Basic information

2012/0163(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
International agreements: framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals **Subject** 6.20.06 Foreign direct investment (FDI)	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	ZALEWSKI Paweł (PPE)	11/10/2012
	Shadow rapporteur MARTIN David (S&D) KOCH-MEHRIN Silvana (ALDE) KELLER Ska (Verts/ALE) ZAHRADIL Jan (ECR) SCHOLZ Helmut (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
BUDG Budgets	The committee decided not to give an opinion.	
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3331	2014-07-23
Foreign Affairs	3203	2012-11-29

European Commission	Commission DG	Commissioner
	Legal Service	-- --
	Trade and Economic Security	-- --

Key events

Date	Event	Reference	Summary
21/06/2012	Legislative proposal published	COM(2012)0335	Summary
03/07/2012	Committee referral announced in Parliament, 1st reading		
21/03/2013	Vote in committee, 1st reading		
26/03/2013	Committee report tabled for plenary, 1st reading	A7-0124/2013	Summary
22/05/2013	Debate in Parliament		
23/05/2013	Decision by Parliament, 1st reading	T7-0219/2013	Summary
23/05/2013	Results of vote in Parliament		
16/04/2014	Decision by Parliament, 1st reading	T7-0419/2014	Summary
16/04/2014	Results of vote in Parliament		
23/07/2014	Act adopted by Council after Parliament's 1st reading		
23/07/2014	Final act signed		
23/07/2014	End of procedure in Parliament		
28/08/2014	Final act published in Official Journal		

Technical information

Procedure reference	2012/0163(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 207-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/7/09876

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE504.106	04/02/2013	
Amendments tabled in committee		PE506.105	28/02/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0124/2013	26/03/2013	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0219/2013	23/05/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0419/2014	16/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00092/2014/LEX	23/07/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0335	21/06/2012	Summary
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	
Follow-up document	COM(2024)0305	22/07/2024	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	NL_CHAMBER	COM(2012)0335	19/10/2012	
Contribution	PT_PARLIAMENT	COM(2012)0335	07/12/2012	
Contribution	CZ_SENATE	COM(2012)0335	12/12/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2014/0912
OJ L 257 28.08.2014, p. 0121

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

2012/0163(COD) - 26/03/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Paweł 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.

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.

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

2012/0163(COD) - 16/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 535 votes to 119 with 9 abstentions, a legislative resolution 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 matter has been referred back to committee during the plenary session of 23 May 2013.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission's proposal as follows:

Dispute settlement mechanism: with the entry into force of the Lisbon Treaty, foreign direct investment was included in the list of matters falling under the common commercial policy.

Agreements providing for investment protection may 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 level of protection as Union law and the general principles common to the laws of the Member States grant to investors from within the Union, but not a higher level of protection;
- Union agreements should ensure that the Union's legislative powers and right to regulate were respected and safeguarded.

Financial responsibility: the amended text stated that financial responsibility arising from a dispute under an agreement should be apportioned according to the following criteria:

- the Union shall bear the financial responsibility arising from treatment afforded by the institutions, bodies or agencies of the Union;
- the Member State concerned shall bear the financial responsibility arising from treatment afforded by that Member State;
- the Union shall bear the financial responsibility arising from treatment afforded by a Member State where such treatment was required by the law of the Union.

The Commission should adopt a decision determining the financial responsibility of the Member State concerned in accordance with the criteria set out in the text and the European Parliament and the Council should be informed of such a decision.

Treatment afforded by the Union: where the Commission received a request for consultations from a claimant or a notice by which a claimant stated its intention to initiate arbitration proceedings in accordance with the provisions of an agreement, it should **immediately notify the European Parliament and the Council.**

Cooperation and consultations between the Commission and the Member State concerned: in accordance with the principle of sincere co-operation, the Commission and the Member State concerned will take all necessary steps to **defend and protect the interests of the Union and of the Member state concerned.**

The Commission and the Member State concerned should enter into consultations on the management of disputes pursuant to the Regulation, and **share with each other information** where relevant to the conduct of disputes.

