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COVER NOTE

from: the Senate of the Netherlands
date of receipt: 18 October 2012
to: Mr Dimitris CHRISTOFIAS, President of the Council of the European Union

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
[doc. 11868/12 WTO 242 FDI 18 CODEC 1768 - COM(2012) 335 final]
- *Opinion¹ on the application of the Principles of Subsidiarity and Proportionality*

Delegations will find attached the above-mentioned opinion.

¹ Translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange site IPEX, at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>
<<https://portal.consilium.europa.eu/dana-cached/help/empty.html>>



Eerste Kamer *der Staten-Generaal*

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Date 5 October 2012

Re Questions of the Dutch Senate about COM(2012)335

Reference 151344.02u

Dear Mr Šefčovič,

The members of the standing committees for Security and Justice (V&J) and for Economic Affairs, Agriculture and Innovation (EL&J) of the Senate of the Dutch Parliament have taken note with interest of the proposal for an EU Regulation establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is a party (COM(2012)335). These members have assessed the proposal in the light of the previous EU Regulation establishing transitional arrangements for bilateral investment agreements between Member States and third countries (COM(2010)344). In the light of the proposed EU Regulation they would like to submit a number of further questions.

The members understand that the draft regulation refers exclusively to investment dispute settlement on the basis of international agreements to which the European Union is a party. They wonder whether this impression is correct and whether in making the proposal the European Commission in fact intends that all bilateral investment agreements of the Member States should be replaced in due course by European investment agreements.

The members of the committees referred to above would point out that, according to the Dutch government, it is not Article 207 (2) of the Treaty on the Functioning of the European Union but Article 64 (2) of that Treaty which should form the correct legal basis for the proposed regulation. This article concerns the free movement of capital and provides – unlike Article 207 – for a shared competence of the Union and the Member States in respect of foreign direct investment. Does the European Commission agree? These members go on to note that indirect investment (also known as portfolio investment) falls outside this exclusive competence. What is the position of the European Commission on portfolio investment? Does the Commission also regard such investment as a national affair or does it consider that such indirect investment may also be included in bilateral investment agreements to which the EU is party?

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The members of the standing committees for Security and Justice (V&J) and for Economic Affairs, Agriculture and Innovation (EL&J) of the Senate look forward with interest to receiving the answers of the European Commission in the context of the political dialogue and trust that the European Commission will reply within the 3-month time limit which it has set itself.

Yours sincerely,

A. Broekers-Knol
Chair of the standing committee
for Security and Justice

Prof. E.M. Kneppers-Heynert
Chair of the standing committee
for Economic Affairs, Agriculture and Innovation