



## Bilateral investment: less Commission authority, easier EU-level agreements

Committees: Committee on International Trade

**In a close vote in the International Trade Committee today, MEPs argued for limiting the power of the European Commission to review and withdraw authorisation from Member States' bilateral investment treaties. At the same time, the committee suggested a more robust mechanism for replacing bilateral investment negotiations with attempts to get EU-level agreements with third countries.**

The current legal framework for foreign direct investment (FDI) consists of over 1,200 bilateral investment treaties between EU Member States and third countries. Since the Lisbon Treaty took effect, however, foreign direct investment has become an exclusively EU competence. This raises the question of what should happen to this collection of bilateral investment treaties (BITs) in the future.

The Commission has proposed a regulation that would require all Member States to notify the Commission of all of their BITs, in exchange for which they would be authorised to maintain these agreements in force. After reviewing these treaties, the Commission could then withdraw this authorization, if the BIT in question conflicts with EU law, overlaps with an EU investment agreement with the same country, or conflicts with EU investment policy more generally.

"It seems that the committee's view is quite split on this subject," said rapporteur Carl Schlyter (Greens/EFA, SV) after the vote. "However, a majority opted for a solution that strongly protects current bilateral treaties, while also opening up a route for Member States to turn any future agreements into EU agreements. I look forward to the results of the vote in plenary, which should put the Parliament's position on firmer footing."

### **Less power to Commission to review agreements and withdraw authorization...**

The report adopted by a slim majority in the International Trade Committee today (15-13-0) primarily reflects the compromise amendments from the EPP, ECR and ALDE groups. This set of compromises would grant the Commission weaker powers of review over existing bilateral investment agreements by Member States. The committee refused to make such reviews mandatory, narrowed their scope to cases where bilateral agreements "constitute a serious obstacle to the conclusion of future Union agreements with third countries," and extended the deadline by which the Commission needs to inform Parliament of the results of the review process from five to ten years after the entry into force of the regulation.

The report also limits the reasons for which the Commission can withdraw authorisation from BITs, by emphasising that this can only happen if the BIT conflicts with EU law, "constitutes a serious obstacle to the conclusion of future agreements" with the third country concerned, or the Council has failed to decide on opening negotiations for an EU investment treaty with the third country for over a year.

**...but a more explicit mechanism to transform bilateral agreements into EU ones**

# Press release

The regulation allows for Member States to amend existing BITs or to conclude new ones, provided that they notify the Commission beforehand (the original proposal suggested a five-month minimum, MEPs want to reduce this to three months). The committee voted to include a mandate for the Commission to consult all other Member States in such cases, to see if it would be preferable to negotiate an EU-wide investment agreement, instead. If a simple majority of Member States are interested in an EU-level agreement, the authorization for the bilateral negotiations could be withheld.

## **Close vote in Committee means backing of plenary will be sought**

Since the vote was quite close, and at the request of the rapporteur, the committee decided to put the report to a plenary vote (including potential new amendments by the political groups), in order to clearly establish the Parliament's negotiating stance on this issue. Therefore, no trilogue meetings will take place until the entire House has voted on the EP's amendments to the regulation. At the same time, a postponement of the final vote, and a referral of the report back to committee at the plenary stage would still leave the door open for a first-reading agreement.

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