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INFORMATION NOTE

from: General Secretariat
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, 14 to 17 April 2014)

I. INTRODUCTION

On 23 May 2013, the Parliament voted to adopt a number of amendments to the abovementioned proposal for a regulation, but did not at that sitting adopt its legislative resolution, thereby not closing the first reading and leaving open the possibility of reaching an agreement in first reading¹. The matter was then referred back to the Committee pursuant to Rule 57(2) of the European Parliament's Rules of Procedure.

¹ See doc. 9635/13.

Subsequently, in accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

These informal contacts resulted in an agreement. In this context, the Committee on International Trade presented one compromise amendment (amendment 55). This amendment had been agreed during the informal contacts referred to above and was consequently intended to replace the amendments previously adopted by the plenary. In addition, the Committee tabled amendment 56 to the legislative resolution (regarding a joint statement by the Parliament, the Council and the Commission).

II. VOTE

When it voted on 16 April 2014, the plenary adopted the compromise amendment (amendment 55) to the proposal for a regulation. In addition, it adopted amendment 56 to the legislative resolution.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The legislative act would then be adopted in the wording which corresponds to the position of the Parliament at first reading.

¹ OJ C 145, 30.6.2007, p.5.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the EU is party *I**

European Parliament legislative resolution of 16 April 2014 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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0335),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0155/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 4 April 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0124/2013),
1. Adopts its position at first reading hereinafter set out¹;
 2. Approves the joint declaration by the European Parliament, the Council and the Commission annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ This position replaces the amendments adopted on 23 May 2013 (Texts adopted P7_TA(2013)0219).

Position of the European Parliament adopted at first reading on 16 April 2014 with a view to the adoption of Regulation (EU) No .../2014 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*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure¹,

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

¹ Position of the European Parliament of 16 April 2014.

Whereas:

- (1) With the entry into force of the Lisbon Treaty, ***foreign direct investment is included in the list of matters falling under the common commercial policy. In accordance with Article 3(1)(e) of the Treaty on the Functioning of the European Union ('TFEU'), the Union has*** █ ***exclusive competence with respect to the common commercial policy and may be party to international agreements covering provisions on foreign direct investment*** .
- (2) Agreements providing for investment protection ***may*** 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.

- (3) ***International*** responsibility for treatment subject to dispute settlement ***follows*** the division of competence between the European Union and Member States. As a consequence, the Union will in principle be responsible for defending any claims alleging a violation of rules included in an agreement which fall within the Union's exclusive competence, irrespective of whether the treatment at issue is afforded by the Union itself or by a Member State.
- (4) ***Union agreements should afford foreign investors the same high level of protection as Union law and the general principles common to the laws of the Member States grant to investors from within the Union, but not a higher level of protection. Union agreements should ensure that the Union's legislative powers and right to regulate are respected and safeguarded.***

- (5) 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 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, *unless the treatment in question is required by the law of the Union*. It is therefore necessary that financial responsibility be allocated, as a matter of Union law, ■ between the Union *itself* and the Member State responsible for the treatment afforded on the basis of criteria established by this Regulation.
- (6) In its resolution on the future EU International Investment Policy¹, the European Parliament has explicitly called for the creation of the mechanism provided for in this Regulation. Furthermore, the Council requested the Commission to study the matter in its Conclusions on a Comprehensive International Investment Policy of 25 October 2010.

- (7) 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 an institution, body or agency 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 law of the Union, 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 *the law of the* Union ■ . 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 *the law of the* Union ■ . 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.*

- (8) The Union ■ should always act as the respondent where a dispute concerns exclusively treatment afforded by the institutions, bodies or agencies of the Union, so that the Union bears the potential financial responsibility arising from the dispute in accordance with the above criteria.
- (9) *Where* a Member State would bear the potential financial responsibility arising from a dispute, it is *equitable and* appropriate, *that* such Member State *would* act as respondent in order to defend the treatment which it has afforded to the investor. The arrangements set down in this Regulation *are aimed at ensuring* 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.

