



---

## NOTE ON INTRA-EU BITS NOT COVERED BY THE TERMINATION AGREEMENT

\*\*\*

### I. COMMENT

- On 5 May 2020, 23 EU Member States signed an [agreement for the termination of intra-EU bilateral investment treaties](#) (“Termination Agreement”). The Termination Agreement implements the *Achmea* Judgment by which the European Court of Justice declared investment treaty arbitration clauses in intra-EU bilateral investment treaties (“intra-EU BITS”) to be incompatible with the EU Treaties.<sup>1</sup>
- The Termination Agreement addresses intra-EU bilateral investment treaties; it does not cover intra-EU proceedings on the basis of Article 26 of the Energy Charter Treaty. According to the preamble, the European Union and its Member States will deal with this matter at a later stage.
- The list of all Intra-EU BITS covered by the Termination Agreement can be found in [Annex A \(p. 30 et seq.\)](#).
- Austria, Finland, Ireland, and Sweden are not parties to the Termination Agreement. There are no Bilateral Investment Treaties in force among these States.<sup>2</sup>
- The United Kingdom has left the EU as of 1 February 2020. The great majority of rights and obligations under EU law remain in force until the end of the transition period. Technically, BITS concluded between the UK and EU Member States should currently be considered as intra-EU BITS. However, after the end of the transition period,<sup>3</sup> BITS concluded between the UK and EU Member States will turn into extra-EU BITS and their conformity with EU law would depend on the legal standards set out by the CJEU in [Opinion 1/17 \(CETA\)](#).
- It is likely that the 23 Member States which are parties to the Termination Agreement will unilaterally terminate the BITS concluded with Austria, Finland, and Sweden. Any unilateral termination will trigger the sunset clause contained in these treaties.

---

<sup>1</sup> See for a detailed analysis: Scheu/Nikolov, *The Incompatibility of Intra-EU Investment Treaty Arbitration With European Union Law – Assessing the Scope of the ECJ’S Achmea Judgment*, German Yearbook of International Law vol. 62 (2019) - Forthcoming. Available at SSRN: <https://ssrn.com/abstract=3545811>.

<sup>2</sup> Ireland is not party to any BIT and was therefore not concerned by the *Achmea* Judgment.

<sup>3</sup> The transition period is supposed to end on 31 December 2020.

## II. LIST OF BITs NOT COVERED BY THE TERMINATION AGREEMENT<sup>4</sup>

<b>INTRA-EU BITs CONCLUDED BY AUSTRIA, FINLAND, and SWEDEN</b>				
<b>State 1</b> (party to the termination agreement)	<b>State 2</b> (non-party to the termination agreement)	<b>Termination period</b>	<b>Sunset clause</b>	<b>Treaty Text</b> (via UNCTAD IIA Navigator)
Bulgaria	Finland	12 months	15 years	<a href="#">Bulgaria - Finland BIT (1997)</a>
Bulgaria	Austria	12 months	10 years	<a href="#">Austria - Bulgaria BIT (1997)</a>
Bulgaria	Sweden	12 months	15 years	<a href="#">Bulgaria - Sweden BIT (1994)</a>
Croatia	Sweden	12 months	20 years	<a href="#">Croatia - Sweden BIT (2000)</a>
Croatia	Finland	12 months	20 years	<a href="#">Croatia - Finland BIT (1999)</a>
Croatia	Austria	12 months	10 years	<a href="#">Austria - Croatia BIT (1997)</a>
Czech Republic	Austria	12 months	10 years	<a href="#">Austria - Czech Republic BIT (1990)</a>
Czech Republic	Sweden	12 months	10 years	<a href="#">Czech Republic - Sweden BIT (1990)</a>
Czech Republic	Finland	12 months	10 years	<a href="#">Czech Republic - Finland BIT (1990)</a>
Estonia	Austria	12 months	10 years	<a href="#">Austria - Estonia BIT (1994)</a>
Estonia	Sweden	12 months	20 years	<a href="#">Estonia - Sweden BIT (1992)</a>
Estonia	Finland	12 months	10 years	<a href="#">Estonia - Finland BIT (1992)</a>
Hungary	Austria	12 months	10 years	<a href="#">Austria - Hungary BIT (1988)</a>
Hungary	Finland	12 months	10 years	<a href="#">Finland - Hungary BIT (1988)</a>
Hungary	Sweden	6 months	20 years	<a href="#">Hungary - Sweden BIT (1987)</a>
Latvia	Austria	12 months	10 years	<a href="#">Austria - Latvia BIT (1994)</a>
Latvia	Sweden	12 months	20 years	<a href="#">Latvia - Sweden BIT (1992)</a>
Latvia	Finland	12 months	10 years	<a href="#">Finland - Latvia BIT (1992)</a>
Lithuania	Austria	12 months	10 years	<a href="#">Austria - Lithuania BIT (1996)</a>
Lithuania	Finland	12 months	10 years	<a href="#">Finland - Lithuania BIT (1992)</a>
Lithuania	Sweden	12 months	20 years	<a href="#">Lithuania - Sweden BIT (1992)</a>

