



EUROPEAN COMMISSION

Brussels, 11.7.2013
C(2013) 4304 final

Dear President,

The Commission would like to thank the Senát for its Opinion concerning 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 a party {COM (2012) 335 final} and apologises for the delay in replying.

The Commission takes particular note of the three main issues raised by the Senát in connection to the proposed Regulation and in reply would like to make the following comments:

As regards the Senát's view that it is essential to ensure equal position of the Member State and the Commission in the course of dispute proceedings, in particular when the Commission acts as respondent and the dispute concerns treatment afforded by a Member State, this situation could arise in two instances, the first being when the Member State declines to act as respondent, and the second when the Commission decides to act as respondent because one of the situations listed in Article 8(2) has arisen. This decision will be the result of extensive consultations between the Commission and the Member State concerned. If the Commission acts as respondent, it will fully take into account and support to the extent possible the interests of that Member State. It will however have to balance these interests with those of the other Member States, and of the EU as a whole, in the matter at hand.

In addition, concerning the Senát's opinion that, when the financial responsibility is to be borne by a Member State, it should act as respondent in the proceedings, the Commission would like to clarify that the basic mechanism of the Regulation indeed generally allows for the entity bearing the financial responsibility to defend itself in the proceedings. However, this might not always be the case because the questions of who acts as respondent and who is financially responsible are treated independently from each other. Under some circumstances, even though the measure at stake is a Member State measure for which the

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EU is not responsible, the Union will have to act as Respondent to ensure consistency in the interpretation of the Agreements concluded by the EU and to protect the interests of the other Member States and of the EU as a whole. In such situations, the Member State concerned will bear financial responsibility because the contested measure is not an EU measure. However, in order to protect the interests of the EU as a whole, the Commission would act as respondent in the proceedings.

Finally, considering the Senat's assessment that the phrase "overriding interests of the Union" is too broad and should be clarified, the Commission considers that the drafting of the Regulation is of utmost importance in that the Regulation will apply for the coming decades in connection to all the Agreements covering investments concluded by the EU. The Commission therefore believes that the language of the Regulation must be broad enough to cover situations that may arise in ten or twenty years but that cannot be envisaged today. It is crucial that such situations are covered by the Regulation and to avoid that any loophole appears in the future. The Commission believes that the language proposed in the Regulation achieves this aim.

The Commission hopes that these clarifications address the concerns raised by the Senat and looks forward to continuing its political dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President