

United Nations Convention on Transparency in Treaty-based Investor-State Arbitration

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PURPOSE: to conclude, on behalf of the European Union, the United Nations Convention on transparency in treaty-based investor-State arbitration.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: following the entry into force of the Treaty of Lisbon, foreign direct investment is included in the list of matters falling under the common commercial policy. In accordance with TFEU, the European Union has exclusive competence with respect to the common commercial policy.

The Commission has since 2010 focussed on [improving transparency for investor-state dispute settlement](#). This was explicitly requested by the European Parliament in its [resolution](#) on the future European Investment Policy.

The United Nations Commission on International Trade Law (UNCITRAL) adopted on 10 July 2013 **rules on transparency** for investor-state dispute settlement, which were in turn endorsed by the United Nations General Assembly on 16 December 2013. These provide for all documents to be made public (both decisions of the tribunal and submissions of the parties), for hearings to be open to the public and for interested parties (civil society) to make submissions to the tribunal. Appropriate protections for confidential information are also provided.

The rules became effective on 1 April 2014. They apply automatically to investor-state dispute settlement arising on the basis of treaties concluded after 1 April 2014 where a reference was made therein to UNCITRAL Arbitration rules. At the same time, the Transparency Rules do not apply to treaties concluded prior to that date.

Given the very high number of existing investment agreements concluded prior to 1 April 2014, the Commission considers it important to ensure the application of the Transparency Rules to those agreements. The European Union is a party to one such agreement - the Energy Charter Treaty - and the Member States of the European Union are parties to around 1 400 such agreements with third countries.

As a consequence, together with other UNCITRAL Members, the Union has pushed for the negotiation of a multilateral convention which would facilitate the application of the UNCITRAL Transparency Rules to existing investment treaties. On 10 February 2014, the Council authorised the Commission to negotiate such a convention under the auspices of UNCITRAL. The negotiations were concluded on 9 July 2014 and the Convention adopted by the United Nations General Assembly on 10 December 2014.

CONTENT: the Commission herewith submits a proposal for a Council Decision on the conclusion, on behalf of the European Union, of the United Nations Convention on transparency in treaty-based investor-State arbitration.

The Convention **applies to investment treaties concluded before 1 April 2014** and establishes a mechanism allowing countries and regional economic integration organisations to agree between themselves to apply the UNCITRAL Transparency Rules in disputes covered by investment treaties to which they are parties. It permits both the Union and the Member States to adhere to the Convention and to apply the Transparency Rules to their existing investment treaties.

By signing the Convention, the European Union could become a party to the Convention in respect of the Energy Charter Treaty and the Member States could become a party to the Convention in respect of their existing agreements. The Convention provides for a negative list approach, i.e. the Transparency Rules will apply unless a signatory lists particular agreements as not being subject to the Convention by making a reservation.