Notice of intention to initiate arbitration proceedings: when a claimant stated its intention to initiate arbitration proceedings against the Union or a Member State the Commission shall inform the European Parliament and the Council within 15 working days of receiving the notice, of 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: the Commission may decide based on a full, balanced, factual analysis and legal reasoning provided to the Member States, that the Union shall act as respondent if:

- the Union would bear all or at least part of the potential financial responsibility arising from the dispute in accordance with the criteria laid down in the regulation; or
- the dispute also concerns treatment afforded by the institutions, bodies or agencies of the Union.

It was added that the Commission may decide that the Union shall act as respondent where similar treatment is **being challenged in a related claim against the Union in the WTO**, where a panel has been established and the claim concerns the same specific legal issue and where it is necessary to ensure a consistent argumentation in the WTO case.

When the Union acts as a respondent, the Commission shall consult the Member State concerned on any pleading or observation prior to the finalisation and submission thereof. Representatives of the Member State concerned shall, at their request and at the Member State's expense, form part of the Union's delegation in any hearing and the Commission shall take Member State's interest in due account.

Where the Union is respondent in a dispute which involves the financial liability of the Union and of a Member State, **the Commission may not settle the dispute without the agreement of the Member State concerned.** The latter may submit a full analysis of the impact of the proposed settlement on its financial interests. Where the Member State does not agree to settle the dispute, the Commission may nonetheless decide to settle provided that such settlement does not have any financial or budgetary implications for the Member State concerned

Where a Member State acts as a respondent, it should inform the Commission in a timely manner of all significant procedural steps, and upon request enter into consultations with the Commission with a view to taking into due consideration any point of law or any other element of Union interest raised by the dispute and identified by the Commission in a non-binding written analysis provided to the Member State concerned.

Settlements: settlement procedure should permit the Commission to settle a case involving the financial liability of the Union, where this would be in the interests of the Union. Where the case also concerns treatment afforded by a Member State, it is appropriate that the Union would only be able to settle a dispute if the settlement would not have any financial or budgetary implications for the Member State concerned.

Advance payment of arbitration costs: the Commission may adopt a decision requiring the Member State concerned to advance financial contributions to the Union budget in respect of foreseeable or incurred costs arising from the arbitration. Such a decision should be proportionate, taking into account the criteria set down in the text.

Settlement of disputes concerning treatment afforded in part by a Member State where the Member State wishes to settle: in such cases, if the Commission and Member State concerned agreed to settle the dispute, the Member State concerned should endeavour to enter into an arrangement with the Commission setting out the necessary elements for the negotiation and implementation of the settlement. **In the event that the Commission does not consent to settle the dispute,** it may decide, based on a full, balanced, factual analysis and legal reasoning provided to Member States **to refuse to settle.**

Report: the Commission's regular report should 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 Union budget. The Commission should annually submit to the European Parliament and to the Council a list of requests for consultations from claimants, claims and arbitration rulings.

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

2012/0163(COD) - 21/06/2012 - Legislative proposal

PURPOSE: to establish a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the

European Union is party.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: with the entry into force of the Lisbon Treaty, the **Union has acquired exclusive competence for the conclusion of international agreements on investment protection**. The Union is already party to one agreement with the possibility for investor-state dispute settlement (the Energy Charter Treaty1) and the Union will seek to negotiate such provisions in a number of agreements currently under negotiation or to be negotiated in the future.

Agreements providing for investment protection typically 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. Investor-to-state dispute settlement can result in awards for monetary compensation. Furthermore, significant costs for administering the arbitration as well as costs relating to the defence of a case will inevitably be incurred in any such case.

In accordance with the case-law of the **Court of Justice of the European Union**, international responsibility for treatment subject to dispute settlement should follow the division of competence between the European Union and Member States.

