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INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is party
- Outcome of the European Parliament's first reading
(Strasbourg, 20 - 24 May 2013)

I. INTRODUCTION

The Rapporteur, Paweł Zalewski (EPP, PL), presented a report consisting of 43 amendments (amendments 1-43) to the proposal for a Regulation of the European Parliament and of the Council Establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is party, on behalf of the Committee on International Trade. In addition, the GUE/NGL political group tabled 11 amendments (amendments 44-54).

II. DEBATE

A debate took place on 22 May 2013, together with an oral question on the interaction between EU law and international investment law in the case of intra-EU bilateral investment treaties concluded between various EU members.

The Rapporteur for the Regulation, Mr Paweł Zalewski, (EPP, PL), considered its report as one of the most crucial reports of the term, and as a final step towards establishing a consistent and comprehensive common foreign EU trade policy. The report would set up a framework that will allow the EU to manage its financial responsibilities resulting from investor state dispute settlements (ISDS). Indeed, various EU countries were subject to dispute settlements held at various tribunals. With the entry into force of the Lisbon Treaty, it is the EU that has exclusive competence over foreign direct investment and takes responsibility for financial commitments resulting from lost civil cases.

The core issue is the right apportionment of the obligation to pay awards to an investor (when and under what conditions the EU pays the awarded sum, and when it is the obligation of the Member State concerned to do so).

The Rapporteur indicated that the vast majority of votes cast in the Committee on International Trade supported the report, but stopped outlining the scope of his report and moved to an oral question tabled together with several other MEPs from various political groups on the interaction between EU law and international investment law. It is the issue of intra-EU bilateral investment treaties (BITs) concluded between various EU members, treaties for which the Commission itself takes the view that they are incompatible with EU law and should be terminated.

David Martin (S&D, UK), Helmut Scholz (GUE/NGL, DE) and Franziska Keller (Greens/EFA, DE), authors of the question, proceeded to the presentation of the question. David Martin (S&D, UK) indicated that the S&D political group did not believe that investor-state dispute settlements are necessary between mature legal systems. In particular, he stressed that ISDS should give no advantage to foreign companies over domestic companies, that ISDS should not be allowed to limit public space for development of health, social, environmental and other policies, and that the system needs to be as transparent and as open as possible. However, the author considered that ISDS may be necessary when they help both European investors to invest and a country to attract investment that it might not otherwise attract.

Helmut Scholz (GUE/NGL, DE) and Franziska Keller (Greens/EFA, DE), considered that ISDS deprive the governments of the Member States of the right to defend their own political majority decisions, such as the withdrawal from nuclear energy or the bans on fracking, as specialised law firms and corporations would take precedence over the European Union and its Member States. Helmut Scholz (GUE/NGL, DE) also considered that a possible consequence could be that companies would establish a branch abroad and then sue the EU or its Member States as an external plaintiff.

Commissioner Karel De Gucht declared that the Commission is, in general terms, ready to accept the bulk of Parliament's amendments, either as drafted or subject to some further work on drafting. However, this is not the case of Amendments 19, 27, 28 and 30, as they would make more difficult for the Commission to defend the Union's interests whilst affecting the unity of the EU's external representation.

As regards the oral question, the Commissioner agreed that bilateral and investment treaties (BITS) between EU Member States do not comply with EU law, and have been challenged before national courts in proceedings which are still pending. All the Member States except one have such intra-EU BITS in force. Several Member States have already agreed bilaterally to terminate their agreements. However, in those cases where Member States are not willing to terminate agreements, the Commission is ready to play its role as a guardian of the Treaties. Indeed, the European Court of Justice ruled in 2009 that provisions in the bilateral investment agreements of Austria, Sweden and Finland relating to the free transfer of capital were in breach of the EU Treaties and did not allow for the application of EU measures on the restriction of capital movements. The Member States concerned have been compelled to bring their agreements into compliance with their Treaty obligations or to denounce them.

The Commissioner then explained the mechanism of Regulation (EU) No 1219/2012¹, which requires the Member States concerned to request authorisation from the Commission to open renegotiation of such an agreement. The process has just started, with 29 requests so far for authorisation to sign or allow the entry into force of protocols amending existing BITS and 36 requests to open negotiations to amend existing BITS.

