



## BRIEFING TO PARLIAMENT

**Subject:** EU-Vietnam Free Trade Agreement and Investment Protection Agreement

**Date:** last updated 4 July 2022

**Objective:** a. to recommend the ratification of the EU-Viet Nam Investment Protection Agreement

b. to provide information on the EU-Viet Nam FTA

### 1. Background of the EU-Vietnam negotiations

In 2007, negotiating directives were adopted by the Council for the Commission to negotiate a Free Trade Agreement (FTA) with countries of the Association of Southeast Asian Nations (ASEAN). Considering the difficulties encountered in the region-to-region negotiations, in December 2009 the Council agreed on the principle of launching bilateral negotiations with individual ASEAN countries based on the authorisation and negotiating directives of 2007.

On the basis of the negotiating directives adopted by the Council in 2007, and supplemented in October 2013 to include investment protection, the Commission has negotiated with Vietnam an ambitious and comprehensive Free Trade Agreement (FTA) and Investment Protection Agreement (IPA), with a view to creating new opportunities and legal certainty for trade and investment between both partners to develop and create new opportunities and legal certainty for trade and investment. This should also result in new opportunities for EU and Vietnam businesses to grow and create jobs.

#### *Objectives and content of the EU-Vietnam Free Trade Agreement*

The objectives of the Agreement between the EU and Vietnam include to:

- remove most of the customs duties and get rid of overlapping bureaucracy;
- improve trade for goods like machinery and appliances, cars and car-parts, pharmaceuticals, chemicals and food products;
- remove non-tariff barriers as well as safeguarding social and environmental protection standards; and
- encourage EU companies to invest more in Vietnam, and Vietnamese companies to invest more in the EU.

### 2. Key elements of the EU-Vietnam Investment Protection Agreement

The **EU-Vietnam Investment Protection Agreement (IPA)** will ensure a high level of investment protection, while safeguarding the EU's and Vietnam's right to regulate and the pursuit of legitimate public policy objectives such as the protection of public health, safety and the environment. The Agreement will also replace the bilateral investment agreements that 21 EU Member States currently have in place with Vietnam (MT does not).

In line with the objectives set by the negotiating directives, the Commission ensured that EU investors and their investments in Vietnam will be granted **fair and equitable treatment** and **not be discriminated against** compared to Vietnamese investments that are in like situations. At the same time, the IPA protects EU investors and their investments in Vietnam from expropriation, unless concerns in the interest of the public are raised, in accordance with due process. Such action would apply on a non-discriminatory basis and against payment of prompt, adequate, and effective compensation according to fair market value of the expropriated investment.

The Agreement includes modern rules on investment protection enforceable through a new **Investment Court System (ICS)** and will ensure that the right of the governments on both sides to regulate in the interest of their citizens is preserved. It sets up a standing international and fully independent dispute resolution system, consisting of a permanent First Instance and an Appeal Tribunal that will conduct dispute settlement proceedings in a transparent and impartial manner. The option of a modern and reformed investment dispute resolution mechanism will ensure a faster and more efficient dispute settlement process to ensure that investment protection rules are adhered to. The IPA and the dispute settlement system therein also includes disciplines on transparency.

Other disciplines included in the IPA are: the possibility to transfer and repatriate funds relating to an investment; a general guarantee of fair and equitable treatment and physical security; a commitment that governments will respect their own written and legally binding contractual obligations towards an investor; and a commitment to compensate for losses in certain circumstances linked to war or armed conflict.

The **fair and equitable treatment** obligation prevents the discretionary interpretation by governments. Such cases may be observed when justice in criminal, civil or administrative proceedings is denied or parties are seriously in breach of due process in judicial and administrative rulings. Moreover, the IPA will also not protect so-called 'shell' or 'mailbox' companies. To qualify as an investor, companies have to run real business operations either in the EU or in Vietnam. Finally, the FTA provides a detailed set of provisions giving guidance to Members of the Tribunal on how to decide whether or not a government measure constitutes indirect expropriation. Detailed language has been included to clarify that legitimate public policy measures cannot be challenged by investors.

