

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

2010/0197(COD) - 04/10/2012 - Council position

The Council's position at first reading which is the result of a political agreement between the European Parliament, the Commission and the Council, makes the following amendments to the Commission's proposal:

Purpose and scope: Parliament did not propose any amendments in this regard. Nevertheless; the text stipulates that, from now on, the Regulation does not have any bearing on the division of competences established by the Treaty. A definition of the term "bilateral investment agreement" is also introduced.

Maintenance in force of existing bilateral investment agreement:

- Article 2 (**notifications to the Commission**): Parliament's amendments were accepted. The text contains also some further technical modifications.
- Article 5 (**Commission assessments**): the text has been thoroughly modified. While the Council could not accept a substantial part of the Parliament's amendment, it did accept the Parliament's idea of including the notion of "**serious obstacle**" in the modified text (contained also in several other Articles). In the Council's view, the mere existence of bilateral investment agreements should not be considered as a "serious obstacle".
- Article 6 (**duty of cooperation**) the Commission's text was **substantially modified** in order to emphasise the importance of close cooperation between Member States and the Commission in resolving any serious obstacles to the negotiation or conclusion of bilateral investment agreements between the EU and third countries as identified by the Commission. In line with the provisions of this Article, the Commission may indicate the appropriate measures to be taken by the Member State concerned to remove the obstacles referred to above. Parliament's amendments could not be accepted.

Authorisation to amend or conclude bilateral investment agreements: Parliament's amendments to Articles 7 (Authorisation to amend or conclude a bilateral investment agreement), 8 (Notification to the Commission), 9 (Authorisation to open formal negotiations) and 11 (Authorisation to sign and conclude a bilateral investment agreement) were accepted in part.

Regarding Article 10 (Participation of the Commission in negotiations), the Parliament's amendment could not be accepted as the text of the Commission proposal was retained.

Final provisions: the Council agreed during the informal contacts with the Parliament to follow its suggestion to insert into the Regulation a **new Article 12** concerning agreements signed by Member States between the entry into force of the TFEU, i.e. 1 December 2009, and the entry into force of this Regulation, even though the Parliament did not propose any amendment in this respect in its position at first reading.

Regarding Article 15 (**Review**), a compromise was agreed on the timing of the report on the application of the Regulation, i.e. **seven years** after the entry into force of the Regulation - instead of ten years proposed by the Parliament and the Council and five years as initially proposed by the Commission.

On Article 16 (Committee procedure), the Council accepted the Parliament's amendment calling for the use of the **advisory procedure**.