Speaking on behalf of the S&D group, Bernd Lange (S&D, DE) supported the Commission proposal.

Kriton Arsenis (S&D, GR) explained that under the Lisbon Treaty, investment protection agreements were EU's competence, as the Commission and the European Union could better guarantee labour rights and other sensitive issues that have proven to be better managed at EU level than in the Member States. But investor protection would not seem to follow this line as it could endanger democracy and labour rights. In particular, he raised the issues of treaty-shopping, third-party finance and the protection of the principles of impartiality and transparency which exist in the European Courts but not in the ISDS.

¹ Regulation (EU) No 1219/2012 of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries (OJ L 351 of 20 December 2012, p. 40).

João Ferreira (GUE/NGL, PT) considered that there was a conflict between investment treaties negotiated under the EU competence and democracy, as different Member States economies had different needs.

Elena Băsescu (EPP, RO) criticized the EU competence in this area, and considered that foreign companies would have, on EU territory, more rights than EU companies.

Commissioner Karel De Gucht again took the floor and declared that ISDS are needed when it is an agreement with a third country that does not have a properly-functioning judicial system, where one can have doubts about the rule of law. Therefore, what is needed is a European way to approach this whenever it is in an agreement. The Commissioner then agreed on the political nature of the issue.

As regards the EU competence for investment policy, the Commissioner indicated that it means that new legislation is needed on a number of issues which in the past were Member States competence. If not, it cannot be applied at EU level.

The Rapporteur, Paweł Zalewski (EPP, PL), closed the debate and considered that the Commissioner's answer means that ISDS are often needed. The Rapporteur then called for the adoption of the report as adopted by the Committee on International Trade.

III. VOTE

When it voted in plenary on 23 May 2013, the European Parliament adopted amendments 1-43.

Nevertheless, the Parliament did not proceed to a vote on the legislative resolution.

The text of the amendments adopted is annexed to this note.

Establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the EU is party *I**

Amendments adopted by the European Parliament on 23 May 2013 on the proposal for a regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is party (COM(2012)0335 – C7-0155/2012 – 2012/0163(COD))²

(Ordinary legislative procedure: first reading)

Amendment 1

Proposal for a regulation
Title

Text proposed by the Commission

Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to *investor-state* dispute settlement tribunals established by international agreements to which the European Union is party

Amendment

Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to *investor-to-state* dispute settlement tribunals established by international agreements to which the European Union is party

Amendment 2

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) With the entry into force of the Lisbon Treaty, the Union has acquired exclusive competence for the conclusion of international agreements on investment protection. The Union is already party to the Energy Charter Treaty which provides for investment protection.

Amendment

(1) With the entry into force of the Lisbon Treaty, the Union has acquired exclusive competence for the conclusion of international agreements on investment protection. The Union, *like the Member States*, is already party to the Energy Charter Treaty which provides for investment protection.

² The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0124/2013).

Amendment 3

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) *Agreements providing for* investment protection *typically* include an investor-to-state dispute settlement mechanism, which allows an investor from a third country to bring a claim against a state in which it has made an investment. Investor-to-state dispute settlement can result in awards for monetary compensation. Furthermore, significant costs for administering the arbitration as well as costs relating to the defence of a case will inevitably be incurred in any such case.

Amendment

(2) ***In the cases where it is justifiable, future investment protection agreements concluded by the Union can*** include an investor-to-state dispute settlement mechanism, which allows an investor from a third country to bring a claim against a state in which it has made an investment. Investor-to-state dispute settlement can result in awards for monetary compensation. Furthermore, significant costs for administering the arbitration as well as costs relating to the defence of a case will inevitably be incurred in any such case.

Amendment 4

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Financial responsibility cannot be properly managed if the standards of protection afforded in investment agreements were to exceed significantly the limits of liability recognised in the Union and the majority of the Member States. Accordingly, future Union agreements should afford foreign investors the same high level of protection as, but no higher level of protection than, Union law and the general principles common to the laws of the Member States grant to investors from within the Union.

