

**Amendment 2****Kader Arif, Véronique De Keyser**

on behalf of the S&amp;D Group

**Report****A7-0148/2011****Carl Schlyter**

Transitional arrangements for bilateral investment agreements between Member States and third countries

COM(2010)0344 – C7-0172/2010 – 2010/0197(COD)

**Proposal for a regulation****Recital 10***Text proposed by the Commission**Amendment*

(10) The Commission should ***be able to*** withdraw the authorisation if 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***. The ***authorisation may also be withdrawn*** if an agreement ***of the Union in force*** with a third country ***contains investment provisions similar to those of a Member State agreement***. ***In order to ensure that agreements of Member States do not undermine the development and implementation*** of the ***Union's*** policies relating to investment, ***including in particular of autonomous measures of common commercial policy, authorisation may be withdrawn***. Finally, should the Council not take a decision on the authorisation to open negotiations concerning investment within one year of the submission of a recommendation by the Commission pursuant to Article 218(3) of the Treaty, the possibility would exist to withdraw the authorisation.

(10) The Commission should withdraw the authorisation ***of an agreement with a third country***, if an ***investment*** agreement of the Union ***with the same third country negotiated by the Commission has already been ratified***. The ***Commission shall require a Member State to cooperate*** if an agreement ***relating to investment*** with a third country ***conflicts with the law*** of the ***Union, if it is incompatible with established policies of the Union*** relating to investment, ***having due regard to the general principles as set out in Article 21 of the Treaty on European Union or if it constitutes a serious obstacle to the conclusion of future agreements with that third country relating to investment***. Finally, should the Council not take a decision on the authorisation to open negotiations concerning investment within one year of the submission of a recommendation by the Commission pursuant to Article 218(3) of the Treaty, the possibility would exist to withdraw the authorisation

Or. en

**Amendment 3**

**Kader Arif, Véronique De Keyser**  
on behalf of the S&D Group

**Report**

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**Carl Schlyter**

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**Proposal for a regulation****Article 5***Text proposed by the Commission**Amendment*

## Review

## Review

1. The Commission shall review the agreements notified pursuant to Article 2, including by assessing, in particular, whether the agreements:

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(a) conflict with the law of the Union ***other than the incompatibilities arising from the allocation of competences between the Union and its Member States,***  
or

(a) conflict with the law of the Union, or

(b) ***overlap, in part or in full, with an agreement of the Union in force with that third country and this specific overlap is not addressed in the latter agreement,*** or

(b) ***constitute a serious obstacle to the conclusion of future Union investment agreements with third countries,*** or

(c) ***constitute an obstacle to the development and the implementation of the Union's policies*** relating to investment, including in particular the common commercial policy.

(c) ***are incompatible with established policies of the Union*** relating to investment, ***having due regard to the general principles as set out in Article 21 of the Treaty on European Union, or***

***(ca) have resulted in or are likely to result in the Commission being denied access to relevant documents relating to the settlement of disputes initiated under the agreements or participation in the proceedings at least as an amicus curiae where those disputes involve Union law.***

2. Consultation may take place between

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the Commission and the notifying Member State, either at the request of the Member State or on the initiative of the Commission, to facilitate the review referred to in paragraph 1.

3. No later than five 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 the continued application of this chapter, based on the review referred to in paragraph 1.***

4. Where the report referred to in paragraph 3 recommends to discontinue the application of the provisions of this Chapter or to modify these provisions, it shall be accompanied by an appropriate legislative proposal.

the Commission and the notifying Member State, either at the request of the Member State or on the initiative of the Commission, to facilitate the review referred to in paragraph 1.

3. No later than five 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 BITs, including the number of BITs that have been renegotiated by individual Member States.***

4. Where the report referred to in paragraph 3 recommends to discontinue the application of the provisions of this Chapter or to modify these provisions, it shall be accompanied by an appropriate legislative proposal.

Or. en

**Amendment 4**

**Kader Arif, Véronique De Keyser**  
on behalf of the S&D Group

**Report**

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**Carl Schlyter**

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**Proposal for a regulation****Article 6***Text proposed by the Commission**Amendment****Withdrawal of authorisation******Cooperation***

1. *The authorisation provided for in Article 3 may be withdrawn where:*

1. *The Commission shall require a Member State to cooperate if an agreement relating to investment with a third country:*

- (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, or*
- (b) *an agreement overlaps, in part or in full, with an agreement of the Union in force with that third country and this specific overlap is not addressed in the latter agreement, or*
- (c) *an agreement constitutes an obstacle to the development and the implementation of the Union's policies relating to investment, including in particular the common commercial policy, or*
- (d) *the Council has not taken a decision on the authorisation to open negotiations on an agreement which overlaps, in part or in full, with an agreement notified under Article 2, within one year of the submission of a recommendation by the Commission pursuant to Article 218(3) of*

- (a) *conflicts with the law of the Union, or*
- (b) *constitutes a serious obstacle to the conclusion of future Union investment agreements with that third country, or*
- (c) *is incompatible with established policies of the Union relating to investment, having due regard to the general principles as set out in Article 21 of the Treaty on European Union.*

*the Treaty.*

2. *When the Commission considers that there are grounds to withdraw the authorisation provided for in Article 3, it shall deliver a reasoned opinion to the Member State concerned on the necessary steps to be taken to comply with the requirements referred to in paragraph 1. Consultations shall take place between the Commission and the Member State concerned.*

