

Brussels, 24 MAI 2011
C/2011/ 3550

Dear President,

Thank you for transmitting to the European Commission the Resolution of the Senate of the Parliament of the Czech Republic on the Proposal for a Regulation of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries {COM(2010) 344}. The Commission welcomes the general support for the proposed Regulation. This Regulation aims at empowering Member States to maintain in force, amend or conclude bilateral agreements on investment with third countries.

The proposal's main aim is to ensure legal certainty by clarifying the legal status of existing bilateral agreements relating to investment after the entry into force of the Lisbon Treaty. The assessment of the Senate of the Parliament of the Czech Republic on this particular point confirms that such a view is shared.

The European Commission takes note of the Senate's views on the need for more flexible time frames both with regard to the 30 day period for the notification of all existing bilateral investment agreements with third countries and to the conditions for the authorisation of future agreements. It should however be emphasised that in the interest of ensuring legal certainty and complying with the general requirement of good administrative conduct, it is imperative that the list of existing bilateral agreements concluded by Member States with third countries is published as soon as possible. The 30 days period seems adequate in this context. With regards to the conclusion of future agreements, the proposed timeframe takes into consideration a fundamental element, namely the mechanism designed to allow appropriate participation of Member States in the decision making process and the delays needed for a proper functioning of this mechanism.

The Senate's recommendation that criteria for withdrawal of the authorisation for bilateral agreements should be set in a more straightforward way is a valuable contribution to the ongoing discussions related to the adoption of the Regulation through the ordinary legislative procedure. Without prejudice to further dialogue that could take place in this context, the European Commission takes the view that the future Regulation should include a clear indication that every bilateral agreement concluded by Member States should be fully in line with the Union's policy relating to investment. Such consistency seems to be of particular importance also in the view of the European Parliament.

Mr. Milan Štěch
President of the Senate
of the Parliament of the Czech Republic

reakcekomise@senat.cz

The European Commission does not consider the provisions on authorisation to be redundant in view of the obligation of Member States to bring their bilateral agreements in line with the provisions of the Union's law. The issue is already addressed in the recitals of the proposed Regulation, as well as in its text. Member States are required to take the necessary steps in order to eliminate incompatibilities, where they exist, with the law of the Union. The authorisation to amend existing agreements or even to conclude new agreements replacing the former ones notably allows Member States to address any such incompatibilities. Until the formal entry into force of the future Regulation, the European Commission is not in a position either to authorise or give its consent to the negotiation or conclusion by a Member State of bilateral agreements relating to investment. Member States should therefore be mindful of their obligations under the law of the Union.

The European Commission avails itself of the opportunity to convey once more its full availability to engage a constructive dialogue with the Senate of the Parliament of the Czech Republic.

Yours faithfully,