Amendment 5

Proposal for a regulation Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Delineation of the outer limits of financial responsibilities under this Regulation is also linked to the safeguarding of the Union's legislative powers exercised within the competences defined by the Treaties, and controlled for their legality by the Court of Justice, which cannot be unduly restrained by potential liability defined outside the balanced system established by the Treaties. Accordingly, the Court of Justice has clearly confirmed that the Union's liability for legislative acts, especially in the interaction with international law, must be framed narrowly and cannot be engaged without the clear establishment of fault¹. Future investment agreements to be concluded by the Union should respect those safeguards to the Union's legislative powers and should not establish stricter standards of liability allowing a circumvention of the standards defined by the Court of Justice.

¹ *Judgment of the Court of Justice of 9 September 2008 in Joined Cases C-120/06 P and C-121/06 P, FIAMM and Fedon v Council and Commission ([2008] ECR I-6513)*

Amendment 6

Proposal for a regulation Recital 4

Text proposed by the Commission

Amendment

(4) Where the Union has international responsibility for the treatment afforded, it will be expected, as a matter of international law, to pay any adverse award and bear the costs of any dispute. However,

(4) Where the Union, ***as an entity having legal personality***, has international responsibility for the treatment afforded, it will be expected, as a matter of international law, to pay any adverse award

an adverse award may potentially flow either from treatment afforded by the Union itself or from treatment afforded by a Member State. It would as a consequence be inequitable if awards and the costs of arbitration were to be paid from the Union budget where the treatment was afforded by a Member State. It is therefore necessary that financial responsibility be allocated, as a matter of Union law, and without prejudice to the international responsibility of the Union, between the Union and the Member State responsible for the treatment afforded on the basis of criteria established by this Regulation.

and bear the costs of any dispute. However, an adverse award may potentially flow either from treatment afforded by the Union itself or from treatment afforded by a Member State. It would as a consequence be inequitable if awards and the costs of arbitration were to be paid from the ***budget of the European Union*** (Union budget) where the treatment was afforded by a Member State. It is therefore necessary that financial responsibility be allocated, as a matter of Union law, and without prejudice to the international responsibility of the Union, between the Union ***itself*** and the Member State responsible for the treatment afforded on the basis of criteria established by this Regulation.

Amendment 7

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Financial responsibility should be allocated to the entity responsible for the treatment found to be inconsistent with the relevant provisions of the agreement. This means that the Union should bear the financial responsibility where the treatment concerned is afforded by ***an institution, body or agency*** of the Union. The Member State concerned should bear the financial responsibility where the treatment concerned is afforded by ***a*** Member State. However, where the Member State acts in a manner required by ***the law of*** the Union, for example in transposing a directive adopted by the Union, the Union should bear financial responsibility in so far as the treatment concerned is required by Union law. The regulation also needs to foresee the possibility that an individual case could concern both treatment afforded by a Member State and treatment required by Union law. It will cover all actions taken by Member States and by the ***European*** Union.

Amendment

(6) Financial responsibility should be allocated to the entity responsible for the treatment found to be inconsistent with the relevant provisions of the agreement. This means that the Union ***itself*** should bear the financial responsibility where the treatment concerned is afforded by ***any institution, body, agency or other legal entity*** of the Union. The Member State concerned should bear the financial responsibility where the treatment concerned is afforded by ***that*** Member State. However, where the Member State acts in a manner required by the Union ***law***, for example in transposing a directive adopted by the Union, the Union ***itself*** should bear financial responsibility in so far as the treatment concerned is required by Union law. The regulation also needs to foresee the possibility that an individual case could concern both treatment afforded by a Member State and treatment required by Union law. It will cover all actions taken by Member States and by the Union. ***In such a case, the Member States and the***

Union should bear financial responsibility for the specific treatment afforded by either of them.

Amendment 8

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) When the Member State acts in a manner inconsistent with that required by Union law, for example when it fails to transpose a directive adopted by the Union or exceeds the terms of a directive adopted by the Union when implementing it into national law, that Member State should consequently bear financial responsibility for the treatment concerned.

