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

2012/0163(COD) - 23/05/2013 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** to 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 matter has been referred back to the committee responsible. The vote on the draft legislative resolution was postponed.

The main amendments adopted in plenary concern the following:

Inclusion of a dispute settlement mechanism: Members state that in the cases where it is justifiable, future investment protection agreements concluded by the Union can 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.

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;
- 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: when the Member State acts in a manner inconsistent with that required by Union law, for example when it fails to transpose a directive adopted by the Union or exceeds the terms of a directive adopted by the Union when implementing it into national law, that Member State should consequently bear financial responsibility for the treatment concerned. **The European Parliament and the Council shall be informed** of the decision determining the financial responsibility of the Member State concerned.

Opening of arbitration proceedings: as soon as the Commission receives notice by which a claimant states its intention to initiate arbitration proceedings, or as soon as the Commission is informed about a request for consultations or a claim against a Member State, it shall notify the Member State concerned

and **inform the European Parliament and the Council** within 15 working days, 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. The amended text specifies the situations where the **'overriding interests of the Union'** are considered to be at stake.

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.