Department for
Business & Trade

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Rt Hon. Liam Byrne MP
Chair, Business and Trade Committee
House of Commons
London
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Dear Rt Hon. Liam Byrne MP

I am writing to inform you of my Department's intention to terminate the UK's remaining bilateral investment treaties (BITs) with EU Member States. This will invoke the process under Part 2 of the Constitutional Reform and Governance Act 2010 (CRaG). Under the terms of CRaG, we expect to firstly lay before both Houses the termination agreements with respect to the UK's BITs with the Czech Republic and Lithuania, and then with Poland, Croatia, Slovenia and Bulgaria to follow once we have finalised arrangements with those partners.

Terminating these BITs now is necessary to close ongoing infringement proceedings which the European Commission begun against the UK in 2020, and to avoid the case being referred to the Court of Justice of the European Union (CJEU). Under the Withdrawal Agreement the European Commission would need to commence proceedings before the CJEU by 31 December 2024.

For context, in March 2018, while the UK was still an EU Member State, the CJEU ruled that provisions in BITs between EU Member States ("intra-EU BITs") which allows for investor-state dispute settlement (ISDS) through arbitration, were incompatible with EU law. In January 2019, Member States, including the UK, signed a Political Declaration which included a commitment to terminate intra-EU BITs to end the legal effect of these ISDS provisions, including with respect to their sunset provisions. In the case of a unilateral termination, intra-EU BITs contain sunset clauses (usually 10-20 years) which provide for investors with investments in place before the termination to be able to commence ISDS for the duration of that period.

The UK did not participate in subsequent negotiations between the Commission and Member States for a plurilateral treaty to terminate all intra-EU BITs. As such, in May 2020, the Commission issued a Letter of Formal Notice to the UK for failure to take steps to effectively remove its intra-EU BITs from the legal order. The Commission then issued a Reasoned Opinion in October 2020 for the same reason.

In December 2020, the then Government informed the Commission that the UK would bilaterally terminate its 12 BITs with EU Member States. This paused the EU legal action, pending completion of the terminations. Notwithstanding the commitment to do so, the previous government didn't move forward with terminating all the UK's EU BITs and this is now being done in line with our broader European reset. If the BITs are not terminated soon, we believe there is a risk that the Commission will commence proceedings against the UK before the CJEU. Under the terms of the Withdrawal Act the deadline to commence those proceedings is 31 December 2024. Additionally, through the 2019 Political Declaration and subsequent bilateral discussions with treaty partners, the UK Government has made commitments to terminate these BITs.

Under the previous Government the UK terminated its BITs with Romania, Estonia, Latvia, Slovakia, Malta and Hungary. As other treaty partners require completion of domestic constitutional procedures before they can consent to termination, the UK is required to lay the relevant termination agreements before Parliament under Part 2 of CRaG. The Czech Republic and Lithuania have already confirmed completion of their domestic processes. As such, they are awaiting the UK's confirmation of completion of its process so that the BITs can be fully terminated.

DBT is working with the Foreign, Commonwealth and Development Office to lay the termination agreements and the explanatory memoranda before Parliament and we expect for this to take place in the coming weeks.

My officials are working with Poland, Croatia, Slovenia and Bulgaria to finalise the termination arrangements and I will provide a further update to the Committee once these discussions are completed.

Yours sincerely,

The Rt Hon Douglas Alexander MP
Minister of State for Trade Policy and Economic Security
Department for Business and Trade