Amendment 9

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(8) On the other hand, where a Member State would bear the potential financial responsibility arising from a dispute, it is appropriate, as a matter of principle, to permit such Member State to act as respondent in order to defend the treatment which it has afforded to the investor. The arrangements set down in this Regulation provide for that. This has the significant advantage that the Union budget and Union resources would not be burdened, even temporarily, by either the costs of litigation or any eventual award made against the Member State concerned.

(8) On the other hand, where a Member State would bear the potential financial responsibility arising from a dispute, it is **equitable and** appropriate, as a matter of principle, to permit such Member State to act as respondent in order to defend the treatment which it has afforded to the investor. The arrangements set down in this Regulation provide for that. This has the significant advantage that the Union budget and Union **non-financial** resources would not be burdened, even temporarily, by either the costs of litigation or any eventual award made against the Member State concerned.

Amendment 10

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) In certain circumstances, it is essential, in order to ensure that the interests of the Union can be appropriately safeguarded, that the Union itself act as a respondent in disputes involving treatment afforded by a Member State. This may be so in particular where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by Union law, where ***it is likely that*** similar claims ***may be brought*** against other Member States or where the case involves ***unsettled*** issues of law, the resolution of which may have an impact on possible future cases against other Member States or the Union. Where a dispute concerns partially treatment afforded by the Union, or required by Union law, the Union should act as a respondent, unless the claims concerning such treatment are of minor importance, having regard to the potential financial responsibility involved and the legal issues raised, in relation to the claims concerning treatment afforded by the Member State.

Amendment

(10) In certain circumstances, it is essential, in order to ensure that the interests of the Union can be appropriately safeguarded, that the Union itself ***may*** act as a respondent in disputes involving treatment afforded by a Member State. This may be so in particular where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by Union law, where similar claims ***have been lodged*** against other Member States or where the case involves issues of law, the resolution of which may have an impact on ***current or*** possible future cases against other Member States or the Union. Where a dispute concerns partially treatment afforded by the Union, or required by Union law, the Union should act as a respondent, unless the claims concerning such treatment are of minor importance, having regard to the potential financial responsibility involved and the legal issues raised, in relation to the claims concerning treatment afforded by the Member State.

Amendment 11

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) ***It is appropriate that*** the Commission decide, within the framework set down in this regulation, whether the Union should be the respondent or whether a Member State should act as respondent.

Amendment

(12) ***In order to create a workable system,*** the Commission ***should*** decide, within the framework set down in this regulation, whether the Union should be the respondent or whether a Member State should act as respondent ***and inform the European Parliament and the Council of any such decision as part of its annual***

Amendment 12

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) Equally, when a Member State acts as respondent it is appropriate that it **keep** the Commission informed of developments in the case and that the Commission can, where appropriate, require that the Member State acting as respondent takes a specific position on matters having **a Union interest**.

Amendment

(14) Equally, when a Member State acts as respondent it is appropriate that it **keeps** the Commission informed of developments in the case and that the Commission can, where appropriate, require that the Member State acting as respondent takes a specific position on matters having **an impact on the overriding interests of the Union**.

Amendment 13

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) A Member State may at any time accept that it would be financially responsible in the event that compensation is to be paid. In such a case the Member State and the Commission may enter into arrangements for the periodic payment of costs and for the payment of any compensation. Such acceptance does not imply that the Member State accepts that the claim under dispute is well founded. The Commission **should be able to** adopt a decision requiring the Member State to make provision for such costs. In the event that the tribunal awards costs to the Union, the Commission should ensure that any advance payment of costs is immediately reimbursed to the Member State concerned.

Amendment

(15) **Without prejudice to the outcome of the arbitration proceedings**, a Member State may at any time accept that it would be financially responsible in the event that compensation is to be paid. In such a case the Member State and the Commission may enter into arrangements for the periodic payment of costs and for the payment of any compensation. Such acceptance does not imply **in any legal manner** that the Member State accepts that the claim under dispute is well founded. The Commission **may in such a case** adopt a decision requiring the Member State to make provision for such costs. In the event that the tribunal awards costs to the Union, the Commission should ensure that any advance payment of costs is immediately reimbursed to the Member State concerned.

