

**Question for oral answer O-000153/2015  
to the Council**

Rule 128

**Bernd Lange, Salvatore Cicu**

on behalf of the Committee on International Trade

Subject: UN Convention on Transparency in Treaty-based Investor-State Arbitration

Traditionally, investor-state dispute settlement (ISDS) has been conducted on the basis of commercial arbitration rules, which may raise public policy issues or have an impact on public finances. Greater transparency during arbitration is therefore of fundamental importance. The Union has championed a multilateral convention which would provide for the application of the UN Commission on International Trade Law (UNCITRAL) Rules on Transparency to ISDS arising from agreements concluded before 1 April 2014. The UN Convention on Transparency in Treaty-based Investor-State Arbitration (the Mauritius Convention) was adopted by the UN General Assembly on 10 December 2014. By signing the convention, the EU could become a party thereto in respect of the Energy Charter Treaty (ECT) and empower the Member States to sign the convention individually in relation to their bilateral investment treaties (BITs). However, a dispute between the Commission and the Member States over substance and procedural decision-taking matters has prevented the Union from signing the convention. (Instead, eight Member States have signed it to date on their own behalf; however, empowerment is necessary for Member States to apply the UNCITRAL transparency rules to existing BITs.) The ECT is excluded from the scope of application of the rules, meaning that in those ISDS cases in which the Union is a respondent and the claimant is from a non-EU state, the transparency rules cannot be applied. In those instances where Member States are respondents, the rules will only apply to those which have signed the convention. This is a deeply troubling situation, as the ECT has in recent years become the treaty under which the largest number of ISDS cases have been brought worldwide. In light of the current impasse, could the Presidency answer the following questions?

1. Is the Presidency applying pressure on those Member States blocking the convention, so as to enable the EU to sign it?
2. Does the Presidency think this lack of coherence reflects badly on the Union's image as an actor abroad, when it remains unable to implement a multilateral solution in order to address certain practical problems in the existing system governing disputes, which the Union itself has championed?
3. Without prejudice to any subsequent further improvements in the international investment protection regime, will the Presidency commit to working towards a situation in which all the Member States provide for the application of the transparency rules to all BITs already in force?

Tabled: 1.12.2015

Forwarded: 2.12.2015

Deadline for reply: 23.12.2015