3. *Where the consultations referred to in paragraph 2 fail to resolve the matter, the Commission shall withdraw the authorisation for the agreement concerned. The Commission shall take a decision on the withdrawal of the authorisation in accordance with the procedure referred to in Article 15(2). It shall include a requirement that the Member State takes appropriate action, and where necessary terminate the relevant agreement.*

4. *Where an authorisation is withdrawn, the Commission shall remove the agreement from the list referred to in Article 4.*

2. *If the Commission concludes that a Member State has an obligation to cooperate under paragraph 1, it shall consult with the Member State concerned in order to address those concerns with the aim of resolving any incompatibility whilst ensuring the best possible degree of continuing legal certainty.*

*Where necessary, the Commission shall deliver a reasoned opinion to the Member State on the steps to be taken including renegotiation of an agreement. If deemed appropriate, the Commission shall assist the Member State concerned in the negotiations with the third country. The Member State concerned shall endeavour to take the necessary steps to satisfactorily resolve the issues raised by the Commission.*

3. *If the Member State fails to take the necessary steps required under paragraph 2 within a period agreed in consultations, the Commission shall, where appropriate, withdraw the authorisation or make a recommendation to the Council to authorise the negotiation of a Union agreement relating to investment in accordance with Article 207(3) of the Treaty.*

*If the Council has not taken a decision on the authorisation to open negotiations within one year of the submission of the recommendation, the Commission shall withdraw the authorisation for the Member State agreement with that third country.*

3a. *The Commission shall take the decisions on the withdrawal of the authorisation referred to in paragraph 3 in accordance with the procedure referred to in Article 15(2). It shall include a*

*requirement that the Member State takes appropriate action and, where necessary, terminates the relevant agreement.*

4. Where an authorisation is withdrawn, the Commission shall remove the agreement from the list referred to in Article 4.

Or. en

**Amendment 5****Carl Schlyter**

on behalf of the Verts/ALE Group

**Véronique De Keyser, Kader Arif**

on behalf of the S&amp;D Group

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**Proposal for a regulation****Recital 4***Text proposed by the Commission**Amendment*

(4) Although bilateral agreements remain binding on the Member States under public international law and will be progressively replaced by future agreements of the Union relating to the same subject matter, the conditions for their continuing existence and their relationship with the Union's policies relating to investment, including in particular the common commercial policy, require appropriate management. That relationship will develop further as the Union exercises its competence.

(4) Although bilateral agreements remain binding on the Member States under public international law and will be progressively replaced by future agreements of the Union relating to the same subject matter, the conditions for their continuing existence and their relationship with the Union's policies relating to investment, including in particular the common commercial policy, require appropriate management. That relationship will develop further as the Union exercises its competence ***in common investment policy with the main goal of creating an investment protection system for all Member States' investors providing equal investing conditions on third country markets. As the new investment policy will be developed in view of the transitional validity of bilateral investment agreements concluded by Member States, it should acknowledge the rights of investors whose investments fall into the scope of those agreements and should ensure their legal certainty.***

Or. en

4.5.2011

A7-0148/6

**Amendment 6**

**Carl Schlyter**

on behalf of the Verts/ALE Group

**Véronique De Keyser, Kader Arif**

on behalf of the S&D Group

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**A7-0148/2011**

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**Proposal for a regulation**

**Recital 5**

*Text proposed by the Commission*

*Amendment*

(5) In the interest of EU investors and their investments in third countries, and of Member States hosting foreign investors and investments, bilateral agreements that specify and guarantee the conditions of investment should be maintained in force.

(5) In the interest of EU investors and their investments in third countries, and of Member States hosting foreign investors and investments, bilateral agreements that specify and guarantee the conditions of investment should be maintained in force.

***The Commission should take the necessary steps towards a progressive replacement of all existing bilateral agreements on investment of Member States with new EU-wide agreements.***

Or. en



4.5.2011

A7-0148/7

**Amendment 7**

**Carl Schlyter**

on behalf of the Verts/ALE Group

**Report**

**A7-0148/2011**

**Carl Schlyter**

Transitional arrangements for bilateral investment agreements between Member States and third countries

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**Proposal for a regulation**

**Recital 10**

*Text proposed by the Commission*

*Amendment*

(10) The Commission should ***be able to*** withdraw the authorisation if 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. ***The authorisation may also be withdrawn if an agreement of the Union in force with a third country contains investment provisions similar to those of a Member State agreement. In order to ensure that agreements of Member States do not undermine the development and implementation of the Union's policies*** relating to investment, ***including in particular of autonomous measures of common commercial policy, authorisation may be withdrawn.*** Finally, should the Council not take a decision on the authorisation to open negotiations concerning investment within one year of the submission of a recommendation by the Commission pursuant to Article 218(3) of the Treaty, the possibility would exist to withdraw the authorisation.

(10) The Commission should withdraw the authorisation ***of an agreement with a third country*** if an ***investment*** agreement ***of the Union with the same third country negotiated by the Commission has already been ratified. The Commission may withdraw the authorisation of an agreement if it*** 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, if it contradicts the implementation of the general principles as set out in Article 21 of the Treaty on European Union or if it constitutes a serious obstacle to the conclusion of future agreements with that third country*** relating to investment. Finally, should the Council not take a decision on the authorisation to open negotiations concerning investment within one year of the submission of a recommendation by the Commission pursuant to Article 218(3) of the Treaty, the possibility would exist to withdraw the authorisation.

Or. en