Amendment 14

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) In some cases, it may be appropriate to reach a settlement in order to avoid costly and unnecessary arbitration. It is necessary to lay down **a** procedure for making such settlements. Such a procedure should permit the Commission, acting in accordance with the examination procedure, to settle a case where this would be in the interests of the Union. Where the case concerns treatment afforded by a Member State, it is appropriate that there should be close co-operation and consultations between the Commission and the Member State concerned. The Member State should remain free to settle the case at all times, provided that it accepts full financial responsibility and that any such settlement is consistent with Union law and not against the interests of the Union.

Amendment

(16) In some cases, it may be appropriate to reach a settlement in order to avoid costly and unnecessary arbitration. It is necessary to lay down ***an effective and swift*** procedure for making such settlements. Such a procedure should permit the Commission, acting in accordance with the examination procedure, to settle a case where this would be in the interests of the Union. Where the case concerns treatment afforded by a Member State, it is appropriate that there should be close co-operation and consultations between the Commission and the Member State concerned, ***including on the proceedings of the settlement procedure and on the amount of monetary compensation.*** The Member State should remain free to settle the case at all times, provided that it accepts full financial responsibility and that any such settlement is consistent with Union law and not against the interests of the Union ***as a whole.***

Amendment 15

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) The Commission should consult closely with the Member State concerned in order to reach agreement on the apportionment of financial responsibility. Where the Commission determines that a Member State is responsible, and the Member State does not accept that determination, the Commission should pay the award, but should address a decision to the Member State requesting it to provide

Amendment

(18) The Commission should consult closely with the Member State concerned in order to reach agreement on the apportionment of financial responsibility. Where the Commission determines that a Member State is responsible, and the Member State does not accept that determination, the Commission should pay the award, but should address a decision to the Member State requesting it to provide

the amounts concerned to the budget *of the European Union*, together with applicable interest. The interest payable should be that set down pursuant to [Article 71(4) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the *European Communities as amended*]. Article 263 of the Treaty is *available* in cases where a Member State considers that the decision falls short of the criteria set out in this Regulation.

the amounts concerned to the *Union* budget, together with applicable interest. The interest payable should be that set down pursuant to Article 78(4) of Regulation (EU, Euratom) No 966/2012 of the *European Parliament and of the Council* of 25 October 2012 on the *financial rules* applicable to the general budget of the *Union*¹. Article 263 of the Treaty on the Functioning of the *European Union* is *available* in cases where a Member State considers that the decision falls short of the criteria set out in this Regulation.

¹ OJ L 298, 26.10.2012, p. 1.

Amendment 16

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The Union budget should provide coverage of the expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for *investor-state* dispute settlement. Where Member States have financial responsibility pursuant to this Regulation, the Union should be able to either accumulate the contributions of the Member State concerned first before implementing the relevant expenditure or implement the relevant expenditure first and be reimbursed by the Member States concerned after. Use of both of these mechanisms of budgetary treatment should be possible, depending on what is feasible, in particular in terms of timing. For both mechanisms, the contributions or reimbursements paid by the Member States should be treated as internal assigned revenue of the Union budget. The appropriations arising from this internal assigned revenue should not only cover the relevant expenditure but they should also be eligible for replenishment of other parts

Amendment

(19) The Union budget should provide coverage of the expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for *investor-to-state* dispute settlement. Where Member States have financial responsibility pursuant to this Regulation, the Union should be able to either accumulate the contributions of the Member State concerned first before implementing the relevant expenditure or implement the relevant expenditure first and be reimbursed by the Member States concerned after. Use of both of these mechanisms of budgetary treatment should be possible, depending on what is feasible, in particular in terms of timing. For both mechanisms, the contributions or reimbursements paid by the Member States should be treated as internal assigned revenue of the Union budget. The appropriations arising from this internal assigned revenue should not only cover the relevant expenditure but they should also be eligible for replenishment of other parts

of the Union budget which provided the initial appropriations to implement the relevant expenditure under the second mechanism.

of the Union budget which provided the initial appropriations to implement the relevant expenditure under the second mechanism.

