



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Assembleia da República 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}.

On 13 September 2017, the Commission adopted the above-mentioned Recommendation. Negotiations on the possible multilateral reform of investor-state dispute settlement started in November 2017 under the auspices of the United Nations Commission on International Trade Law, which entrusted its Working Group III in July 2017 to examine reform of investor-state dispute settlement. The European Union is putting forward its proposal for a multilateral investment court in this context.

On 20 March 2018, the Council adopted the Decision authorising the opening of negotiations for a Convention establishing a multilateral court for the settlement of investment disputes, which provides that negotiations shall be conducted in line with the negotiating directives set out in the Annex to the Decision.

The Commission welcomes the overall support of the Assembleia da República for the establishment of a multilateral investment court.

The Assembleia da República in its Opinion raises the issue of the costs associated with the establishment and operation of a multilateral investment court. The Commission agrees that investor-state dispute settlement proceedings can be costly both for investors and states, which poses a problem of access to the system and availability of legal remedies, especially for small and medium-sized enterprises and natural persons. Designing a multilateral investment court that is cost-effective in its establishment and operation is a key objective for the Commission.

The Commission would like to recall that the negotiating directives adopted by the Council on 20 March 2018 stipulate: “One objective of the negotiations should be that the multilateral court operates in an effective way, both in terms of costs and length of procedures. The fixed costs of the court, including costs of remuneration of its members

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and costs of administrative and secretarial support, should in principle be borne by the Contracting Parties to the Convention establishing the multilateral court with a possible contribution from the disputing parties through Court fees, which should not be linked to the remuneration of the Members of the Court” (paragraph 15) and “The Convention should include appropriate provisions aimed at ensuring the access of small and medium-sized enterprises and natural persons to the multilateral court by seeking, inter alia, to reduce costs.” (paragraph 17).

This issue has been discussed at the Trade Policy Committee (Services and Investment) of the Council, in which the Portuguese government is represented, during the preparation of the negotiating directives and at informal technical meetings between the Commission and the Member States.

In November 2018, Working Group III of the United Nations Commission on International Trade Law concluded that it was desirable that reforms be developed to address concerns, inter alia, with respect to cost and duration of investor-state dispute settlement proceedings. From April 2019, Working Group III will start discussions on reform options. The European Union and its Member States will continue political and technical discussions on issues pertaining to the establishment of a multilateral investment court, in line with the negotiating directives adopted by the Council on 20 March 2018.

The Commission hopes that these clarifications address the issue raised by the Assembleia da República and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

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Member of the Commission*