### 3. Key elements of the EU-Vietnam FTA

The EU-Vietnam FTA is one of the first 'new generation' bilateral agreements. On top of the usual FTA element of removing of customs duties and non-tariff barriers for trade in goods and services, it contains important provisions on intellectual property protection, investment liberalisation, public procurement, competition and sustainable development. The Agreement establishes the conditions for EU businesses to take full advantage of the opportunities created in Vietnam.

Vietnam will continue removing **tariff barriers** on certain EU products and will commit to increase the use of international standards when drafting its regulations. On the day the FTA enters into force, over 99% of all imports from Vietnam will enter the EU duty-free, whilst 65% of European products will enter into Vietnam tariff free. Vietnam has also committed itself to continue removing these tariff barriers over a period of 10 years. The discrepancy between the two sides accounts for the fact that Vietnam is still a developing country.

Sectors that will benefit from the immediate removal of tariffs are machinery and appliances, pharmaceuticals, cars, dairy, wine and chocolates. The current benefits and tariffs which are provided to Vietnam unilaterally through the Generalised Scheme of Preferences (GSP) will be maintained and integrated within the FTA concluded. In the case of agriculturally sensitive products for the EU, the levels of imports would be controlled through the use of Tariff Rate Quotas (TRQs).

In today's global economy, both large and small companies often operate along **global value chains** and their products generally contain domestically produced components as well as inputs sourced

from abroad. The rules of origin agreed in the FTA seek to strike a prudent balance between flexibility for companies to source parts from other countries and establishing sufficient clarity on the minimum conditions to be met for products to qualify as European or Vietnamese and benefit from preferences under the Agreement. The concept of 'ASEAN cumulation' was also included to ensure that manufacturers can source components from other ASEAN Members with which the EU already has a FTA in operation. Without compromising on health, safety and the environment, the Agreement addresses **regulatory divergences** in some key sectors that constitute non-tariff barriers to EU-Vietnam trade by going further than the rules established within the WTO agreement on Technical Barriers to Trade.

The EU and Vietnam Agreement includes provisions on **trade facilitation** that will enhance customs cooperation to simplify, harmonise, standardise, and modernise trade procedures to reduce transaction costs for business. This will be done without compromising on the safety and security of legitimate trade. The Agreement strengthens cooperation between the parties, especially by reducing barriers in relation to international standards on motor vehicles (through the use of UNECE regulations) and pharmaceuticals along with the simplification and standardisation of customs procedures.

The Agreement provides extra market access for a wide range of **services** such as in the areas of telecommunications, environmental services, engineering, computing and maritime transport. In financial services, European commercial banks will, under specific conditions, be able to increase the number of customer services locations. In certain sectors domestic and foreign services providers will be treated alike in terms of rules and regulations, creating predictability and a level playing field.

The EU and Vietnam retain the **right to regulate** to establish quality and safety standards and to introduce new regulations to pursue legitimate policy objectives such as security, public health and safety. The Agreement protects certain sensitive sectors (TV, radio and film, public health and education, social services and water distribution) in which no commitments are made.

The FTA will present new opportunities for firms wanting to establish a **commercial presence**, by improving market access in both services and manufacturing sectors as well as providing for new opportunities to attract inward investment.

In the area of **public procurement**, the Agreement is fully in line with the WTO Agreement on Government Procurement and provides for an increased level of access to Vietnam's market. The EU-Vietnam FTA provides for access to Vietnam's ministries and important state-owned enterprises, as well as Vietnam's two biggest cities, Hanoi and Ho Chi Minh City.

The Agreement also contains beneficial provisions on **intellectual property rights, Geographical Indications and copyrights**.

A comprehensive and binding chapter on **trade and sustainable development** intended to ensure that trade supports environmental protection and social development was agreed, in line with other recently concluded EU Agreements.

