

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

2010/0197(COD) - 12/12/2012 - Final act

PURPOSE: to establish transitional rules on bilateral investment treaties.

LEGISLATIVE ACT: Regulation (EU) No 1219/2012 of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries

CONTENT: this Regulation establishes the terms, conditions and procedures under which the Member States are authorised to amend or conclude bilateral investment agreements.

At the time of the entry into force of the Treaty of Lisbon, Member States maintained a significant number of bilateral investment agreements with third countries. The Treaty on the Functioning of the European Union does not contain any explicit transitional provisions for such agreements that have now come under the Unions exclusive competence. The regulation will give form to an EU competence for foreign direct investment introduced by Article 207 of the Treaty of Lisbon as part of the EU's common commercial policy. It is aimed at ensuring a smooth transition from the current system of bilateral investment treaties (BITs) between Member States and third countries to a system whereby EU bilateral investment treaties are negotiated by the Commission.

The Regulation:

- addresses the status under Union law of bilateral investment agreements of the Member States signed before 1 December 2009. Those agreements can be maintained in force, or enter into force, in accordance with the Regulation;
- lays down the conditions under which Member States are empowered to conclude and/or maintain in force bilateral investment agreements signed between 1 December 2009 and 9 January 2013;
- lays down the conditions under which Member States are empowered to amend or conclude bilateral investment agreements with third countries after 9 January 2013.

The authorisation to amend or conclude bilateral investment agreements provided for by the Regulation should notably allow Member States to address any incompatibilities between their bilateral investment agreements and Union law.

In order to ensure uniform conditions for the implementation of the Regulation, implementing powers are conferred on the Commission which shall be assisted by the Committee for Investment Agreements, being a committee within the meaning of Regulation (EU) No 182/2011.

The Commission shall present a report on the application of this Regulation by 10 January 2020.

ENTRY INTO FORCE: 09/01/2013.