIA reform process, we focused on **improving and clarifying the provisions** on investment protection and investment dispute settlement, in order to improve legal certainty and avoid abuses.
- For instance, we have clarified the meaning of the fair and equitable treatment standard (by listing its main elements in a closed list) as well as of the concept of indirect expropriation (through an annex with detailed guidance on how this concept should be interpreted); we have introduced various safeguards such as to address economic and monetary difficulties, public debt restructuring or the stability of the financial system; we have prohibited "treaty shopping", "forum shopping", and we have excluded "mailbox companies" from the benefits of our agreements. Regarding dispute settlement, we have proposed rules discouraging unfounded or frivolous claims, increased transparency in line with UNCITRAL rules, a code of conduct for arbitrators and the possibility for the Parties to issue binding interpretations on how certain provisions should be interpreted.
- We have gone further and proposed **ambitious and innovative provisions aiming at**: clearly affirming and enhancing the safeguards for the right to regulate of the Parties; improving the establishment and functioning of arbitral tribunals; creating an appellate mechanism; and addressing the relationship with the domestic courts. Regarding dispute settlement, we proposed an investment court system (ICS) with the objective of increasing legitimacy, effectiveness and independence of the dispute settlement system in EU FTAs.
- The European Commission has **integrated the reform elements** in all the agreements that it has negotiated. The agreements recently concluded by the EU, such as with **Canada or Vietnam**, fully illustrate this approach. For instance, based on the **comparative analysis made by UNCTAD** in this year's World Investment Report, the EU-Canada agreement entails the highest level of ambition in terms of reform-oriented elements and qualifies among the most advanced new generation IIAs.
- It is obvious that the reform undertaken in the first phase of IIA reform needs to be effectively implemented in order to maximize its benefits. From this point of view, the EU makes use of **several types of mechanisms to modernize the existing stock** of IIAs in line with the outcomes of the current reform.
- First of all, once entered into force, an agreement on investment concluded by the EU with a third country **replaces the bilateral investment treaties** previously

concluded by the EU Member States with the same country. This ensures maximum legal certainty for investors as well as for the success of our reform.

- Second, the EU Member States, when empowered by the European Commission to negotiate bilateral investment treaties with third countries with which there are no negotiations at EU level, strive to **ensure consistency of their agreements with the EU investment policy**, including with regard to the reform aspects. This way, old agreements are amended or replaced with new and modern ones.
- Third, our free trade agreements include commitments and **references to international principles and rules** in the field of sustainable development and corporate social responsibility, as part of our chapters on trade and sustainable development. Parties also have the possibility to issue **binding interpretations** on the various treaty provisions. Such tools facilitate an effective and coherent implementation of the agreement.
- Reducing the fragmentation of the IIA regime does not require only a simplified and more consistent legal framework, but also a more reliable, more legitimate and less controversial way to apply this framework in dispute settlement cases. This is why the European Union is supporting the idea of the establishment of a **multilateral investment court**. In our view, this is one of the key elements of the **next phase of the IIA reform** because it is the most efficient mechanism to address the significant stock of existing treaties.
- Important issues arise, particularly as regards its effectiveness and efficiency; in taking this forward, we acknowledge them - they need to be carefully thought through, worked on, and developed. The EU considers that it is important to be realistic and pragmatic, and move forward bit by bit on this multilateral work. We view UNCITRAL as a good forum for discussing the global reform of ISDS, looking at all these issues affecting ISDS in detail, and hopefully provide a forum for regarding to these problems. We encourage all countries and international organisations to take part in UNCITRAL Working Group III.
- We thank the organizers of this event for their constant and valuable support and we encourage UNCTAD to continue its work in the field of IIA reform, which has proved very helpful for all the countries involved in the reform process.