Amendment 17

Proposal for a regulation Article 2 – point b

Text proposed by the Commission

(b) ‘costs arising from the arbitration’ means the fees and costs of the arbitration tribunal and the costs of representation and expenses awarded to the claimant by the arbitration tribunal;

Amendment

(b) ‘costs arising from the arbitration’ means the fees and costs of the arbitration tribunal, ***arbitration institution*** and the costs of representation and expenses awarded to the claimant by the arbitration tribunal;

Amendment 18

Proposal for a regulation Article 2 – point c

Text proposed by the Commission

(c) ‘dispute’ means a claim brought by a claimant against the Union pursuant to an agreement and on which an arbitration tribunal will rule;

Amendment

(c) ‘dispute’ means a claim brought by a claimant against the Union ***or a Member State*** pursuant to an agreement and on which an arbitration tribunal will rule;

Amendment 19

Proposal for a regulation Article 2 – point j a (new)

Text proposed by the Commission

Amendment

(ja) "overriding interests of the Union" means any of the following:

(i) there is a serious threat to the consistent or uniform application or implementation of investment provisions of the agreement subject to the investor-to-state dispute to which the Union is a party,

(ii) a Member State measure may conflict

with the development of the Union's future investment policy,

(iii) the dispute implies a possible significant financial impact on the Union budget in a given year or as part of the multiannual financial framework.

Amendment 20

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

2. Where provided for in this Regulation, the Commission shall adopt a decision determining the financial responsibility of the Member State concerned in accordance with the criteria laid down in paragraph 1.

Amendment

2. Where provided for in this Regulation, the Commission shall adopt a decision determining the financial responsibility of the Member State concerned in accordance with the criteria laid down in paragraph 1. ***The European Parliament and the Council shall be informed of such a decision.***

Amendment 21

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

As soon as the Commission receives notice by which a claimant states its intention to initiate arbitration proceedings, ***in accordance with the provisions of an agreement,*** it shall notify the Member State concerned.

Amendment

As soon as the Commission receives notice by which a claimant states its intention to initiate arbitration proceedings, ***or as soon as the Commission is informed about a request for consultations or a claim against a Member State,*** it shall notify the Member State concerned ***and inform the European Parliament and the Council on any prior request from a claimant for consultations, on the notice by which a claimant states its intention to initiate arbitration proceedings against the Union or a Member State within 15 working days of receiving the notice, including the name of the claimant, the provisions of the agreement alleged to have been breached, the economic sector involved, the treatment alleged to be in breach of the agreement and the amount of***

damages claimed.

Amendment 22

Proposal for a regulation Article 8 – paragraph 2 – point c

Text proposed by the Commission

(c) *it is likely that* similar claims *will be brought* under the same agreement against treatment afforded by other Member States and the Commission is best placed to ensure an effective and consistent defence; or,

Amendment

(c) similar claims *or requests for consultations concerning similar claims have been lodged* under the same agreement against treatment afforded by other Member States and the Commission is best placed to ensure an effective and consistent defence; or,

Amendment 23

Proposal for a regulation Article 8 – paragraph 2 – point d

Text proposed by the Commission

(d) the dispute raises *unsettled* issues of law which may *recur in other disputes under the same or other Union agreements concerning treatment afforded by the Union or other Member States.*

Amendment

(d) the dispute raises *sensitive* issues of law *the resolution of* which may *affect the future interpretation of the agreement in question or of* other agreements.

Amendment 24

Proposal for a regulation Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the Union assumes to act as respondent pursuant to a decision of the Commission in accordance with paragraph 2 or the default rule set out in paragraph 1, such determination of the respondent status shall be binding on the claimant and the arbitration tribunal.

Amendment 25

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission shall inform the **other Member States and** the European Parliament of any dispute in which this Article is applied and the manner in which it has been applied.

Amendment

4. The Commission shall inform the European Parliament and **the Council** of any dispute in which this Article is applied and the manner in which it has been applied.

Amendment 26

Proposal for a regulation Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) inform the Commission of all significant procedural steps, and enter into consultations regularly and, in any event, when requested by the Commission; and,

Amendment

(b) inform the Commission of all significant procedural steps **without delay**, and enter into consultations regularly and, in any event, when requested by the Commission; and,

Amendment 27

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

2. The Commission may, at any time, **require** the Member State concerned to take a particular position as regards any point of law raised by the dispute or any other **element having a Union interest**.