- (10) Member States may, nevertheless, prefer that the Union *would* act as a respondent in this type of disputes, for example for reasons of technical expertise. Member States should, therefore, have the possibility to decline to act as a respondent, without prejudice to their financial responsibility.
- (11) In *exceptional* circumstances, it is essential, in order to ensure that the interests of the Union can be appropriately safeguarded, that the Union itself *would* act as a respondent in disputes involving treatment afforded by a Member State. *These circumstances are limited to cases* where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by *the law of the Union and where* ■ *similar treatment is being challenged in a related claim against the Union in the WTO, where a panel has been established and the claim concerns the same specific legal issue and where it is necessary to ensure a consistent argumentation in the WTO case.*

- (12) *Where the Union acts as respondent in cases involving Member State measures, the Commission will conduct its defence in a manner which protects the financial interests of the Member State concerned.*
- (13) *Decisions on whether the Union or a Member State should act as respondent should be taken within the framework set down in this regulation. It is appropriate that the Commission should immediately inform the European Parliament and the Council about the manner in which this framework is applied.*
- (14) It is necessary to provide for some practical arrangements for the conduct of arbitration proceedings in disputes concerning treatment afforded by a Member State. *Those* arrangements should aim at the best possible management of the dispute whilst ensuring compliance with the duty of *sincere* co-operation, *referred to* in Article 4(3) of the Treaty on European Union *and the defence and protection of the interests of the Member State concerned.*

- (15) Where the Union acts as respondent such arrangements should provide for very close co-operation including the prompt notification of any **significant** procedural steps, the provision of **relevant** documents, frequent consultations and participation in the delegation to the proceedings.
- (16) *Where a Member State acts as respondent, it is appropriate that, in accordance with the duty of sincere cooperation referred to in Article 4(3) of the Treaty on European Union, it keep the Commission informed of developments in the case and in particular ensure timely information of any significant procedural steps, the provision of relevant documents, consultations and participation in the delegation to the proceedings. It is also appropriate that the Commission is provided with adequate opportunity to identify any point of law or any other element of Union interest raised by the dispute.*

- (17) *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 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.

- (18) 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 *involving the financial liability of the Union*, where this would be in the interests of the Union. Where the case *also* concerns treatment afforded by a Member State, *it is appropriate that the Union would only be able to settle a dispute if the settlement would not have any financial or budgetary implications for the Member State concerned. In such cases*, 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 *the law* of the Union.

- (19) Where an award has been rendered against the European Union, that award should be paid without delay. The Commission should make arrangements for the payment of such awards, unless a Member State has already accepted financial responsibility .
- (20) 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 *Union* budget ¹, together with applicable interest. The interest payable should be that set down pursuant to ¹ Article 78(4) of ¹ 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.*

- (21) The Union budget should provide coverage of the expenditure resulting from agreements *covering provisions on foreign direct investment to which the Union is a party and which provide* 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.

- (22) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission.
- (23) The implementing powers relating to Articles **9(2)**, **9(3)**, 13(1), 14(8), **15(3)** and **16(3)** should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.

¹ OJ L 55, 28.2.2011, p. 13.

- (24) The advisory procedure should be used for the adoption of decisions *that the Union should act as respondent pursuant to Article 9(2) given that in these cases it is necessary for the Union to take over but that this should still be subject to control by the Member States. The advisory procedure should be used for the adoption of decisions* on settlement of disputes pursuant to *Article 15(3)* given that those decisions will have at most a merely temporary impact on the Union budget, since the Member State concerned will be required to assume any financial responsibility arising from the dispute, and because of the detailed criteria set down in the regulation for acceptability of such settlements,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
General Provisions

Article 1
Scope

1. ***Without prejudice to the division of competences established by the TFEU, this Regulation applies to investor-to-state dispute settlement conducted pursuant to an agreement to which the Union is a party, or the Union and its Member States are parties, and initiated by a claimant of a third country. In particular, the adoption and application of this Regulation shall not affect the delimitation of competences established by the Treaties, including in relation to the treatment afforded by the Member States or the Union and challenged by a claimant in investor-to-state dispute settlement conducted pursuant to an agreement.***
2. For information purposes, the Commission shall publish in the Official Journal of the European Union and keep up to date, a list of the agreements falling within the scope of this Regulation.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "agreement" means any international agreement *covering provisions on foreign direct investment* to which the Union is a party *or the Union and its Member States are parties* and which provides for investor-to- state dispute settlement;
- (b) "costs arising from the arbitration" means the fees and costs of the arbitration tribunal, *and the arbitration institution* and the costs of representation and expenses awarded to the claimant by the arbitration tribunal, *such as costs of translation, costs of legal and economic analysis and other relevant costs with respect to the arbitration proceedings*;
- (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;

