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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Council Statement on the Commission's proposal for a selection mechanism for adjudicators in international investment courts - Endorsement - Decision to use the written procedure for the adoption

1. Prior to the informal video conference of the Trade Policy Committee (Services and Investment) on 21 October 2020, the Presidency proposed that the Council adopts a Statement with respect to document WK 11273/2020 containing a revised draft Commission Decision on the procedure for the selection and appointment of members of international investment courts established pursuant to bilateral or multilateral treaties in which the EU is Party.
2. Following completion of the discussions on the Presidency's proposal for the Statement in the Trade Policy Committee (Services and Investment) on 21 October 2020 and finalisation of a subsequent written consultation on the Statement in the Trade Policy Committee (Services and Investment), the Permanent Representatives' Committee is invited to endorse the draft Council Statement, which can be found in the Annex of this note.

3. In light of the current exceptional circumstances, which make it impossible to adopt "A" items at Council meetings in the coming weeks, and taking account of the derogation to the Council's Rules of Procedure adopted by written procedure on 23 March 2020, the Permanent Representatives' Committee is invited to:
- endorse the Council statement on the Commission's proposal for a selection mechanism for adjudicators in international investment courts in the Annex; and
 - approve the use of the written procedure for the approval of the above-mentioned statement.
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DRAFT COUNCIL STATEMENT

on the

Selection mechanism for adjudicators in international investment courts

THE COUNCIL OF THE EUROPEAN UNION:

1. TAKES note of the proposal for a decision of the European Commission for the establishment of a procedure for the selection and appointment of members of international investment courts established pursuant to bilateral or multilateral treaties in which the EU is Party.
2. HIGHLIGHTS that the establishment of such procedure by the Commission shall be without prejudice to the division of competences between the Union and the Member States and between the institutions of the EU as laid down in the Treaties. The decision of the European Commission shall not limit the Council's and the Member States' freedom to provide a legal basis for such procedure in future decisions of the Council and the Member States concerning the conclusion of an international agreement comprising international investment courts or tribunals. The European Commission's decision shall not be invoked as a binding precedent by any Member State or any EU institution in any future discussion on such procedure or in order to support any particular interpretation of the Treaties.