Briefing
Initial Appraisal of a European Commission Impact Assessment

November 2017

Multilateral court for the settlement of investment disputes

Impact Assessment (SWD (2017)302, SWD (2017) 303 (summary)) of a Commission 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).

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above recommendation, submitted on 13 September 2017 and referred to Parliament's Committee on International Trade. The recommendation aims to pave the way for the creation of a framework for the resolution of international investment disputes. The IA notes that foreign investors and host countries have settled their investment disputes through the Investor-State Dispute Settlement (ISDS, ad hoc arbitration) since the 1950s. In recent years, concerns have been voiced about the ISDS, in particular in the context of the negotiation processes of the Transatlantic Trade and Investment Partnership (TTIP) (EU-USA) and of the Comprehensive Economic and Trade Agreement (CETA) (EU-Canada). Based on the results of the public consultation carried out in 2014, the European Commission presented a plan in May 2015 to reform the investment resolution system. It comprises, as a first step, an institutionalised court system (Investment Court System, ICS) for future EU trade and investment agreements and, as a second step, the establishment of an 'international investment Court'.[1] According to the IA report, 'since 2016 the Commission has actively engaged with a large number of partner countries both at a technical and political level to further the reform of the ISDS system and to build a consensus for the initiative of a permanent multilateral investment Court' (IA, p. 6).

In its resolutions of 8 July 2015 on the Transatlantic Trade and Investment Partnership (TTIP)[2] and of 6 April 2011 on the future European international investment policy,[3] Parliament noted the need to reform the investment dispute settlement mechanism. In its resolution of 5 July 2016 on the future strategy for trade and investment,[4] it supported the aim of creating a 'multilateral solution to investment disputes'.

Problem definition

The EU is the largest exporter and biggest recipient of foreign direct investments in the world. Therefore, it is considered important to have clear rules protecting EU investments in other countries and foreign investments in the EU area. Worldwide, there are 3 328 investment treaties of which a majority contains ISDS provisions. The EU Member States are involved in 1 384 of these treaties with third countries. The EU is also a party to the Energy Charter Treaty (ECT), which contains ISDS provisions (IA, p. 11).

[1] See Commission Communication: Trade for all. Towards a more responsible trade and investment policy, COM(2015)497, October 2015 and Commission Reflection Paper on Harnessing Globalisation, May 2017. See also Puccio, L. and Harte, R., From arbitration to the investment court system (ICS), EPRS, June 2017 and Harte, R., Prospects for a Multilateral Investment Court, EPRS, June 2017.
[2] EP resolution of 8 July 2015 on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP), P8_TA(2015)0252.
[3] EP resolution of 6 April 2011 on the future European international investment policy, P7_TA(2011)0141.
[4] EP resolution of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment, P8_TA(2016)0299.

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The IA report explains the problems arising from the ISDS, namely (1) a lack of legitimacy and a safeguard for independence of arbitrators, (2) deficiencies in predictability and consistency of the case-law, (3) a lack of possibility to review decisions, (4) a lack of transparency and (5) high costs of proceedings. The problem drivers in relation to the ISDS mentioned in the IA report are: insufficient independence of arbitrators, ad hoc tribunals paid by parties, a different set of arbitration rules, confidentiality of cases, no appeal possibility and a lack of facilitation mechanism for SMEs (IA, pp. 7-18).

Since 2015, the aim has been to replace the ISDS by the ICS – which establishes a Tribunal of First Instance and an Appeals Tribunal with permanent tribunal members – in future EU trade and investment agreements. The IA report notes that the ICS addresses various issues of the ISDS system, such as shortcomings in legitimacy, consistency, transparency and a possibility to appeal. The IA points out, however, that on account of its bilateral nature, the ICS cannot fully address the issues arising from the ISDS system and that, therefore, progress within the ICS may be achieved only up to certain limits. Furthermore, the inclusion of an ICS in each EU trade and investment agreement has raised other concerns relating to the administrative burden, complexity and budgetary impact. The IA argues that the more ICS there are in EU agreements, the more complex and burdensome the system will be to manage. The progressive phase out of the ISDS and replacement by the ICS will also take a long time, without any certainty that all bilateral investment treaties would eventually be covered (IA, pp. 15-22).