### *Procedure in Council*

On 19 October 2018, the European Commission presented to the Council the EU-Vietnam Trade Agreement and the EU-Vietnam Investment Protection Agreement together with draft Council Decisions. The Commission has also presented to the Council the following proposals for Council Decisions:

- Proposal for a Council Decision on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and Vietnam;

- Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and Vietnam;
- Proposal for a Council Decision on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and Vietnam of the other part;
- Proposal for a Council Decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States, of the one part, and Vietnam of the other part.

The Commission's presentation of split Council Decisions covering the signature and conclusion of the trade part of the Agreement on the one hand, and the signature and conclusion of the Investment Protection Agreement on the other, reflects the Court of Justice of the European Union (CJEU) opinion 02/2015 of 16 May 2017 on competence in trade and investment agreements that stated that the trade part of the Singapore Agreement is Union competence, while the Investment Protection part of the Singapore Agreement is mixed competence.

Following this ruling of the CJEU on competence issues on the trade and investment elements of the EU-Singapore FTA it is noted that the EU-Vietnam FTA is subject to a vote by the Member States by Qualified Majority. On the other hand, in view of the same ruling, the EU-IPA will be subject to a Common Accord vote and will require the ratification of all the Member States for the agreement to be ratified. Hence, following a positive vote in the Council by all the Member States, the IPA will also need to be ratified by Malta.

#### **4. Expected Benefits from the FTA and Trade Relations between Malta and Vietnam**

##### *4.1 Benefits at the EU level*

The EU-Vietnam FTA and IPA will continue to build on the bilateral trade and investment Agreements concluded between the EU and Members of the Association of Southeast Asian Nations (ASEAN). They are an important step towards the EU's ultimate goal of a Trade and Investment Agreement with all the members of ASEAN. The two Agreements with Vietnam are a good reference point for the other Trade and Investment Agreements the EU is negotiating with ASEAN Member States in view of the ambitious results achieved. It is particularly important as an example of how the EU's trade and investment relations with developing countries could be enhanced.

With total bilateral trade in goods of €47.6 bn in 2017 and trade in services of €3.6 bn in 2016, Vietnam shows potential for increased levels of trade, especially in services. At the same time, in 2016, EU companies invested up to \$1.5 bn in Vietnam, bringing the accumulated level of investment to \$8.3 bn, making the EU the largest non-Asian investor.

##### *4.2 Benefits for Malta*

*The Investment Protection Agreement (IPA) between the EU and Vietnam will also provide certainty for potential Maltese investors wishing to invest in Vietnam and Vietnamese investors wanting to set up business in Malta. This is done through the commitment of fair and equitable treatment of investors that will serve to prevent discriminatory action against investors, including expropriation, indirect expropriation and other barriers to investment, such as restrictions on the transfer of capital. At the same time the IPA will also protect the Parties' rights to regulate in the interest of their citizens. The Agreement will also enable the setting up of an Investment Court System with permanent judges with*

the objective of avoiding conflict of interest of the arbitrators. Apart from a First Instance Tribunal, the system also provides for the opportunity to appeal a decision through an Appeals Tribunal.

The existing trade flows between Malta and Vietnam are relatively low, with total trade in 2018 reaching a value of €25.4 million (0.27% of total trade). This is broken down into imports of €22.3 million (0.36% of total Maltese imports) and exports of €3.2 million (0.1% of total Maltese exports). Annex 1 provides a breakdown of aggregated and sectoral trade data for the period 2011 – 2018.

While the trade between Malta and Vietnam is not significant the Agreements will stimulate the trade relations that exist between the two countries, through lower tariff and non-tariff barriers, and new opportunities in the provision of services. While historical data indicates that tariff reductions will not have a significant impact on the trade flows, the Agreement provides added value in important areas, such as, by addressing barriers that exist behind borders, opening up services and investment sectors and by extending the value chain throughout the ASEAN region.