It is to be noted that the Commission foresaw the need for this Regulation in its Communication "Towards a comprehensive European international investment policy". The proposed Regulation has been explicitly requested by the European Parliament in its resolution on the future EU International Investment Policy adopted on 22 March 2011). Furthermore, the Council requested the Commission to study the matter in its Conclusions on a Comprehensive International Investment Policy (25 October 2010).

IMPACT ASSESSMENT: this proposal has not been subject to an impact assessment.

LEGAL BASIS: **Article 207(2) of the TFEU** which establishes the exclusive competence of the Union for a common commercial policy, including for foreign direct investment.

CONTENT: the central organising principle of this Regulation is that **financial responsibility flowing from investor-state dispute settlement cases should be attributed to the actor which has afforded the treatment in dispute**.

Allocation of Financial Responsibility: investor-to-State dispute settlement will give rise to costs for the parties concerned, both in terms of fees and in terms of the payment of final award. Regardless of whether the Union or a Member State acts as respondent to a claim, the financial responsibility for any costs should follow the origin of the treatment of which the investor complained. Therefore :

- should the treatment attacked by an investor exclusively originate **in a Member State**, the Member State in question should be liable for the costs flowing from the dispute settlement;
- where the treatment of which an investor complained originates **in the institutions of the Union** (including where the measure in question was adopted by a Member State as required by Union law), financial responsibility should be borne by the Union.

Equally, the decision on whether to settle a **dispute settlement claim** and the responsibility for the payment of a settlement award should normally follow the origin of the treatment.

Distribution of roles in relation to the conduct of disputes: the proposal distinguishes three different situations, as regards the distribution of roles between the Union and the Member States in relation to the conduct of disputes under agreements to which the Union is a party.

- **In the first situation**, the Union would act as respondent where the treatment alleged to be inconsistent with the agreement is treatment afforded by one or several Union institutions. The Union would accept full financial responsibility in such cases.
- **In the second**, the Member State would act as respondent where the treatment in question is afforded by the Member State.The Member State would accept full financial responsibility is such cases. In this situation, the Member State would need to keep the Commission informed of developments in the case, and permit the Commission to give direction on particular issues.
- **In the third situation**, the Union would act as respondent in respect of treatment afforded by a Member State. This would occur where the Member State has opted not to act as respondent. It would also occur where the Commission decides that issues of Union law are involved such that the Union may be financially responsible, in whole or in part. It would also apply where the Commission takes the view that a Union position is required in order to ensure unity of external representation.

It is evident for the Commission that, where the Union acts as respondent concerning treatment afforded by a Member State, it will be necessary to ensure a **high degree of cooperation** with the Member State concerned. This will involve close co-operation in the preparation of the defence, from the beginning to the end of the procedure.

Recognition and enforcement of awards against the Union: it is also necessary to set down rules to deal with the situation in which the EU is held liable. Since the European Union is or will be a party to such agreements, the European Union will be under an international obligation to accept any award made against it. The European Union would honour such obligation.

Given investor-state dispute settlement is based on arbitration, in most countries, including the Member States of the European Union, **the recognition and enforcement of investment awards is based on the relevant legislation governing arbitration**.

The rules which apply to the recognition and enforcement of investment awards are those set down in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) when the arbitration in question is pursuant to the rules of the ICSID Convention and otherwise, those elaborated in the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and national laws on arbitration shall apply.

BUDGETARY IMPLICATIONS: at the time this proposal is made, the Union is only party to one agreement with investor-state dispute settlement, even if a number of other agreements are currently under negotiation. Hence, it is impossible to be specific as to the likely budgetary consequences in the preparation of a Regulation of this nature, intended to have a horizontal effect.

Financial Statements shall be prepared for all future agreements to be concluded pursuant to Article 218 of the Treaty which would fall under the scope of this Regulation.

All such payments and recoveries would be made through the budget line 20 02 01 - External trade relations, including access to the markets of third countries.

The necessary provisions for this have been taken up in the Commission's proposal for the 2013 budget by specifying that the following expenditure shall be allowed:

- arbitration costs, legal expertise and fees incurred by the Union as party to disputes arising from the implementation of international agreements concluded under Article 207 of the Treaty on Functioning of the European Union;
- payment of final award or award settlements paid to an investor in the context of such international agreements.