The IA includes a problem tree that presents the problems and drivers concerning the ISDS and the baseline, i.e. a co-existence of the ISDS and the ICS (IA, p. 19). The problem definition is based on stakeholder consultations, studies and various data sources. The IA notes that the stakeholders affected are investors and businesses, states (EU Member States, third countries), the EU, the general public, arbitrators and arbitration centres (IA, pp. 19-21).

As regards ex-post evaluation, the IA report notes that an evaluation has not been carried out for the ICS as it is a very recent creation. The first agreement containing an ICS provision is the CETA (EU-Canada). As for the ISDS, the IA report refers to academic studies and does not describe evaluation and monitoring procedures concerning the ISDS. The IA report notes that in the ECT there is an obligation to perform a periodical review and that the most recent review has been ongoing since 2014. However, the IA report does not provide much information about the findings of this review (IA, pp. 22-23).

Objectives of the legislative proposal

Regarding the **general** objectives, the IA report refers to Article 21(1) and Article 21(2) of the Treaty on European Union. Article 21(1) defines the guiding principles for the Union's external action, such as democracy, rule of law, human rights, equality and solidarity. Article 21(2) defines the objectives, such as, for example, encouraging the integration of all countries into the world economy and promoting an international system based on stronger multilateral cooperation and good global governance (IA, 24-26).

As regards the **specific** objectives, the IA report states that the aim is to enhance the coherence of the EU policy in investment dispute resolution and to align it with EU global policy in the context of other areas of international dispute resolution. The objective is to establish a framework for the investment dispute settlement that is (1) 'permanent, independent and that enjoys the recognition of authority and legitimacy of citizens', (2) 'predictable, delivering consistent case-law in its functioning, ensuring that the interpretation of substantive standards is consistent', (3) 'allowing for an appeal of decisions in order to correct legal and factual errors', (4) 'transparent', (5) 'efficient, in that it satisfies the needs of involved stakeholders through an effective use of financial and human resources' (IA, p. 26).

The defined objectives seem logical in relation to the problem definition. According to the Better Regulation Toolbox (Tool #16) the objectives should be specific, measurable, achievable, relevant and time-bound (S.M.A.R.T.). It can be noted that the defined objectives are not time-bound. In addition, in the summary table

concerning the contribution of the options to the objectives, simplification is mentioned as one of the general objectives although it does not appear in that section (IA, pp. 61-62). **Operational** objectives are dealt with under the monitoring section of the IA (see below).

Range of options considered

The IA presents eight policy options, of which options 1-6 derive from the Inception Impact Assessment (published in August 2016) and options 7-8 have been added on the basis of the public consultation (21 December 2016 - 15 March 2017) and the stakeholder meeting (27 February 2017).

Option 1 (Baseline): The baseline means a co-existence of the ISDS and the ICS of which there is no experience yet. The EU would continue to negotiate the ICS in bilateral trade and investment agreements or investment agreements. The IA notes that the problems referred to in the problem section would persist, given that the ICS would apply to future agreements and that the ISDS would continue, insofar as the treaties applying it have not been replaced by EU agreements containing the ICS. Given the vast number of treaties containing ISDS provisions, the negotiation process would take a long time (IA, pp. 21-22 and 26-27).

Option 2 (Re-negotiation of the bilateral investment treaties (BIT) and the Energy Charter Treaty (ECT) to align with the ICS): The EU and the Member States would aim to re-negotiate the bilateral agreements and the ECT in order to include the ICS. Given the significant number of BIT, a majority of stakeholders considered this option to be too burdensome, complex and disproportionate in relation to its likely use per BIT (IA, p. 27).

Option 3 (Reform of the arbitration rules applied in the ISDS to align them with the ICS): Several sets of arbitration rules (International Centre for Settlement of Investment Disputes (ICSID), United Nations Commission on International Trade Law (UNCITRAL), Permanent Court of Arbitration (PCA)) applied in the ISDS would be reformed in order to align them with the principles of the ICS. The IA notes that, as there is no common institutional framework for the procedural aspects of the ISDS, the abovementioned arbitration rules should be re-negotiated, which would be very complex (IA, pp. 27-28).

