



World Investment Forum 2014: Investing in Sustainable Development

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Dear organizers, distinguished audience!

It is my honour to speak today before you.

Let me first express my gratitude to UNCTAD for organizing a conference on International Investment Agreements within the context of the World Investment Forum 2014.

Belarus attaches significant importance to conclusion of bilateral investment agreements and development of national legislation towards higher level of protection for foreign investments and is always interested in obtaining the latest trends in the field.

The international investment policies part of the World Investment Forum 2014, including its part dealing with the reform of the international investment agreements regime, provides with such experience.

To date Belarus has signed 63 BITs and is currently working on 28 draft BITs.

Being a party to the Customs Union and Single Economic Area with Kazakhstan and Russia, as well as the future Eurasian Economic Union, Belarus is also engaged together with mentioned states and Eurasian Economic Commission in negotiations on a number of FTAs, which contain special chapters on investment promotion and protection.

Belarus has also signed a number of multilateral international instruments aimed at protection of investments and investors, including the ICSID Convention, the MIGA Convention, the CIS Agreement on Cooperation in the Field of Investments, CIS Convention on protection of Investor's Rights

It is necessary to mention that Belarus does not have a broad network of multilateral investment protection agreements and for this reason we don't face serious challenges, arising from overlapping commitments under BITs and multilateral instruments.

Though, there are some issues within the process of drafting of BITs I would like to raise.

Our partners more propose inclusion into the text of rigid regulative rights of receiving State. Thus, such proposals may include obligation of investor to adhere to national investment policies. The detail I would like to address to is the nature of these policies. Are these policies approved by a legal act by a competent authority? Whether these policies prevail over provisions of the BIT? Are they subject to frequent change due to the changes of approach by adopting authority? Does the investor have the right to appeal the newly approved policy in case if it affects its original rights and interests?

Another concern relates to increasingly frequent proposal by our partners to oblige the subrogee to assume the obligations related to investments together with rights or claims of indemnified party.

In our opinion, this approach may lead to unwillingness by insurance companies to guarantee the non-commercial risks in these markets and, as a result, lowering of investors' activities.

Another sensitive for Belarus issue lays within the initiative by our partners to amend existing BITs in order to align their provisions with the States' obligations under treaties on economic integration unions. In particular, according to the proposed amendments each Contracting Party shall protect investments without prejudice to measures adopted by the integration union; states grant investors the free transfer of the payments relating to investments without prejudice to measures adopted by the integration union.

Suggested amendments in our opinion may lead to the deterioration of the investors' rights, particularly their rights on free transfer of investments and other payments related to investments thus lowering the level of protection of investors and their investments, as well as hampering inclusive growth and development of national economy of the investor's state in case when the investor essentially contributes to the economy of its State.

We consider that States may take any measures to fulfill their obligations resulting from their membership in the integration unions. However, BIT shall provide that the investors be compensated by the State, which has taken such measures, including for the delay in transfer or other limitations of the investors' rights. Another option may establishment of interstate consultation mechanism prior to enforcement of measures, as well as institution of appellate judicial authority, accessible for investors and capable to review these measures.

Belarus also shares qualms regarding apparent drawbacks of existing mechanism for BIT-based investor-State dispute-settlement procedure. While considering among proposed by UNCTAD 5 paths of reform for the investor-State disputes system we would call upon our negotiations partners to choose the way of tailoring the existing system through individual BITs, in which the balance between interests of investor and receiving State would meet. We believe this will be the most precise instrument, allowing States to tweak the system without harming the rights of investor.

Possibility of creation of an appeals facility for legal assessment of taken awards in order to maintain consistency and predictability of decisions by the dispute settlement institutions is also seems appropriate. In this regard UNCTAD may play a role of a multilateral focal point and platform to provide the infrastructure and institutional backstopping for such efforts.

Belarus highly appreciates cooperation with UNCTAD, including its participation in raising awareness about bilateral investment treaties and free trade agreements, and is looking forward to expand this cooperation.

Thank you for your attention.