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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Council Decision on the signing, on behalf of the Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part
- Adoption
Council Decision on the conclusion, on behalf of the Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part
- Request for the consent of the European Parliament

**Unilateral declaration by the Kingdom of Belgium regarding the Council decision
on the signing, on behalf of the EU, of the Investment Protection Agreement
between the European Union and its Member States, of the one part,
and the Socialist Republic of Viet Nam, of the other part**

Belgium welcomes the signing of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part.

Belgium reaffirms its commitment to the ongoing reform of investment dispute resolution. It constitutes a step towards the establishment of a multilateral investment court which shall become the responsible legal institution to resolve conflicts between investors and states. Belgium continues to support the Commission's ongoing efforts in this regard.

Belgium believes that the opinion of the Court of Justice of the EU on the compatibility of ICS with EU treaties (Opinion 1/17) has contributed to further clarify the legal framework in which an ICS can be established and paves the way for further work.

Belgium underlines that, as confirmed by the ECJ in its Opinion 1/17, the Investment Protection Agreement with Vietnam reaffirms the parties' right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity. The mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under the Agreement. Furthermore the jurisdiction of the envisaged tribunals to declare infringements of the obligations foreseen in the Agreement cannot be interpreted in such a way as to prevent a Party from adopting and applying measures necessary to protect public security or public morals or to maintain public order or to protect human, animal or plant life or health, subject only to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade between the Parties. Moreover, the discretionary powers of the ICS Tribunal and Appellate Tribunal do not extend to permitting them to call into question the level of protection of public interest determined by the Union following a democratic process.

Belgium welcomes the Statement by the Commission on the investment protection and the Investment Court System ("ICS") within the framework of the EU-Viet Nam Investment Protection Agreement. Belgium is of the view that this statement is relevant to the interpretation of the Investment Protection Agreement with Vietnam in the light of the rules on treaty interpretation contained in Articles 31 and 32 of the Vienna Convention of the Law of Treaties.

Belgium insists on the importance of the ongoing multilateral discussion on the respect of human rights and international obligations by multinational companies, organized by the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. It remains an advocate for greater European engagement in the negotiation process. It also pleads for a more inclusive and consensual negotiation method.

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Statement by the Commission on the investment protection and the Investment Court System ("ICS") within the framework of the EU-Viet Nam Investment Protection Agreement

The EU-Viet Nam Investment Protection Agreement is a further step on the path of the reformed approach to investment protection policy and dispute settlement established in the EU-Canada Comprehensive and Economic Trade Agreement together with the Joint Interpretative Instrument and Statement no 36 made at the time of signature of that Agreement.

As such it contains all of the improvements included in CETA and set out in those additional instruments, which, as recognised by the Court of Justice of the European Union are designed to ensure that the right to regulate of the European Union and its Member States can continue to be effectively exercised. In particular, the EU-Viet Nam Investment Protection Agreement contains the guarantees which the Court of Justice in Opinion 1/17 considered were necessary to ensure that the tribunals established by the Agreement cannot call into question the choices democratically made within a Party, relating to, inter alia, the level of protection of public order or public safety, the protection of public morals, the protection of health and life of humans and animals, the preservation of food safety, protection of plants and the environment, welfare at work, product safety, consumer protection or, equally, fundamental rights.¹

¹ Opinion 1/17 of the Court of Justice of 30 April 2019, paras 147 to 161

It also includes, like CETA, the Investment Court System and foresees the transition to a Multilateral Investment Court. It contains provisions ensuring the full transparency of proceedings (including submissions and hearings) and that allow interested parties to make submissions to the tribunal (*amicus curiae*).

It marks, like CETA and the EU-Singapore Investment Protection Agreement an important stage in the transformation of international investment policy, through the replacement of the Member States' Bilateral Investment Treaties with the reformed EU approach and the prospect of the establishment of a Multilateral Investment Court.

The EU-Viet Nam Investment Protection Agreement, like CETA and the EU-Singapore Investment Protection Agreement, is built on the EU core values and incorporates them. The IPA reaffirms the commitments in the UN Charter and the Universal Declaration of Human Rights. It also reaffirms the commitments on sustainable development and transparency, as agreed in the EU-Viet Nam FTA. This includes promotion of multilateral environmental and labour agreements and standards in domestic policies and laws. The IPA provides protection only for investments that are made in compliance with the domestic legislation, including the obligations related to the protection of the environment and labour as well as the respect of human rights.

The IPA also reaffirms the commitments to promote responsible business conduct through instruments such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD MNE Guidelines), the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. These commitments are accompanied by concrete engagement of the EU on the ground, such as the project on *Responsible Supply Chains in Asia*, which is an EU-ILO-OECD joint initiative whose main objective is to enhance respect for human rights, labour and environmental standards by businesses with supply chains in Asia, aligning their practices to international standards. The project involves six Asian countries, including Viet Nam.

Further, the Commission notes the discussions about responsible business conduct and investor obligations taking place in different international fora, including the United Nations and the OECD. The European Union has taken a leading role in ensuring responsible business conduct and respect for human rights on an international level. The Commission will continue to promote a leading role for the European Union, whilst examining how to react and shape the ongoing discussions.