- (d) "investor-to-state dispute settlement" means a mechanism provided for by an agreement by which a claimant may initiate claims against the Union *or a Member State*;
- (e) "Member State" means one or more Member States of the European Union;
- (f) "Member State concerned" means the Member State *as defined in point (e)* which has afforded the treatment alleged to be inconsistent with the agreement;
- (g) "financial responsibility" means an obligation to pay a sum of money awarded by an arbitration tribunal or agreed as part of a settlement and including the costs arising from the arbitration;

- (h) "settlement" means any agreement between the Union or a Member State, or both, of the one part, and a claimant, of the other, whereby the claimant agrees not to pursue its claims in exchange for the payment of a sum of money *or action other than the payment of money*, including where the settlement is recorded in an award of an arbitration tribunal;
- (i) "arbitration tribunal" means any person or body designated under an agreement to rule on an investor-to-state dispute;
- (j) "claimant" means any natural or legal person which may bring a claim to investor-to-state dispute settlement pursuant to an agreement or any natural or legal person to whom the claims of the claimant under the agreement have been lawfully assigned;

- (k) *“the law of the Union” means the Treaty on the Functioning of the European Union; the Treaty on European Union, as well as any acts of the Union referred to in Article 288 paragraph 2, 3 and 4 of the Treaty on the Functioning of the European Union and any international agreements to which the Union is a party or the Union and its Member States are parties; for the sole purposes of this Regulation “the law of the Union” shall not mean the investment protection provisions in the agreement as defined in point (a) of this Article;*
- (l) *“required by the law of the Union” refers to treatment where the Member State concerned could only have avoided the alleged violation of the agreement by disregarding an obligation under the law of the Union such as where it has no discretion or margin of appreciation as to the result to be achieved.*

CHAPTER II
Apportionment of financial responsibility

Article 3
Apportionment criteria

1. Financial responsibility arising from a dispute under an agreement shall be apportioned according to the following criteria:
 - (a) the Union shall bear the financial responsibility arising from treatment afforded by the institutions, bodies or agencies of the Union;
 - (b) the Member State concerned shall bear the financial responsibility arising from treatment afforded by that Member State;

(c) as an exception to point (b), the Union shall bear the financial responsibility arising from treatment afforded by a Member State where such treatment was required by the law of the Union.

Notwithstanding point (c) of the first subparagraph, where the Member State concerned is required to act pursuant to the law of the Union in order to remedy the inconsistency with the law of the Union of a prior act, that Member State shall be financially responsible unless the adoption of such prior act was required by the law of the Union.

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.***

3. Notwithstanding paragraph 1, the Member State concerned shall bear the financial responsibility where:
 - (a) the Member State concerned has accepted potential financial responsibility pursuant to Article 12 ■ or,
 - (c) the Member State concerned enters into a settlement, pursuant to Article 15.
4. *Notwithstanding paragraph 1, the Union shall bear the financial responsibility where the Union acts as respondent pursuant to Article 4.*

CHAPTER III
Conduct of disputes

Section 1
Conduct of disputes concerning treatment afforded by the Union

Article 4
Treatment afforded by the Union

1. The Union shall act as respondent where the dispute concerns treatment afforded by the institutions, bodies or agencies of the Union.
2. ***Where the Commission receives a request for consultations from a claimant or a notice by which a claimant states its intention to initiate arbitration proceedings in accordance with the provisions of an agreement, it shall immediately notify the European Parliament and the Council.***

Section 2
Conduct of disputes concerning treatment afforded by a Member State

Article 5
Treatment afforded by a Member State

The provisions of this Section shall apply in disputes concerning, fully or partially, treatment afforded by a Member State.

Article 6
Cooperation and consultations between the Commission and the Member State concerned

- 1. In accordance with the principle of sincere co-operation referred to in Article 4(3) of the Treaty on European Union, the Commission and the Member State concerned will take all necessary steps to defend and protect the interests of the Union and of the Member state concerned.*

2. ***The Commission and the Member State concerned shall enter into consultations on the management of disputes pursuant to this Regulation, bearing in mind any deadlines set down in this Regulation and in the agreement concerned, and shall share with each other information where relevant to the conduct of disputes.***

Article 7
Request for consultations

1. ***Where*** the Commission receives a request for consultations from a claimant in accordance with the provisions of an agreement, it shall ***immediately*** notify the Member State concerned. ***Where a*** Member State ***■*** has been made aware of or has received a request for consultations, ***it*** shall immediately inform the Commission.
2. Representatives of the Member State concerned ***and the Commission*** shall form part of the Union's delegation to the consultations.