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

2012/0163(COD) - 23/07/2014 - Final act

PURPOSE: to protect foreign investment throughout the EU by establishing a framework for managing financial responsibility linked to investor-to-state dispute settlements established by international agreements to which the European Union is party.

LEGISLATIVE ACT: Regulation (EU) n° 912/2014 of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party.

CONTENT: with 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 the Treaty on the Functioning of the European Union (TFEU), the Union has **exclusive competence** with respect to the common commercial policy and may be a party to international agreements covering provisions on foreign direct investment.

Agreements providing for investment protection may 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. Investor-to-state dispute settlement can result in awards for monetary compensation.

This Regulation sets out the rules for **managing the financial consequences of investor-to-state disputes**, specifying how cooperation between the Commission and the member states should be structured in specific cases. It provides clarity as to whether the Union or the Member State concerned conducts the defence of a case and pays the final award or settlement amount where investor-to-state arbitration proceedings take place.

In its resolution of 6 April 2011 on the future European international investment policy, the European Parliament explicitly called for the creation of the mechanism provided for in the Regulation.

The main points of the Regulation are as follows:

Apportionment of financial responsibility: financial responsibility arising from a dispute under an agreement shall be apportioned in accordance with the following criteria:

- the Union shall bear the financial responsibility arising from treatment afforded by the institutions, bodies, offices or agencies of the Union;
- the Member State concerned shall bear the financial responsibility arising from treatment afforded by that Member State;
- by way of exception, the Union shall bear the financial responsibility arising from treatment afforded by a Member State where such treatment was required by Union law.

Conduct of the procedure: the Union shall act as the respondent where the dispute concerns treatment afforded by the institutions, bodies, offices or agencies of the Union.

Where the dispute concerns **treatment afforded by a Member State**, the Commission and the Member State concerned shall enter into consultations on the management of disputes and shall share with each other information where relevant to the conduct of disputes. The Commission shall **inform the European Parliament** and the Council of any requests for consultations.

The Member State concerned shall act as the respondent except under certain circumstances. In **exceptional circumstances**, the Commission may decide that the Union will act as respondent in disputes relating to treatment afforded by a Member State.

The Commission may decide that the Union is to act as the respondent where similar treatment is being challenged in a **related claim against the Union in the WTO**, where a panel has been established and the claim concerns the same specific legal issue, and where it is necessary to ensure a consistent argumentation in the WTO case. The Commission shall ensure that the Union's defence protects the **financial interests** of the Member State concerned.

- **Where the Union acts as the respondent**, practical arrangements should provide for very close cooperation including the prompt notification of any significant procedural steps, the provision of relevant documents, frequent consultations and participation in the delegation to the proceedings.

- **Where a Member State acts as the respondent**, it must keep the Commission informed of developments in the case and in particular ensures timely information of any significant procedural steps, the provision of relevant documents, frequent consultations and participation in the delegation to the proceedings.

Settlements: the Regulation lays down a procedure permitting the Commission to settle a case involving the financial responsibility of the Union, where this would be in the interests of the Union. Where the case also concerns treatment afforded by a Member State, the Union would only be able to settle a dispute if the settlement would not have any financial or budgetary implications for the Member State concerned.

Advance payment of costs arising from the arbitration: the Commission may adopt a decision requiring the Member State concerned to advance financial contributions to the budget of the Union in respect of foreseeable or incurred costs arising from the arbitration.

Report and review: the Commission shall submit a detailed report on the operation of this Regulation to the European Parliament and to the Council at regular intervals. That report shall contain all relevant information including the listing of the claims made against the Union or the Member States, related proceedings and rulings, and the financial impact on the budget of the Union. The first report shall be submitted by 18 September 2019. Subsequent reports shall be submitted every three years thereafter.

ENTRY INTO FORCE: 17.9.2014.