Amendment

2. **Where overriding interests of the Union so require**, the Commission may, at any time **after consultations with** the Member State concerned, **require that Member State** to take a particular position as regards any point of law raised by the dispute or any other **issue of law, the resolution of which may affect the future interpretation of the agreement in question or of other agreements**.

Amendment 28

Proposal for a regulation Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If the Member State concerned considers the request of the Commission as unduly compromising its effective defence, it shall enter into consultations with a view to finding an acceptable solution. Where an acceptable solution cannot be found, the Commission may take a decision requiring the Member State concerned to take a particular legal position.

Amendment 29

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. When an agreement, or the rules referred to therein, provide for the possibility of annulment, appeal or review of a point of law included in an arbitration award, the Commission may where it considers that the consistency or correctness of the interpretation of the agreement so warrant, require **the** Member State to lodge an application for such annulment, appeal or review. In such circumstances, representatives of the Commission shall form part of the delegation and may express the views of the Union as regards the point of law in question.

3. When an agreement, or the rules referred to therein, provide for the possibility of annulment, appeal or review of a point of law included in an arbitration award, the Commission may where it considers that the consistency or correctness of the interpretation of the agreement so warrant, **after consultations with the Member State concerned,** require **that** Member State to lodge an application for such annulment, appeal or review. In such circumstances, representatives of the Commission shall form part of the delegation and may express the views of the Union as regards the point of law in question.

Amendment 30

Proposal for a regulation Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. If the Member State concerned refuses to lodge an application for annulment, appeal or review, it shall inform the Commission within 30 days. In that case the Commission may take a decision requiring the Member State concerned to lodge an application for annulment, appeal or review.

Amendment 31

Proposal for a regulation Article 10 – point c

Text proposed by the Commission

Amendment

(c) the Commission shall provide the Member State with all documents relating to the proceeding, so as to ensure as effective defence as possible; and,

(c) the Commission shall provide the Member State with all documents relating to the proceeding, ***keep the Member State informed of all significant procedural steps and enter into consultations with the Member State in any event when requested by the Member State concerned,*** so as to ensure as effective defence as possible; and,

Amendment 32

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall regularly inform the European Parliament and the Council of developments in the arbitration proceedings referred to in the first paragraph.

Amendment 33

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. Where the Union is respondent in a dispute concerning treatment afforded, whether fully or in part, by a Member State, and the Commission considers that the settlement of the dispute would be in the interests of the Union, it shall first consult with the Member State concerned. The Member State may also initiate such consultations with the Commission.

Amendment

1. Where the Union is respondent in a dispute concerning treatment afforded, whether fully or in part, by a Member State, and the Commission considers that the settlement of the dispute would be in the interests of the Union, it shall first consult with the Member State concerned. The Member State may also initiate such consultations with the Commission. ***The Member State and the Commission shall ensure mutual understanding of the legal situation and possible consequences and avoid any disagreement with a view to the settlement of the case.***

Amendment 34

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

3. In the event that the Member State does not consent to settle the dispute, the Commission may settle the dispute where overriding interests of the Union so require.

Amendment

3. In the event that the Member State does not consent to settle the dispute, the Commission may settle the dispute where overriding interests of the Union so require. ***The Commission shall provide the European Parliament and the Council with all relevant information about the Commission's decision to settle the dispute, in particular its justification.***

Amendment 35

Proposal for a regulation Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where a Member State is respondent in a dispute exclusively concerning treatment afforded by its authorities and

decides to settle the dispute, it shall notify the Commission of the draft settlement arrangement and shall inform the Commission of the negotiation and the implementation of the settlement.

Amendment 36

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

1. Where the Union acts as respondent pursuant to Article 8, and the Commission considers that the award or settlement in question should be paid, in part or in full, by the Member State concerned on the basis of the criteria laid down in Article 3(1), the procedure set out in paragraphs 2 to 5 shall apply.