In relation to regulatory and non-tariff barriers, commitments between the EU and Vietnam on certain specific areas of interest to Malta have been taken. In particular sectors of interest to Malta, such as **electronics, automotive, pharmaceutical and medical devices**, the EU and Vietnam agreed to use international standards to base their own standards, technical regulations and conformity assessment procedures to avoid duplicative and unnecessary burdensome conformity testing procedures with respect to product safety and compatibility of standards. This will allow products produced in the EU to satisfy the standards (including those related to safety) to be exported and marketed in Vietnam.

In trade in services, the Agreement will provide for greater market access to service providers in the different modes of supply in the different sectors, including cross border trade and temporary movement of persons to provide a service, covering the services sectors committed in the schedules. Among other areas, potential economic gains could exist in the financial sector, covering banking and insurance services, and maritime services in view of Malta's strength in these sectors. The Agreement also opens the market for several investment sectors, with new opportunities to increase Foreign Direct Investment (FDI) flows both ways.

While trade with Vietnam has the potential for growth, an important concept in the EU's approach to the region is that of cumulating the trade and production in the ASEAN region. Hence, once the Trade Agreements with the other economies are finalised, one expects liberalised trade to be significantly larger. The completed project of FTAs with the countries in the region would provide access to a market with a population that is currently over 600 million people.

To summarize, the IPA will also create added security for investors willing to invest in Vietnam, while ensuring that the high level of public policy and standards of the parties are respected. Benefits are expected both from tariff elimination / reduction as well as from the improvement of trade relations by addressing regulatory and non-tariff barriers, opening up the services and investment market and importantly linking the FTAs within the region which should have an overall effect of reducing trade costs between Malta and Vietnam / ASEAN Members and increase the potential for new FDI flows.

## 5. Recommended Malta position

In October 2018, the European Commission issued and submitted to the Council of the European Union the following texts:

- a. The text of the EU-Vietnam Free Trade Agreement;
- b. The text of the EU-Vietnam Investment Protection Agreement;
- c. The Proposal for a COUNCIL DECISION on the conclusion of the Free Trade Agreement between the European Union and Vietnam;
- d. The Proposal for a COUNCIL DECISION on the signing of the Free Trade Agreement between the European Union and Vietnam;
- e. The Proposal for a COUNCIL DECISION on the conclusion of the Investment Protection Agreement between the European Union and the Member States on the one hand and Vietnam on the other hand; and
- f. The Proposal for a COUNCIL DECISION on the signing of the Investment Protection Agreement between the European Union and Vietnam.

The European Union and Vietnam signed the Trade Agreement and the Investment Protection Agreement on 30 June 2019. The Council took a decision to conclude the FTA negotiations on 30 March 2020, while Vietnam ratified the FTA and the IPA on 8 June 2020. The EP voted in favour of both agreements in February 2020. The FTA entered into force on 1 August 2020.

In the case of the Investment Protection Agreement, the respective national parliaments of EU Member States have to ratify the agreement. In view of the potential economic benefits that could derive from the Investment Protection Agreement as indicated in Section 3.2, the Parliament of Malta (the FEAC) is hereby requested to consider a position in favour of and to ratify the EU-Vietnam Investment Protection Agreement.

## Annex I: trade flows

### a. Malta – Vietnam total trade between 2011 - 2018

Year	Exports €	Imports €	Total	Surplus / Deficit
2011	126,346	6,897,946	7,024,292	-6,771,600
2012	2,954,335	1,866,333	4,820,668	1,088,002
2013	4,323,582	2,209,206	6,532,788	2,114,376
2014	902,679	2,645,896	3,548,575	-1,743,217
2015	2,832,883	2,308,162	5,141,045	524,721
2016	3,917,198	10,135,958	14,053,156	-6,218,760
2017	6,265,404	28,515,138	34,780,542	-22,249,734
2018	3,192,197	22,251,790	25,443,987	-19,059,593
<b>8-yr average</b>	<b>3,064,328</b>	<b>9,603,804</b>	<b>12,668,132</b>	<b>-6,539,476</b>
<b>Grand total</b>	<b>21,322,427</b>	<b>54,578,639</b>	<b>75,901,066</b>	<b>-33,256,212</b>

