



**COUNCIL OF
THE EUROPEAN UNION**



Conclusions on a comprehensive European international investment policy

*3041st FOREIGN AFFAIRS
Council meeting
Luxembourg, 25 October 2010*

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION,

1. ACKNOWLEDGING the crucial role of foreign direct investment in fostering competitiveness, economic growth and productivity, strengthening trade relations between nations, contributing to sustainable development, job creation and enhanced consumer benefits ;
2. RECOGNIZING the importance of foreign direct investment within the scope of the EU exclusive competence for the common commercial policy under Articles 3(1)(e) and 207 of the Treaty on the Functioning of the European Union ;
3. RECALLING the Conclusions of the European Council on the adoption on 17 June 2010 of the Europe 2020 Strategy for jobs and smart, sustainable and inclusive growth¹ ;
4. WELCOMES the Commission's Communication dated 7 July 2010 to the Council, the European Parliament, the European Economic & Social Committee and the Committee of the Regions "Towards a comprehensive European international investment policy"² ;

¹ Doc.EUCO 13/10.

² Doc.11952/10.

P R E S S

5. RECOGNIZES the importance of foreign direct investment for economic growth and fully supports the development of a common Policy Framework on Investment that establishes a level playing field for all EU investors in third countries and for investors from third countries in the EU ;
6. RECOGNIZES the opportunity of creating an efficient, ambitious and comprehensive Union policy on investment in a changing global environment. The policy should support the objective of the Union remaining the world's leading destination and source of investment and reflect the Union's commitment to maintain an open investment environment, in line with the new Europe 2020 Strategy. The new EU international investment policy should increase the level of competitiveness of the Union and open new markets ;
7. ACKNOWLEDGING the importance of a comprehensive approach to shaping the future EU international investment policy that does not discriminate between different types of investors and their investments, SUPPORTS the definition of a broad scope for the new EU policy in this field as suggested by the Commission, to be further elaborated in full respect of the respective competences of the Union and its Member States as defined by the Treaties ;
8. SHARES the view that the creation of a common EU international investment policy should increase the current level of protection and legal security for the European investor abroad. Efficiency must lead the action of the Union in reaching this goal ;
9. Given that the bilateral investment agreements concluded by the Member States with third parties are, so far, the main source of protection and legal security for the European investor abroad, STRESSES that the new legal framework should not negatively affect investor protection and guarantees enjoyed under the existing agreements. This priority must be met in the Regulation to be adopted in order to establish transitional arrangements for bilateral investment agreements between Member States and third countries. In accordance with Article 351 of the Treaty on the Functioning of the European Union, bilateral investment agreements concluded by Member States should continue to afford protection and legal security to investors till they are replaced by at least equally effective EU agreements ;
10. CALLS for a pragmatic and realistic approach by ensuring a legal framework that empowers Member States to negotiate and conclude bilateral investment agreements with third parties when there is no EU investment agreement envisaged in the near future with them. The procedures in this legal framework should be light, quick and efficient and carried out by Member States and the Commission in a spirit of good cooperation ;
11. STRESSES the added value of a coherent approach on how to communicate externally on the development and the implementation of the new EU policy on investment. The aim of such approach would be to keep the investment climate and investor confidence in the EU and abroad as positive as possible ;

12. TAKES good note of the geographical focus of the short to medium term agenda for investment negotiations presented by the Commission and, given the necessity to set priorities, RECOMMENDS, among others, the following criteria for selecting priority partners : the economic climate in third countries, their market size and growth, the strategic importance of the economic relations of the EU with them, the opportunities offered by these countries in terms of investment, their political and institutional stability, the degree of local legal protection for European investors, the bilateral investment agreements concluded by Member States with these countries, as well as the potential added value of an EU agreement with them ;
13. ACKNOWLEDGES the Commission's views on the main options for the shape of the future agreements to be concluded by the EU, principally in the form of comprehensive agreements or stand-alone investment agreements. Increasing access to non-EU markets and improving the level of protection of European investors should be the main criteria for assessing which option is the most appropriate ;
14. STRESSES the need to ensure the inclusion in the substance of future negotiations of the fundamental standards of "fair and equitable treatment", non-discrimination ("most-favored-nation treatment" and "national treatment"), "full protection and security" treatment of investors and investments, protection against expropriation (including the right to prompt, adequate and effective compensation), free transfer of funds of capital and payments by investors, as well as other effective protection provisions (such as, where appropriate, the so-called "umbrella clauses") and dispute settlement mechanisms and CONSIDERS that these principles should be the main pillars of future EU investment agreements ;
15. CONSIDERS that detailed provisions of future EU investment agreements now need to be further fleshed out at the latest when examining forthcoming negotiating directives by the Commission, on the basis of the experience and the best practices of the Member States ;
16. RECOGNIZES the importance of the social and environmental dimension of foreign direct investment as well as the rights and the obligations of investors, and EMPHASIZES the valuable contribution of organizations like the OECD, UNCTAD and the ILO and their international instruments to the EU investment policy, especially in the field of corporate social responsibility. At the same time, it remains crucial that the main focus of international investment agreements should continue to be effective and ambitious investment protection and market access ;
17. STRESSES that, in keeping with existing practices by Member States and in accordance with Article 205 of the Treaty on the Functioning of the European Union and Article 21 of the Treaty on the European Union, the new European international investment policy should be guided by the principles and objectives of the Union's external action, including the rule of law, human rights and sustainable development as well as taking into account the other policies of the Union and its Member States. The European investment policy must continue to allow the EU and the Member States to adopt and enforce measures necessary to pursue public policy objectives ;

18. TAKES good note of the issues raised by the Commission regarding the implementation of the commitments by the parties to an agreement, including an effective enforcement mechanism and the issue of international responsibility ; STRESSES, in particular, the need for an effective investor-to-state dispute settlement mechanism in the EU investment agreements and INVITES the Commission to carry out a detailed study on the relevant issues concerning international arbitration systems, including inter alia the legal and political feasibility of EU membership in international arbitration institutions as well as the question of liability arising from arbitration procedures and the responsibilities of the Member States in this respect ;
 19. LOOKS forward to the Commission developing further initiatives as well as to working with the Commission and the European Parliament, through good cooperation and in full respect of the attribution of competences defined by the Treaties, to set up a comprehensive European international investment policy."
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