Amendment

1. Where the Union acts as respondent pursuant to Article 8, and the Commission considers that the award or settlement in question should be paid, in part or in full, by the Member State concerned on the basis of the criteria laid down in Article 3(1), the procedure set out in paragraphs 2 to 5 *of this Article* shall apply. *That procedure shall also apply where the Union, acting as respondent pursuant to Article 8, is successful in the arbitration but has to bear any costs arising from the arbitration.*

Amendment 37

Proposal for a regulation Article 17 – paragraph 3

Text proposed by the Commission

3. Within three months of receipt of the request for payment of the final award or settlement, the Commission shall adopt a decision addressed to the Member State concerned, determining the amount to be paid by that Member State.

Amendment

3. Within three months of receipt of the request for payment of the final award or settlement, the Commission shall adopt a decision addressed to the Member State concerned, determining the amount to be paid by that Member State. *The Commission shall inform the European Parliament and Council of such decision and its financial reasoning.*

Amendment 38

Proposal for a regulation Article 17 – paragraph 4

Text proposed by the Commission

4. Unless the Member State concerned objects to the Commission's determination within one month, the Member State concerned shall compensate ***the budget of*** the Union for the payment of the award or the settlement no later than three months after the Commission's decision. The Member State concerned shall be liable for any interest due at the rate applying to other monies owed to the ***budget of the*** Union.

Amendment

4. Unless the Member State concerned objects to the Commission's determination within one month, the Member State concerned shall compensate ***with the equivalent amount*** the Union ***budget*** for the payment of the award or the settlement no later than three months after the Commission's decision. The Member State concerned shall be liable for any interest due at the rate applying to other monies owed to the Union ***budget***.

Amendment 39

Proposal for a regulation

Article 18 – paragraph 1

Text proposed by the Commission

1. The Commission may adopt a decision requiring the Member State concerned to make financial contributions to ***the budget of*** the Union in respect of ***any*** costs arising from the arbitration ***where it considers that the Member State will be liable to pay any award pursuant to*** the criteria set down in Article 3.

Amendment

1. ***Where the Union acts as respondent pursuant to Article 8, and unless an arrangement has been entered into pursuant to Article 11,*** the Commission may adopt a decision requiring the Member State concerned to make ***advance*** financial contributions to the Union ***budget*** in respect of ***foreseeable or incurred*** costs arising from the arbitration. ***Such a decision on financial contributions shall be proportionate, taking into account*** the criteria set down in Article 3.

Amendment 40

Proposal for a regulation

Article 19

Text proposed by the Commission

A Member State's reimbursement or payment to ***the budget of*** the Union, for the payment of an award or a settlement or any costs, shall be considered as internal assigned revenue in the sense of [Article 18 of ***Council*** Regulation (***EC***, Euratom)

Amendment

A Member State's reimbursement or payment to the Union ***budget***, for the payment of an award or a settlement or any costs, ***including those referred to in Article 18(1) of this Regulation,*** shall be considered as internal assigned revenue in

*No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the General Budget of the European Communities]. It may be used to cover expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for **investor-state** dispute settlement or to replenish appropriations initially provided to cover the payment of an award or a settlement or any costs.*

the sense of **Article 21(4)** of Regulation (EU, Euratom) **No 966/2012**. It may be used to cover expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for **investor-to-state** dispute settlement or to replenish appropriations initially provided to cover the payment of an award or a settlement or any costs.

Amendment 41

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by [the Committee for Investment Agreements established by Regulation [2010/197 COD]]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Amendment

1. The Commission shall be assisted by the Committee for Investment Agreements established by Regulation (EU) **No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries¹**. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

¹ *OJ L 351 20.12.2012, p. 40.*

Amendment 42

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

1. The Commission shall submit a report on the operation of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than **three** years after the entry into force of this Regulation. Subsequent reports shall be submitted every three years thereafter.

Amendment

1. The Commission shall submit a **detailed** report on the operation of this Regulation to the European Parliament and the Council at regular intervals. **That report shall contain all relevant information including the listing of the claims made against the Union or the Member States, related proceedings, rulings and the financial impact on the respective**

budgets. The first report shall be submitted no later than ***five*** years after the entry into force of this Regulation. Subsequent reports shall be submitted every three years thereafter ***unless the budgetary authority, comprised of the European Parliament and the Council, decides otherwise.***

Amendment 43

Proposal for a regulation Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall annually submit to the European Parliament and to the Council a list of requests for consultations from claimants, claims and arbitration rulings.