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Human rights compatibility of investor–State arbitration in international investment protection agreements

Motion for a resolution

tabled by Mr José María BENEYTO and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

1. The Parliamentary Assembly notes that numerous bilateral investment treaties (BITs) and international investment agreements (IIAs) include compulsory arbitration clauses for the adjudication of disputes between investors and host States.
2. The Assembly recognises the need to ensure that legitimate human rights concerns, not only of the investors with regard to their property rights, but also of persons affected in different ways by the investors' activities (in particular health, environment and labour rights), are properly taken into account.
3. The principle of democracy must not be circumvented by abusive "stabilisation clauses" in foreign investment contracts concluded under international investment agreements.
4. The interpretation of "fair and equal treatment" (FET) clauses and the notion of an investor's "legitimate expectations" should take into account the host State's international human rights obligations, in particular under the European Convention on Human Rights (ETS No. 5). Both sides' expectations should be spelled out clearly in the foreign investment contracts, ideally in light of a "human rights impact assessment", which should become part of relevant due diligence requirements.
5. Investor-State arbitration should achieve a fair balance between the legitimate concerns of investors and those of the host State and its inhabitants. Arbitration procedure should comply with basic fair trial requirements under Article 6 of the European Convention on Human Rights.
6. The Assembly intends to make concrete proposals as to ways and means of improving the functioning of existing BITs and IIAs and to ensure that any future agreements (including the Transatlantic Trade and Investment Partnership (TTIP) currently under negotiation between the European Union and the United States) include sufficient human rights safeguards.

Signed (see overleaf)



*Signed*¹:

BENEYTO José María, Spain, EPP/CD
AGRAMUNT Pedro, Spain, EPP/CD
ALLAVENA Jean-Charles, Monaco, EPP/CD
BAYKAL Deniz, Turkey, SOC
DÍAZ TEJERA Arcadio, Spain, SOC
FRANKEN Hans, Netherlands, EPP/CD
GROSS Andreas, Switzerland, SOC
HOVHANNISYAN Arpine, Armenia, EPP/CD
IWIŃSKI Tadeusz, Poland, SOC
MATEU PI Meritxell, Andorra, ALDE
MATO Ana, Spain, EPP/CD
MIGNON Jean-Claude, France, EPP/CD
MOTA AMARAL João Bosco, Portugal, EPP/CD
OMTZIGT Pieter, Netherlands, EPP/CD
PALACIOS José Ignacio, Spain, EPP/CD
PINTADO Ángel, Spain, EPP/CD
PUCHE Gabino, Spain, EPP/CD
QUINTANILLA Carmen, Spain, EPP/CD
SÁEZ Àlex, Spain, SOC
SEDÓ Salvador, Spain, EPP/CD
TOMLINSON John E., United Kingdom, SOC
XUCLÀ Jordi, Spain, ALDE

1. ALDE: Alliance of Liberals and Democrats for Europe
EPP/CD: Group of the European People's Party
SOC: Socialist Group