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#### **"I/A" ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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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 **(first reading)**  
- Adoption of the legislative act **(LA + S)**  
= Statements

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#### **Statement by the Czech Republic, Lithuania, Poland and Slovakia**

The Czech Republic, Lithuania, Poland and Slovakia wish to state that 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 before the entry into force of this Regulation.

The Czech Republic, Lithuania, Poland and Slovakia underline that the Union's exclusive competence in the area of common commercial policy relating to international investment agreements or free trade agreements containing investment protection provisions is limited to foreign direct investment according to Article 207 TFEU, which is the legal basis of this Regulation.

The Czech Republic, Lithuania, Poland and Slovakia attach utmost importance to the fact that the adoption of this Regulation does not constitute any reasons or legal basis to claim an exclusive external competence of the Union pursuant to Article 3 para. 2 TFEU for the conclusion of international investment agreements or free trade agreements containing investment protection provisions not explicitly covered by Article 207 para. 1 TFEU, in particular provisions on portfolio investment and other provisions on investment protection that are not covered by the Union's exclusive competence on common commercial policy.

The Czech Republic, Lithuania, Poland and Slovakia accept the definition "required by Union law" based on understanding that the definition "required by Union law" includes treatment when the Member State applied any of the means stated in the Directive to achieve the result of the Directive.

The Czech Republic, Lithuania, Poland and Slovakia accept Article 14(5) based on understanding that Article 19 does not apply to Article 14(5).

While maintaining the opinion on elements outlined above, the Czech Republic, Lithuania, Poland and Slovakia can support the adoption of this Regulation.

### **Statement by Germany, Finland and the Netherlands**

Germany, Finland and the Netherlands wish to state that 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 before the entry into force of this Regulation.

Germany, Finland and the Netherlands underline that the Union's exclusive competence in the area of common commercial policy relating to international investment agreements or free trade agreements containing investment protection provisions is limited to foreign direct investment according to Article 207 TFEU, which is the legal basis of this Regulation.

Germany, Finland and the Netherlands attach utmost importance to the fact that the adoption of this Regulation does not constitute any reasons or legal basis to claim an exclusive external competence of the Union pursuant to Article 3 para. 2 TFEU for the conclusion of international investment agreements or free trade agreements containing provisions not explicitly covered by Article 207 para. 1 TFEU, in particular provisions on portfolio investment and other provisions on investment protection that are not covered by the Union's exclusive competence on common commercial policy.

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