3. The Member State concerned *and the Commission* shall immediately provide *to each other relevant* information *for* the case.
4. *The Commission shall inform the European Parliament and the Council of any such requests for consultations.*

Article 8

Notice of intention to initiate arbitration proceedings

1. *Where* 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 *immediately* notify the Member State concerned. *When a claimant states its intention to initiate arbitration proceedings against the Union or a Member State the Commission shall inform the European Parliament and the Council within 15 working days of receiving the notice, of 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.*

2. **Where a Member State** ■ receives notice by which a claimant states its intention to initiate arbitration proceedings, **it** shall immediately notify the Commission.
3. **The Commission shall inform the European Parliament and the Council of any such notices of intention to initiate arbitration proceedings.**

Article 9
Respondent status

1. **The Member State concerned shall act as respondent except where any of the following situations arise :**
 - (a) the Commission **following consultations under Article 6** has taken a decision pursuant to **paragraphs 2 or 3 within 45 days of receiving notice or notification referred to in Article 8**; or,

- (b) the Member State *following consultations under Article 6 has* confirmed to the Commission in writing that it *does not intend* to act as respondent within **45** days of receiving notice or notification referred to in Article 8.

If either of the situations referred to in (a) or (b) arise, the Union shall act as respondent.

- 2. The Commission may decide *based on a full, balanced, factual analysis and legal reasoning provided to the Member States, in accordance with the procedure* in Article **22(2)**, that the Union shall act as respondent where one or more of the following circumstances arise:

- (a) **■** the Union would bear *all or* at least part of the potential financial responsibility arising from the dispute in accordance with the criteria laid down in Article 3; *or*

(b) the dispute also concerns treatment afforded by the institutions, bodies or agencies of the Union.

3. *The Commission may decide, based on a full, balanced, factual analysis and legal reasoning provided to Member States in accordance with the examination procedure referred to in Article 22(3) that the Union shall act as respondent where similar treatment is being challenged in a related claim against the Union in the WTO, where a panel has been established and the claim concerns the same specific legal issue and where it is necessary to ensure a consistent argumentation in the WTO case.*
4. *In acting pursuant to this Article, the Commission shall ensure that the Union's defence protects the financial interests of the Member State concerned.*

5. The Commission and the Member State concerned shall immediately after receiving notice or notification referred to in Article 8 enter into consultations *pursuant to Article 6* on the management of the case pursuant to this Article. The Commission and the Member State concerned shall ensure that any deadlines set down in the agreement are respected.
6. ***When the Union acts as a respondent, according to paragraphs 2 and 5, the Commission shall consult the Member State concerned on any pleading or observation prior to the finalisation and submission thereof. Representatives of the Member State concerned shall, at their request and at the Member State's expense, form part of the Union's delegation in any hearing and the Commission shall take Member State's interest in due account.***
7. The Commission shall ***immediately*** 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.

Article 10
Conduct of Arbitration proceedings by a Member State

1. ***Where*** a Member State acts as *a* respondent, ***in all phases of the dispute, including possible annulment, appeal or review***, the Member State ***pursuant to Article 6*** shall:
 - (a) provide the Commission ***in a timely manner*** with ***relevant*** documents relating to the proceeding;
 - (b) inform the Commission ***in a timely manner*** of all significant procedural steps, and ***upon request*** enter into consultations ***with the Commission with a view to taking into due consideration any point of law or any other element of Union interest raised by the dispute and identified by the Commission in a non-binding written analysis provided to the Member State concerned; and***,
 - (c) permit representatives of the Commission, at its request ***and its own expense*** to form part of the delegation representing the Member State.

2. The Commission *shall provide* the Member State *with relevant documents relating to the proceedings, so as to ensure as effective defence as possible.*
3. *As soon as an award is rendered, the Member State shall inform the Commission. The Commission shall inform the Parliament and the Council.*

Article 11

Conduct of Arbitration proceedings by the Union

1. *Pursuant to Article 6, the following provisions shall apply throughout arbitration proceedings, where the Union acts as a respondent in any disputes in which Member State would be liable to bear all or part of the potential financial responsibility:*
 - (a) the Commission shall take all necessary measures to defend *and protect the interests of the Member State* concerned;

- (b) the Member State concerned shall provide all necessary assistance to the Commission;
- (c) the Commission shall provide the Member State *concerned* with *relevant* 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; ■
- (d) the Commission and the Member State concerned shall prepare the defence in close co-operation with *each other; and*,
- (e) *the Union's delegation in the proceedings shall comprise the Commission and representatives of the Member State concerned, unless the Member State concerned informs the Commission that it intends not* to form part of the Union's delegation in the proceedings.

