



EUROPEAN COMMISSION

*Brussels, 5.6.2018  
C(2018) 3542 final*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on the Recommendation for a Council Decision authorising the opening of negotiations for a Convention establishing a multilateral court for the settlement of investment disputes {COM(2017) 493 final}.*

*The Commission is committed to reform the current system of investment dispute settlement in favour of a more independent, impartial, accountable and transparent mechanism. The abovementioned Commission Recommendation builds on the current European Union policy to institutionalise the traditional system of investment dispute resolution through the introduction of the Investment Court System in its bilateral trade and/or investment agreements. The establishment of a permanent Multilateral Investment Court will ensure better use of resources and improve efficiency as well as coherence and consistency of the overall system of investment dispute settlement at the multilateral level.*

*Specific aspects of the design and functioning of the Multilateral Investment Court remain to be discussed and negotiated with interested third countries. The most efficient use of resources taking into account the number of countries that will foreseeably become members of the Court as well as the expected caseload, coupled with the necessary flexibilities, will certainly be at the core of such discussions. Interested countries will also consider the most appropriate mechanisms to deter abusive and frivolous claims, including, as the Bundesrat rightly points out, the possibility that investors share part of the burden, for instance through a system of fees and the inclusion of the loser-pays principle. The Commission strongly believes that a fair, transparent and efficient use of resources is a fundamental aspect to the success of this initiative and will make every effort to ensure an optimal outcome of ongoing multilateral discussions.*

*Mr Michael Müller  
President of the Bundesrat  
Leipziger Str. 3-4  
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*The initial draft negotiating directives presented by the Commission are currently being considered by the Council, in which the German government is represented. These discussions include the issue of the distribution of costs and reflect the considerations raised by the Bundesrat.*

*The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Cecilia Malmström  
Member of the Commission*