Option 4 (Creation of a permanent multilateral appeal instance): In this option the ISDS and the ICS would continue to co-exist but a possibility to appeal the decisions of the ad hoc ISDS Tribunals and the ICS Tribunals of First Instance would be established. This option would contribute to addressing various issues concerning legitimacy, independence, predictability and consistency. However, as in this option also the ISDS would be in place in the first instance phase, referring cases back would be difficult on account of the ad hoc nature of the ISDS tribunals. There was a positive response to this option among respondents in the public consultation, but it was also noted that the existence of the ad hoc ISDS tribunal in this option would not provide an adequate solution (IA, pp. 28-29).

Option 5 (Creation of a permanent multilateral investment court (MIC)): This option would mean establishing a multilateral court for investment dispute settlement by the EU and interested third countries. The court system would comprise both a Tribunal of First Instance and an Appeal Instance. The Court would deal with the bilateral agreements when both countries have agreed that their BIT can be subject to the MIC. The features of the court (composition, procedural, institutional and financial aspects) will be subject to multilateral negotiations. This option is limited to the negotiation of a common dispute resolution framework, without involving substantive investment rules (e.g. non-discrimination, fair and equitable treatment, non-expropriation). According to the IA, there is broad support among stakeholders for the principle of establishing a multilateral court for investment disputes (IA, pp. 29-30). This is the **preferred option**.

Option 6 (Negotiation of the multilateral substantive investment rules): According to the IA report, this option would be desirable, but not feasible at present as there is not sufficient support among countries for such

negotiations (no common approach to negotiating objectives or uniform approach to substantive investment standards) (IA, pp. 30-31).

Option 7 (Improvement of the ISDS in bilateral EU investment agreements and in the ECT): Several stakeholders have suggested a reform of bilateral EU investment agreements and the ECT. This would include stricter requirements for arbitrators, the possibility for stakeholders to intervene in proceedings, flexibility in the fee system in order to assist SMEs, the possibility for non-pecuniary remedies and an exhaustion of domestic remedies prior to initiating the ISDS procedures. The IA report points out that some suggestions, such as the exhaustion of domestic remedies and non-pecuniary remedies, are not in line with the EU approach. Given the bilateral nature of the system, a re-negotiation process would engage considerable resources without any certainty of obtaining a uniform system in the end (IA, pp. 31-32).

Option 8 (National courts of the host states to decide on the investment disputes): The IA notes that this option, suggested by stakeholders, is contrary to the main objective of ensuring a neutral international mechanism for cross-border disputes. The option would also require dismantling the current system, or ensuring that all the concerned treaties be given direct effect, which could be considered difficult in some countries for constitutional reasons (IA, pp. 32-33).

The policy options are derived from the objectives, problem definition and feedback of the stakeholders. It can be noted, however, that stakeholder views are not indicated in every option. When the stakeholders are referred to in some of the options, the IA report does not specify which stakeholders are concerned (e.g. investors, states, legal practitioners). The IA report notes that six options (2, 3, 4, 6, 7, 8) were discarded without analysis. As regards the discarded options, it would have been more informative to have a more developed description of all the options, including their positive and negative aspects. The options 1 (baseline) and 5 (creation of a permanent multilateral investment court) are the only options retained for further analysis. According to the Commission's Better Regulation Guidelines (pp. 22-23, see also Tool #17), 'a particularly strong justification should be provided when, exceptionally, only one option is retained for full assessment against the baseline'**.** Whereas many options were discarded for being non-feasible or unrealistic, the preferred option 5 does not provide much information of its political feasibility. It does not indicate how much political support there is among countries (EU and third countries). Furthermore, generally speaking, the reference to stakeholder support in that option is rather vague.

Scope of the Impact Assessment

As only one option is retained in addition to the baseline option, the IA report presents sub-options for the assessment in line with the Better Regulation Guidelines (pp. 22-23). The achievement of the defined objectives is analysed in option 1 (baseline) and option 5 (MIC) through specific key features, which are the composition of the Court and procedural, institutional and financial aspects. In the baseline scenario (current system), according to the IA report, the objectives would not be met with the ISDS. As regards the ICS, the objectives could be partly achieved as the ICS contributes to the permanent nature of the court and to legitimacy and provides an appeal possibility. The co-existence of the ISDS and the ICS produces uneven public law adjudication and requires significant human and financial resources. The IA report stresses that in option 5, certain features are an inherent part of the option, such as the permanent nature of the Court, the appeal tribunal and the remuneration of adjudicators, but various features will be subject to negotiation. The IA assesses various options for these key features.

