

# India-EU FTA: Investment chapter likely to include FDI liberalisation

**DIFFERENT ROUTE.** Unlike pact with EFTA, there may not be a minimum investment commitment from EU.

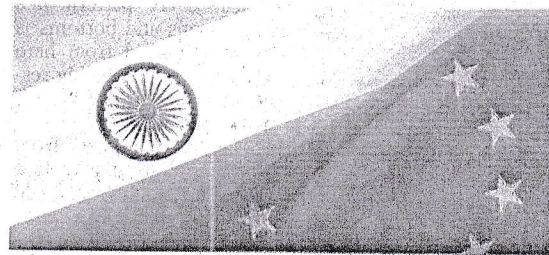
**Amiti Sen**  
New Delhi

The proposed India-EU Free Trade Agreement (FTA) is likely to focus on investment liberalisation, including rules guiding foreign direct investment (FDI) while keeping investment protection and arbitration out of the pact, to be negotiated separately in a bilateral investment treaty (BIT), according to sources.

New Delhi may not get a minimum investment commitment from the EU, like it got in its FTA with the European Free Trade Association (EFTA) comprising Switzerland, Iceland, Norway and Liechtenstein, the source added. This is because such large commitments fall in the jurisdiction of member states.

## TWO PORTIONS

"Negotiations on invest-



**FOR DELINKING.** The Finance Ministry is in favour of BITs to be negotiated separately from FTAs

ments with the EU is divided into two portions. The bit on protection and arbitration will happen separately as part of a BIT. The FTA will focus on investment liberalisation, which is about facilitating FDI. The two are set to be completely delinked," the source said.

BITs are agreements between two countries for the protection of investments in each other's territories and assures a minimum standard of treatment and non-discrimination.

The Finance Ministry is in favour of BITs to be negotiated separately from FTAs as it does not want investment protection and arbitration to be part of an umbrella pact. It has communicated the same to the Commerce Ministry.

## MODEL BIT

In a bid to check multinational companies filing cases against India at international arbitration courts, which resulted in big losses for the country in the past, the Fin-

ance Ministry formulated a model BIT in 2016. The model BIT requires investors to exhaust local remedies before initiating international arbitration proceedings. It terminated a large number of BITs, including ones with European countries, and sought new BITs that take after the model BIT of 2016.

"There are many fundamental differences between the EU and India on how arbitration should be treated in the BITs. But both want the BIT to be separate," the source said.

## KEY REASON

One of the reasons why the EU wants a separate investment protection pact, that would not be tied to the FTA, is because such an agreement could then get finalised irrespective of the pace of the FTA talks. "In the FTA negotiations, the EU is pushing for binding commit-

ments in FDI limits from India in areas where it has fully liberalised while pushing for more where there is scope. Binding commitments will ensure that there is no adverse policy change in the future," the source explained.

While India would have liked to impose a condition of minimum investment commitment on the EU, on the lines of the FTA with EFTA, there are legal hurdles. "India understands that such a demand will not fly with the EU because of its laws which put the matter in the jurisdiction of individual states," the source added.

Interestingly, the India-EFTA FTA, signed recently, also deals only with investment promotion and facilitation and does not contain investment protection features and arbitration. After a nine-year gap, India and the EU officially relaunched negotiations for an FTA in June 2022.