2. ***The Commission shall regularly inform the European Parliament and the Council of developments in the arbitration proceedings referred to in paragraph 1.***

Article 12

Acceptance by the Member State concerned of potential financial responsibility
where the Union is respondent

Where the Union acts as respondent ***in any disputes in which a Member State would be liable to bear all or part of potential financial responsibility***, the Member State concerned may, at any time, accept any potential financial responsibility arising from the arbitration. To this end the Member State concerned and the Commission may enter into arrangements dealing with, inter alia **■** :

- (a) mechanisms for the periodic payment of costs arising from the arbitration;
- (b) mechanisms for the payment of any awards made against the Union.

CHAPTER IV
Settlements *where the Union is respondent*

Article 13

Settlement of disputes concerning treatment afforded by the Union

1. If the Commission considers that a settlement of a dispute concerning treatment exclusively afforded by the Union would be in the interests of the Union, it may adopt an implementing decision in accordance with the examination procedure referred to in Article 22(3) to approve the settlement.
2. Should a settlement potentially involve action other than the payment of a monetary sum, the relevant procedures for such action shall apply.

Article 14

Settlement of disputes concerning treatment afforded *in full or in part* by a Member State *where the Union wishes to settle*

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 *financial* interests of the Union, it shall first consult with the Member State concerned *pursuant to Article 6*. The Member State may also initiate such consultations with the Commission.
2. If the *Commission and the* Member State concerned *agree* to settle the dispute, *the Member State concerned* shall endeavour to enter into an arrangement with the Commission setting out the necessary elements for the negotiation and implementation of the settlement.

3. *Where the Union is respondent in a dispute pursuant to which a Member State would incur financial liability and where no Union financial liability is involved, only the Member State concerned can settle the dispute, pursuant to Article 15.*
4. *Where the Union is respondent pursuant to Article 9(1)(b), the Commission may, following consultations pursuant to Article 6(1), decide to settle the dispute where the settlement is in the financial interests of the Union. In so deciding, the Commission shall provide a full, balanced, factual analysis and legal reasoning demonstrating the financial interests of the Union.*
5. *Where the Union is respondent in a dispute pursuant to Article 9(2)(a) which solely involves the financial liability of the Union and where no Member State financial liability is involved, the Commission may decide to settle the dispute.*

6. *Where the Union is respondent in a dispute pursuant to Article 9(2) which involves the financial liability of the Union and of a Member State, the Commission may not settle the dispute without the agreement of the Member State concerned. The Member State concerned may submit a full analysis of the impact of the proposed settlement on its financial interests. Where the Member State does not agree to settle the dispute, the Commission may nonetheless decide to settle provided that such settlement does not have any financial or budgetary implications for the Member State concerned on the basis of a full, balanced, factual analysis and legal reasoning, taking account of the Member State analysis and demonstrating the financial interests of the Union and of the Member State concerned. In this case Article 19 does not apply.*

7. *The terms of settlement under paragraphs 4, 5 and 6 shall not include actions on the part of the Member State concerned other than the payment of a monetary sum.*
8. *Any settlements under this Article shall be subject to approval* in accordance with the examination procedure referred to in Article 22(3).

Article 15

Settlement *of disputes concerning treatment afforded exclusively* by a Member State *where the Member State wishes to settle*

1. Where the Union is respondent in a dispute **■** exclusively *concerning* treatment afforded by a Member State, the Member State concerned may *propose to* settle a dispute where:
 - (a) the Member State concerned accepts any *potential* financial responsibility arising from the settlement;