Regarding the **composition of the court**, the IA preferences are:
- the number of adjudicators would be linked to the volume of the cases on account of the efficiency arguments (alternative: a link to the number of the contracting parties);
- adjudicators would have a long, non-renewable mandate which would be more in line with the independence principle (alternative: long or short (once) renewable mandate);
- adjudicators would work full-time and would be employed by the MIC with a fixed salary, which would enhance independence and impartiality (alternative: part-time work, can be self-employed and receive fees for service);

- adjudicators' qualification criteria would be defined in broader terms to ensure consistency and predictability (alternative: expertise in specific areas);
- adjudicators would be precluded from exercising any other professional activity to ensure their independence (alternative: precluded to exercise only legal activities concerning other investment disputes).

Procedurally, the IA preferences are:
- adjudicators would be appointed by an independent body (alternative: by the contracting parties or by a body composed of contracting parties and other stakeholders), and cases would be allocated to adjudicators on a random basis (objective criteria) (alternative: disputing parties can intervene), which would enhance independence and legitimacy;
- the scope of appeal should be limited to checking manifest errors in the appreciation of facts for efficiency reasons (alternative: a complete fresh analysis of the facts).

Institutionally, the IA preferences are:
- the secretariat would be self-standing to ensure independence and legitimacy (alternative: housing the secretariat in an existing organisation);
- countries would agree in the legal instrument to subject their investment treaties to the jurisdiction of the MIC (opt-in system), which would contribute to efficiency, permanency and transparency (alternative: re-negotiating and/or amending each treaty);
- specific measures would be taken to support access of SMEs and of developing countries to the MIC in order to enhance efficiency and access to justice (alternatives: no specific measures for SMEs or for developing countries).

Financially, the IA preferences are:
- the costs of the MIC would be allocated on the basis of the level of development of members, which would contribute to efficiency and good global governance (alternative: an equal allocation of costs among members). The IA also notes that this practice is in use in other international organisations. The costs would be carried by the contracting parties, but user fees could also be considered, taking into account SMEs, however.

The IA compares the two options from the point of view of effectiveness in achieving the objectives, efficiency and coherence with the EU's overarching policy objectives. A summary table of the effects of the retained options is presented in the IA report (IA, p. 61). The economic, social, environmental, budgetary, administrative and human rights aspects have been taken into account in the analysis (IA, pp. 33-64). The IA stresses, however, that significant social and environmental impacts are not expected as the initiative focuses on the procedural aspects and not on the substantive standards (IA, 39). Option 5 is the preferred option as, according to the IA, it would better address the defined objectives. Annex 3 provides a table describing the implications of this option for stakeholders, i.e. investors, states, legal practitioners and the general public (IA, pp. 83-84).

The IA notes that disputes arising from the bilateral investment treaties **(**BITs) among Member States, and disputes between an investor of a Member State and a Member State under the Energy Charter Treaty, are excluded from the scope of the MIC initiative as the 'Commission takes the view that such agreements are inconsistent with EU law and hence cannot be covered by the current initiative' (IA, p. 11). This aspect could perhaps have been explained further in the IA report.

Subsidiarity / proportionality

The legal basis of this initiative is Article 218(3) and 218(4) of the Treaty on the Functioning of the European Union (TFEU). In investment protection, the European Union has partly exclusive and partly shared competence. According to the IA, the initiative is in line with the Treaty-based objectives and the Charter of Fundamental Rights. The IA notes that the Member States would not have competence to deal with all the matters falling under the scope of this initiative (IA, pp. 23-24). Concerning the proportionality aspect, the IA report explains that all the reasonable policy options have been presented and their likely effectiveness assessed (IA, p. 24).

