

Minutes of the 8th meeting of the Expert Group on intra-EU investment environment
Brussels, 28 May 2020

The 8th meeting of the Member States' Expert Group on intra-EU investment environment took place on 28 May 2020 via videoconference.

DG FISMA updated Member States on the signature of the plurilateral agreement on the termination of intra-EU Bilateral Investment Treaties (intra-EU BITs), which took place on 5 May 2020. It also informed Member States about the launch of the public consultation and the inception impact assessment on an investment protection and facilitation framework, noting that in the context of the economic consequences of the COVID-19 crisis, increasing investor confidence and mobilising cross-border investment in the EU would gain even more importance.

Several delegations welcomed the recent signature of the agreement for the termination of intra-EU BITs and some also stressed the importance of ensuring its timely entry into force. Three Member States that did not sign the plurilateral termination agreement updated on the progress made for achieving bilateral termination of their intra-EU BITs by mutual consent. One Member State clarified that it had not signed the plurilateral agreement as it did not have intra-EU BITs in force. Several Member States called for progress also on the intra-EU application of the Energy Charter Treaty.

DG FISMA presented the 'Public consultation on an intra-EU investment protection and facilitation initiative' and the 'Inception impact assessment' published on 26 May 2020. Several delegations expressed support for the initiative and no one opposed to it. On the substance of the inception impact assessment, Member States asked for clarifications whether the options were mutually exclusive. One Member State inquired whether an option of an arbitration tribunal that could refer questions to the Court of Justice could be considered (based on the experience with the EU-Switzerland agreement). One Member State stressed the importance of a binding mechanism in view of investor concerns. Another Member State noted it was important to ensure the uniform application of EU law and avoid forum shopping. DG FISMA clarified that the options presented in the inception impact assessment were not mutually exclusive and were not definitive. Several questions on the process were raised, in particular on the timing, which Council working party would be best placed to follow the initiative on intra-EU investment and which national experts would need to be involved, acknowledging that the initiative presented a wider range aspects also relating to justice and investment facilitation fields. DG FISMA clarified that the initiative was currently envisaged for 2021 Q1, but modifications of the timeline were possible.

DG FISMA then also presented a targeted 'Questionnaire for the Member States' authorities on investment protection and facilitation within the European Union', which would also feed into the impact assessment on the initiative. Delegations expressed their willingness to cooperate with the Commission and to reply to the questionnaire.

Finally, the Commission services updated the Member States on the Commission's position and on recent developments regarding the termination of bilateral investment treaties between the EU Member States and the UK. Several delegations, in particular those having bilateral

investment treaties with the UK, expressed preference for a coordinated solution (with COM help) leading to the termination of bilateral investment treaties in a bilateral manner. The Commission services agreed to reconvene a meeting with those Member States having bilateral investment treaties with the UK to discuss the way forward.

On investment protection in future relations with the UK, the Commission services recalled, that the Political Declaration between the EU and the UK of October 2019 and their negotiating mandates focus on investment liberalisation and do not include any reference to investment protection. DG FISMA made clear that the Expert Group on intra-EU investment environment was not the right forum for this discussion.