Source: NSO data

### a. Major imports to Malta from Vietnam 2011 - 2018

HS Code	Product Description	Value <sup>1</sup> in €
64041990	Footwear with outer soles of rubber or plastics and uppers of textile materials (excl. indoor footwear, sports footwear, incl. tennis shoes, basketball shoes, gym shoes, training shoes and the like, and toy footwear)	51,982,039
39232100	Sacks and bags, incl. cones, of polymers of ethylene	4,554,416
73089099	Structures and parts of structures of iron or steel, n.e.s. (excl. bridges and bridge-sections; towers; lattice masts; gates; doors, windows and their frames and thresholds; equipment for scaffolding, shuttering, propping or pit-propping, weirs, sluices,	2,466,563
03046200	Frozen fillets of catfish "Pangasius spp., Silurus spp., Clarias spp., Ictalurus spp."	2,234,320
84021910	Firetube boilers (excl. central heating hot water boilers capable also of producing low pressure steam)	1,931,094
08013200	Fresh or dried cashew nuts, shelled	1,367,421
03074938	Squid "loligo spp.", frozen (excl. loligo vulgaris, pealei and patagonica)	775,057
16041411	Prepared or preserved tunas and skipjack, whole or in pieces, in vegetable oil (excl. minced)	688,841
09041100	Pepper of the genus Piper, neither crushed nor ground	688,838
03042903	Frozen fillets of pangasius (Pangasius spp.)	525,842
84269190	Cranes designed for mounting on road vehicles (excl. hydraulic cranes designed for the loading and unloading of vehicles)	386,592
94017100	Upholstered seats, with metal frames (excl. seats for aircraft or motor vehicles, swivel seats with variable height adjustments and medical, dental or surgical furniture)	378,741

<sup>1</sup> Value includes cost, insurance and freight (CIF).

Source: NSO data

b. Major exports from Malta to Vietnam – 2011 - 2018

HS Code	Product Description	Value <sup>2</sup> in €
85423990	Electronic integrated circuits (excl. in the form of multichip integrated circuits and such as processors, controllers, memories and amplifiers)	6,961,818
24022090	Cigarettes, containing tobacco (excl. containing cloves)	5,248,931
30049000	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes, put up in measured doses "incl. those for transdermal administration" or in forms or packings for retail sale (excl. containing antibiotics, hormones or steroids)	3,322,008
85415000	Semiconductor devices, n.e.s.	1,619,033
85423111	Electronic multi-component integrated circuits "MCOs" as processors and controllers as specified in note 9 (b) (4) to chapter 85, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	1,593,192
71023900	Diamonds, worked, but not mounted or set (excl. industrial diamonds)	1,526,797
91012100	Wrist-watches of precious metal or of metal clad with precious metal, whether or not incorporating a stop-watch facility, with automatic winding (excl. with backs made of steel)	1,499,324
71022100	Industrial diamonds unworked or simply sawn, cleaved or bruted	1,101,967
47071000	Recovered "waste and scrap" paper or paperboard of unbleached kraft paper, corrugated paper or corrugated paperboard	660,127
30042000	Medicaments containing antibiotics, put up in measured doses "incl. those in the form of transdermal administration" or in forms or packings for retail sale (excl. medicaments containing penicillins or derivatives thereof with a penicillanic structure, or	570,679
39159080	Waste, parings and scrap, of plastics (excl. that of polymers of ethylene, styrene, vinyl chloride and propylene)	199,927
71131900	Articles of jewellery and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal (excl. articles > 100 years old)	156,000
84431335	Offset printing machinery, sheet fed, new, taking sheets of a size > 52 x 74 cm	124,000
29350090	Sulphonamides (excl. 3-{1-[7-"hexadecylsulphonylamino"-1H-indole-3-yl]-3-oxo-1H, 3H-naphtho[1,8-cd]pyran-1-yl]-N,N-dimethyl-1H-indole-7-sulphonamide and metosulam "ISO")	105,199

Source: NSO data

<sup>2</sup> Values is the free on-board value (FOB).