International agreements: framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals

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The Committee on International Trade adopted the report by Pawe ZALEWSKI (EPP, PL) 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.

The committee recommends that the position of the European Parliament adopted in first reading following the ordinary legislative should amend the Commission proposal as follows: **Inclusion of a dispute settlement mechanism**: Members consider that it is not obligatory to include an investor-to-state dispute settlement mechanism clause in future EU investment agreements and that their inclusion should be a conscious and informed policy choice that requires political and economic justification.

Observance of limits of EU law: future Union agreements should afford foreign investors the same high 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. Future investment agreements should respect 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.

Inconsistent action by a Member State: when the Member State acts in a manner inconsistent with that required by Union law, for example when the Member State fails to transpose a directive adopted by the Union, the Member State should consequently bear financial responsibility for the treatment concerned.

Definitions: the definition of ‘dispute’ is clarified and 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. The report introduces a definition for "overriding interests of the Union".

Financial responsibility: Members consider that the European Parliament and Council shall be informed of a Commission decision determining the financial responsibility of the Member State concerned

Opening of arbitration proceedings: the Commission must inform the European Parliament and the Council on any prior request from a claimant for consultations, of 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.

Respondent status: where the Union decides to act as respondent pursuant to a decision of the Commission, such determination of respondent status shall be binding on the claimant and the arbitration tribunal.

Conduct of arbitration proceedings by a Member State: 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.

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.

Conduct of proceedings by the Union: 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 a defence as possible. The Commission shall regularly inform the European Parliament and the Council of developments in the arbitration proceedings. 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.

Settlement of disputes concerning treatment afforded by a Member State: 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. 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.

Members consider that the Commission should be notified about all settlements taking place for disputes that are raised under EU agreements.

Procedure where there is no agreement as to financial responsibility: the Commission shall inform the European Parliament and Council of such decision and its financial reasoning.

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.

Advance payment of arbitration costs: where the Union acts as respondent, and unless an arrangement has been entered into, 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.

Report: the Commission’s regular report on the operation of the Regulation 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 Commission shall annually submit to the European Parliament and to the Council a list of requests for consultations from claimants, claims and arbitration rulings.