<sup>4</sup> Based on the data provided by the UNCTAD International Investment Agreements Navigator, available at <https://investmentpolicy.unctad.org/international-investment-agreements> (accessed on 6 May 2020).

Malta	Austria	12 months	10 years	<a href="#">Austria - Malta BIT (2002)</a>
Malta	Sweden	12 months	20 years	<a href="#">Malta - Sweden BIT (1999)</a>
Romania	Sweden	12 months	20 years	<a href="#">Romania - Sweden BIT (2002)</a>
Romania	Austria	12 months	10 years	<a href="#">Austria - Romania BIT (1996)</a>
Romania	Finland	12 months	15 years	<a href="#">Finland - Romania BIT (1992)</a>
Slovakia	Austria	12 months	10 years	<a href="#">Austria - Slovakia BIT (1990)</a>
Slovakia	Finland	12 months	10 years	<a href="#">Finland - Slovakia BIT (1990)</a>
Slovenia	Austria	12 months	10 years	<a href="#">Austria - Slovenia BIT (2001)</a>
Slovenia	Sweden	12 months	15 years	<a href="#">Slovenia - Sweden BIT (1999)</a>
Slovenia	Finland	12 months	15 years	<a href="#">Finland - Slovenia BIT (1998)</a>

#### **LIST OF INTRA-EU BITs CONCLUDED BY THE UNITED KINGDOM**

<b>State</b> (party to the termination agreement)	<b>Termination period</b>	<b>Sunset clause</b>	<b>Treaty</b> (via UNCTAD IIA Navigator)
Bulgaria	12 months	20 years	<a href="#">Bulgaria - United Kingdom BIT (1995)</a>
Croatia	12 months	20 years	<a href="#">Croatia - United Kingdom BIT (1997)</a>
Czech Republic	12 months	15 years	<a href="#">Czech Republic - United Kingdom BIT (1990)</a>
Estonia	12 months	20 years	<a href="#">Estonia - United Kingdom BIT (1994)</a>
Hungary	6 months	20 years	<a href="#">Hungary - United Kingdom BIT (1987)</a>
Latvia	12 months	20 years	<a href="#">Latvia - United Kingdom BIT (1994)</a>
Lithuania	12 months	15 years	<a href="#">Lithuania - United Kingdom BIT (1993)</a>
Malta	12 months	20 years	<a href="#">Malta - United Kingdom BIT (1986)</a>
Romania	12 months	20 years	<a href="#">Romania - United Kingdom BIT (1995)</a>
Slovakia	12 months	15 years	<a href="#">Slovakia - United Kingdom BIT (1990)</a>
Slovenia	12 months	20 years	<a href="#">Slovenia - United Kingdom BIT (1996)</a>