Relations with third countries

The IA refers to the discussions with third countries on a multilateral reform of investment dispute resolution. The discussions have been held in the UNCTAD context (Investment Forum in July 2016), in the expert meeting in 2016 (60 countries and 8 international organisations were represented) and in the World Economic Forum context in January 2017. The IA notes that in July 2017 the UNCITRAL (United Nations Commission on International Trade Law) gave Working Group III a mandate concerning work on a reform of the current investment resolution system (IA, p. 69, p. 81). However, the IA report does not provide much information on the political support among third countries for MIC. Furthermore, it would have been useful to have an analysis of how the preferred option would affect foreign investments in the EU and EU investments in the third countries. In the preferred option, specific measures would be foreseen for the developing countries to support access to the MIC (IA, pp. 53-54).

Budgetary or public finance implications

The estimated annual budgetary impact of the preferred option is around €5.4 million for the EU and Member States (€2.7 million for the EU and €2.7 million for the Member States). Given that the MIC is not yet in place, the cost estimates are based on projections of the preferred option's features. The assessment comprises both quantitative and qualitative analysis. The budgetary implications and allocation of costs are subject to multilateral negotiations. The annual cost of the baseline is around €8.7 million. This is estimated on the basis of 11 ICS for the EU and the costs of the remaining ISDS for the EU and for the EU Member States (IA, pp. 119-120). The IA report explains the costs analysis in Annex 4.

SME test / Competitiveness

The IA report notes that the current system does not ensure accessibility of small investors to the investment settlement resolution, as the costs of the ISDS proceedings may be high (IA, pp. 52-53). The IA points out, on the other hand, that there is no data available on potential claimants not having brought claims on account of high costs. The IA report in any case considers that for micro-enterprises it would be difficult to use dispute resolution. The accessibility issue for SMEs in relation to the ISDS was raised in the consultation process (the stakeholder meeting and the public consultation) (IA, pp. 14-15 and pp. 18-20). The ICS has already introduced measures that take SMEs into account (IA, p. 36). In the preferred option, it is suggested that access of SMEs would be supported by specific measures. This would have more financial implications for the EU and Member States. On the other hand, the IA points out that as most of the EU companies are SMEs, increased costs would eventually be outweighed by positive impacts on competitiveness and the EU economy (IA, pp. 52-53).

Simplification and other regulatory implications

According to the IA report, the MIC initiative would be in line with the objective of simplification in EU policy-making. It would reduce administrative burden in the investment dispute resolution field, as the aim is to centralise disputes under a single set of procedural rules (IA, p. 60). The IA report states that the initiative would not affect the autonomy of EU law (IA, p. 24). It would have been useful to have a more developed description of the legal aspects of the MIC, which is rather limited in the IA report. It should be noted that the Belgian government has asked the European Court of Justice for an opinion (submitted on 6 September 2017) concerning compatibility of the ICS in the CETA agreement with the principle of the autonomy of EU law.[5]

Quality of data, research and analysis

The IA report is based on the expert judgement of the Commission services. No external study has been commissioned. It is backed up by the stakeholder consultation, relevant case law, academic literature and various data sources (World Bank, OECD, United Nations Conference on Trade and Development (UNCTAD), International Centre for Settlement of Investment Disputes (ICSID)). The data references and links are provided. The

[5] See Harte, R., CETA ratification process: Latest developments, EPRS, October 2017.

presentation of the policy options would have benefited from more detailed description of various options. Furthermore, the justification of the preferred option could have been stronger if legal aspects and information of the political feasibility had been further clarified in the IA report.

Stakeholder consultation

Annex 2 of the IA report explains the consultation of stakeholders in detail. The consultation process consisted of the feedback on the Inception Impact Assessment (seven contributions, published on the Commission website), an online public consultation (OPC) between 21 December 2016 – 15 March 2017 (193 replies, published on the Commission website) and discussions with stakeholders and academics. The respondents to the OPC replied in their personal or professional capacity (around 40 % from trade unions, business associations and NGOs, while almost half did not specify the type of their organisation). The OPC, which was based on the 2014 public consultation on investment protection, aimed to seek feedback for multilateral reform. A meeting with 100 stakeholders, which was recorded and web-streamed, was organised in February 2017. Around 36 % of the attendants were private investors and business representatives, 28 % were from NGOs and trade unions, 12 % public authorities, 10 % academics, 7.5 % legal practitioners, 4.5 % media representatives and 1.5 % consultants. The Commission also held discussions with the Member States and third countries on the initiative. As already indicated, the views of stakeholders are mentioned in some of the policy options and sub-options, though without always specifying which stakeholders are concerned (i.e. investors, states, etc.). The IA report could have provided more information on the level of stakeholder support for the preferred option as the references are rather vague (IA, p. 30, p. 69, p. 81).

