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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
of the Council establishing transitional arrangements for bilateral investment
agreements between Member States and third countries**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and 7/07/2010
to the Council
(document COM(2010)344final – 2010/0197 COD):

Date of the position of the European Parliament, first reading: 10/05/2011

Date of adoption of the position of the Council: 4/10/2012

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The Lisbon Treaty established the Union's exclusive competence on foreign direct investment, as part of the common commercial policy. In accordance with Article 2 of the Treaty on the Functioning of the European Union (TFEU), only the Union may legislate and adopt legally binding acts in an area where exclusive competence is conferred upon the Union. In the absence of a specific transitional regime in the TFEU clarifying the status of Member States' bilateral investment agreements, the Commission's proposal for a Regulation seeks to establish legal certainty for investors benefiting from these agreements, by authorising the continued existence of all investment agreements signed between Member States and third countries, as well as to create a mechanism empowering – under certain conditions – Member States to negotiate and conclude such agreements in the future.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted in the 1st reading fully reflects the agreement reached in the trilogue between the Council, the European Parliament and the Commission, as concluded on 29th May 2012. The main points of this agreement are as following:

- to clarify the status under the law of the Union of bilateral investment agreements of the Member States signed before the entry into force of the Lisbon Treaty, by confirming that those agreements may be maintained in force (or enter into force) until they are replaced by the investment agreement of the Union;
- to establish the conditions under which Member States may be empowered to conclude and/or maintain in force bilateral investment agreements signed between the entry into force of the Lisbon Treaty and the entry into force of this Regulation;

- to streamline the conditions and procedures under which Member States may be empowered to amend or conclude bilateral investment agreements with third countries after entry into force of the Regulation;
- to ensure that maintainance in force of investment agreements by Member States, or authorisation to open negotiations or conclude bilateral investment agreements with third countries will not prevent the negotiation or conclusion of future investment agreements by the Union;
- to confer on the Commission – with a view to applying the Regulation – implementing powers in accordance with Regulation (EU) No 182/2011, and to apply advisory procedure for the adoption of authorisation decisions pursuant to the Regulation.

The Commission fully supported the agreement reached in the trilogue.

4. DECLARATIONS

The Commission accepted and subscribed to the joint declaration of the Council, the Parliament and the Commission on the fact that the use of comitology in the Regulation should not be considered as a precedent for future acts on empowerment of Member States under the EU exclusive competences, and that the choice of the advisory procedure should not be considered as a precedent for future implementing acts under the Common Commercial Policy.

5. CONCLUSION

The Commission accepts the position taken by the Council.