- (b) any settlement arrangement is enforceable only against the Member State concerned;
and
 - (c) the terms of the settlement are compatible with the law of the Union .
2. The Commission and the Member State concerned *shall* enter into consultations to evaluate a Member State's intention to settle a dispute.
 3. The Member State concerned shall notify the Commission of the draft settlement arrangement. The Commission shall be deemed to have accepted the *draft* settlement arrangement unless it decides otherwise, in accordance with the advisory procedure referred to in Article 22(2) and within 90 days following the notification of the draft settlement by the Member State, on the grounds that the *draft* settlement does not meet all of the conditions set out in paragraph 1. *When the draft settlement is accepted, the Commission shall take all necessary steps to make the settlement arrangements effective.*

Article 16

Settlement of disputes concerning treatment afforded in part by a Member State where the Member State wishes to settle

- 1. Where the Union is respondent in a dispute concerning treatment afforded in part by a Member State, and the Member State considers that the settlement of the dispute would be in its financial interests, it shall first consult with the Commission pursuant to Article 6.*
- 2. If the Commission and Member State concerned agree to settle the dispute, the Member State concerned shall endeavour to enter into an arrangement with the Commission setting out the necessary elements for the negotiation and implementation of the settlement.*
- 3. In the event that the Commission does not consent to settle the dispute, the Commission may decide, based on a full, balanced, factual analysis and legal reasoning provided to Member States in accordance with the examination procedure referred to in Article 22(3) to refuse to settle.*

CHAPTER V
Payment of final awards and settlements

Article 17
Scope

The provisions of this chapter shall apply where the Union acts as respondent in a dispute.

■ Article 18
Procedure for the payment of awards or settlements

1. A claimant having obtained a final award pursuant to an agreement may present a request to the Commission for payment of that award. The Commission shall pay any such award ■, except where the Member State concerned has accepted financial responsibility pursuant to Article 12 in which case the Member State shall pay the award.
2. Where a settlement ■ pursuant to *Article* 13 or 14 is not recorded in an award, a claimant may present a request to the Commission for payment of the settlement. The Commission shall pay any such settlement within any relevant time periods set down in the settlement agreement.

Article 19

Procedure where there is no agreement as to financial responsibility

1. Where the Union acts as respondent pursuant to Article 9, and the Commission considers that the award or settlement *or costs arising from the arbitration* 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.
2. The Commission and the Member State concerned shall immediately enter into consultations to seek agreement on the financial responsibility of the Member State concerned, and the Union where applicable.
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.***

4. Unless the Member State concerned objects to the Commission's determination within *two months*, the Member State concerned shall compensate the *Union* budget for the payment of the award or the settlement no later than *six* 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 .
5. If the Member State concerned objects, unless the Commission agrees with the Member State's objection, the Commission shall adopt a decision within *six* months of receipt of the Member State's objection, requiring the Member State concerned to reimburse the amount paid by the Commission, together with interest at the rate applying to other monies owed to the budget of the Union.
6. *The Commission's decisions pursuant to paragraphs 3 or 5 of this Article shall be published in the Official Journal of the European Union.*

Article 20

Advance payment of arbitration costs

1. The Commission may adopt a decision requiring the Member State concerned to *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.
2. To the extent that the costs arising from the arbitration are awarded to the Union by the arbitration tribunal, and the Member State concerned has made periodic payment of costs arising from the arbitration, the Commission shall ensure that they are transferred to the Member State which has paid them in advance, ***together with interest at the rate applying to other monies owed to the budget of the Union.***

Article 21
Payment by a Member State

A Member State's reimbursement or payment to the Union *budget*, for the payment of an award or a settlement or costs *arising from the arbitration, including those referred to in Article 20(1) of this Regulation*, shall be considered as internal assigned revenue in 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 costs *arising from the arbitration*.

CHAPTER VI
Final provisions

Article 22

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 countries*¹. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

¹ *OJ L 351 20.12.2012, p. 40.*

Article 23
Report and Review

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 Union budget.*** 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.
2. ***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.***
3. The Commission may also submit, together with the report referred to in paragraph 1 and based on the Commission's findings, a proposal to the European Parliament and the Council for the amendment of this Regulation.

Article 24

With regard to disputes under agreements covered under Article 1 and concluded before the regulation enters into force, this regulation shall apply only in respect of disputes where the submission of a claim to arbitration has been lodged after the entry into force of the regulation which concern treatment afforded after the entry into force of the Regulation.

Article 25

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President

Joint declaration by the European Parliament, the Council and the Commission

The adoption and application of this Regulation is without prejudice to the division of competence established by the Treaties and shall not be interpreted as an exercise of shared competence by the Union in areas where the Union's competence has not been exercised.