Monitoring and evaluation

The European Commission will carry out annual monitoring on the functioning of the Court and will complement the monitoring by dialogue with the Member States and EU stakeholders. Furthermore, a regular audit of the EU financial contributions to the costs of the Court will be undertaken. According to the IA, the Court should also evaluate its functioning and discuss the results with the contracting parties (IA, p. 64, p.66).

The IA report defines the **operational** objectives, derived from the specific objectives, in its monitoring section: (1) ensuring independence of adjudicators, (2) ensuring efficient dispute settlement proceedings, (3) ensuring access to investment dispute settlement for all investors, (4) building up consistent case-law, (5) improving transparency (IA, p. 64).

The monitoring indicators are: a) the number of successful challenges brought against individual adjudicators and members (objective 1), b) the average length per proceeding and resources spent per case (objective 2), c) statistics on cases taken to the Court and average cost per case per investor type (objective 3), d) qualitative analysis of case law and percentage of decisions upheld by the Court (objective 4), and e) creation of a website, a documentation centre and a repository (objective 5), (IA, pp. 64-66).

The data sources would be the secretariat of the Court, academia, reviews and articles, user feedback, user frequency of Court website and requests for information (IA, p. 65). The IA report notes that stable monitoring indicators are difficult to define before the Court is established. Even so, the proposed indicators and sources could perhaps have been further clarified (e.g. indicator (a), the sources such as 'academia', 'independent reviews and academic articles', 'user feedback').

Commission Regulatory Scrutiny Board (RSB)

The RSB issued a positive opinion on a draft version of the IA report, with recommendations for improvement, on 24 July 2017. The RSB considered that the following aspects should be further explained in the IA report: (1) reasons for discarding options concerning existing arbitration systems for commercial and investment disputes, (2) specificities of the MIC in comparison to the European Court of Human Rights, (3) the basis on which the MIC

would make its rulings and clarify its intended decision power, (4) cost allocation between the EU and the Member States, (5) stakeholders' views on discarded options and views of Member States and third countries on the preferred option. In addition, description of success indicators were requested. In Annex I, in line with the Better Regulation Guidelines, the IA report provides information about how the RSB recommendations were taken into account (pp. 68-69). Nevertheless, further efforts could have been made to elaborate further on these points (with the exception of point 4, which is explained in the IA, and is, among other factors, subject to negotiations).

Coherence between the Commission's recommendation and IA

The Commission recommendation largely follows the conclusions of the IA, albeit with some differences. According to the negotiating directives annexed to the recommendation, the Convention should not exclude the possibility of relying on the secretariat support of an international organisation or of being integrated into such a structure, whereas the preferred option of the IA comprises a self-standing secretariat to ensure independence and legitimacy. In the preferred option of the IA, the costs of the MIC would be allocated on the basis of the level of development of the contracting parties, which would contribute to good global governance and efficiency. According to the negotiating directives, the distribution of the fixed costs should be decided on an equitable basis among the contracting parties, although certain factors may be taken into account, such as the level of economic development of parties, the number of agreements covered per party, and the volume of international investment flows or stocks by parties.

Conclusions

The IA report explains well the issues related to ISDS and the current co-existence of ISDS and ICS. It establishes a clear link between the identified problems, objectives and policy options, which is in line with the Better Regulation Guidelines. The IA report also provides links and references to relevant data sources and researches. From the IA report it seems that stakeholder views have been taken into account when identifying problems and considering policy options. However, the references to stakeholders remain too vague in the policy options. The IA could have further developed the justification of the preferred option, as required in the Better Regulation Guidelines, given that only one option was retained for assessment, along with the baseline. It would also have been useful to have more information on the political feasibility and the legal aspects of the initiative (i.e. how MIC relates to the EU law, the European Court of Justice, other international organisations and international tribunals). The presentation of various options is to some extent uneven. A more balanced presentation of all the options (both positive and negative aspects) would have given a better overall picture of various scenarios. Furthermore, the IA report could perhaps have analysed the impact of the preferred option on foreign investments in the EU and EU investments in third countries.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on International Trade, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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