

# Bilateral investment agreements between Member States and third countries: transitional arrangements

2010/0197(COD) - 10/05/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 345 votes to 246, with 14 abstentions, a resolution on the proposal for a regulation of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries.

It adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

**Aim and scope:** this Regulation establishes the terms, conditions and the procedure under which Member States are authorised to maintain in force, amend or conclude bilateral agreements with third countries relating to investment.

**Notification to the Commission:** within 30 days from the entry into force of this Regulation, the Member States shall notify the Commission of all bilateral agreements with third countries relating to investment concluded and/or signed before the entry into force of this Regulation that they either wish to maintain in force or permit to enter into force under this Chapter. The notification shall include a copy of those bilateral agreements. Member States shall also notify the Commission of future changes to the status of these agreements.

**Review of the agreements:** the resolution **limits the power of the Commission** to review the existing bilateral investment agreements by Member States. The amended text provides that the Commission may review the agreements notified by the Member States assessing whether the agreements:

- conflict with the law of the Union other than the incompatibilities arising from the allocation of competences between the Union and its Member States on foreign direct investment, or;
- constitute a **serious obstacle** to the conclusion of future Union agreements with third countries relating to investment.

No later than **ten years** after the entry into force of this Regulation, the Commission shall present to the European Parliament and the Council a report on the state of play of the review of existing bilateral investment agreements with third countries.

**Withdrawal of authorisation:** the authorisation provided shall be withdrawn where the Union has already ratified an agreement with the same third country relating to investment negotiated by the Commission.

The amended text stipulates that the authorisation may be withdrawn where: (a) an agreement conflicts with the law of the Union other than the incompatibilities arising from the allocation of competence between the Union and its Member States on foreign direct investment, or (b) an agreement constitutes a serious obstacle to the conclusion of future agreements with that third country relating to investment.

When the Commission considers that there are grounds to withdraw the authorisation, it shall deliver a reasoned opinion to the Member State concerned. Consultations shall take place between the Commission

and the Member State concerned. Those consultations may include the possibility for Member States to renegotiate the agreement with the third country within an agreed period of time.

**Authorisation to amend or conclude agreements:** subject to the conditions laid down in the Regulation, a Member State shall be authorised to enter into negotiations to amend an existing bilateral investment agreement with a third country or to conclude a new agreement relating to investment with a third country.

Where a Member State intends to conclude a new agreement with a third country relating to investment, the Commission shall consult the other Member States within thirty days to determine whether there would be added value in having an agreement of the Union.

**Authorisation to open formal negotiations:** the Commission shall authorise the opening of formal negotiations unless it concludes that the opening of negotiations would: (a) be in conflict with the law of the Union other than the incompatibilities arising from the allocation of competence between the Union and its Member States on foreign direct investment, or (b) undermine the objectives of negotiations underway between the Union and the third country concerned, or (c) not be in line with policies of the Union relating to investments, or (d) constitute a serious obstacle to the conclusion of future Union agreements with that third country relating to investment.

If a simple majority of Member States indicate their interest in concluding an investment agreement of the Union with the third country concerned, the Commission may withhold authorisation and instead propose a negotiating mandate to the Council in accordance with Article 207(3) of the Treaty. The Commission shall keep the European Parliament immediately and fully informed at all the stages of the procedure.

When making its decision the Commission shall take into consideration the geographical priorities of the Union's investment strategy and the capacity of the Commission to negotiate a new agreement of the Union with the third country concerned.

**Participation of the Commission in negotiations:** an amendment states that the Commission may participate as an observer in the negotiations between the Member State and the third country as far as the exclusive competence of the Union is concerned.

**Authorisation to sign and conclude an agreement:** where the Commission decides to negotiate a bilateral investment agreement or a foreign direct investment agreement with a third country, it shall duly notify all Member States about its intention and the scope of the new agreement.

**Review:** no later than ten years after the entry into force of this Regulation, the Commission shall present to the European Parliament and the Council a report on the application of this Chapter which shall review the need for a continued application of this Regulation and any of its Chapters.