



EUROPEAN PARLIAMENT

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*Committee on International Trade*

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**2012/0163(COD)**

4.2.2013

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## **DRAFT REPORT**

on 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 party (COM(2012)0335 – C7-0155/2012 – 2012/0163(COD))

Committee on International Trade

Rapporteur: Paweł Zalewski

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on 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 party  
(COM(2012)0335 – C7-0155/2012 – 2012/0163(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0335),
  - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0155/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Title**

*Text proposed by the Commission*

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 party

*Amendment*

Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to *investor-to-state* dispute settlement tribunals established by international agreements to which the European Union is party

*Justification*

*To formally align the title of the regulation to the definition included in Article 2(d).*

**Amendment 2****Proposal for a regulation****Recital 10***Text proposed by the Commission*

(10) In certain circumstances, it is essential, in order to ensure that the interests of the Union can be appropriately safeguarded, that the Union itself act as a respondent in disputes involving treatment afforded by a Member State. This may be so in particular where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by Union law, where *it is likely that* similar claims *may be brought* against other Member States or where the case involves *unsettled* issues of law, the resolution of which may have an impact on possible future cases against other Member States or the Union. Where a dispute concerns partially treatment afforded by the Union, or required by Union law, the Union should act as a respondent, unless the claims concerning such treatment are of minor importance, having regard to the potential financial responsibility involved and the legal issues raised, in relation to the claims concerning treatment afforded by the Member State.

*Amendment*

(10) In certain circumstances, it is essential, in order to ensure that the interests of the Union can be appropriately safeguarded, that the Union itself *may* act as a respondent in disputes involving treatment afforded by a Member State. This may be so in particular where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by Union law, where similar claims *have been lodged* against other Member States or where the case involves issues of law, the resolution of which may have an impact on *current or* possible future cases against other Member States or the Union. Where a dispute concerns partially treatment afforded by the Union, or required by Union law, the Union should act as a respondent, unless the claims concerning such treatment are of minor importance, having regard to the potential financial responsibility involved and the legal issues raised, in relation to the claims concerning treatment afforded by the Member State.

### Amendment 3

#### Proposal for a regulation Recital 18

##### *Text proposed by the Commission*

(18) The Commission should consult closely with the Member State concerned in order to reach agreement on the apportionment of financial responsibility. Where the Commission determines that a Member State is responsible, and the Member State does not accept that determination, the Commission should pay the award, but should address a decision to the Member State requesting it to provide the amounts concerned to the budget of the European Union, together with applicable interest. The interest payable should be that set down pursuant to **[Article 71(4) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities as amended]**. Article 263 of the Treaty is *available* in cases where a Member State considers that the decision falls short of the criteria set out in this Regulation.

##### *Amendment*

(18) The Commission should consult closely with the Member State concerned in order to reach agreement on the apportionment of financial responsibility. Where the Commission determines that a Member State is responsible, and the Member State does not accept that determination, the Commission should pay the award, but should address a decision to the Member State requesting it to provide the amounts concerned to the budget of the European Union, together with applicable interest. The interest payable should be that set down pursuant to **Article 78(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union<sup>1</sup>**. Article 263 of the Treaty is *available* in cases where a Member State considers that the decision falls short of the criteria set out in this Regulation.

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<sup>1</sup> *OJ L 298, 26.10.2012, p. 1.*

Or. en

### Amendment 4

#### Proposal for a regulation Recital 19

##### *Text proposed by the Commission*

(19) The Union budget should provide coverage of the expenditure resulting from agreements concluded pursuant to

##### *Amendment*

(19) The Union budget should provide coverage of the expenditure resulting from agreements concluded pursuant to

Article 218 of the Treaty providing for *investor-state* dispute settlement. Where Member States have financial responsibility pursuant to this Regulation, the Union should be able to either accumulate the contributions of the Member State concerned first before implementing the relevant expenditure or implement the relevant expenditure first and be reimbursed by the Member States concerned after. Use of both of these mechanisms of budgetary treatment should be possible, depending on what is feasible, in particular in terms of timing. For both mechanisms, the contributions or reimbursements paid by the Member States should be treated as internal assigned revenue of the Union budget. The appropriations arising from this internal assigned revenue should not only cover the relevant expenditure but they should also be eligible for replenishment of other parts of the Union budget which provided the initial appropriations to implement the relevant expenditure under the second mechanism.

Article 218 of the Treaty providing for *investor-to-state* dispute settlement. Where Member States have financial responsibility pursuant to this Regulation, the Union should be able to either accumulate the contributions of the Member State concerned first before implementing the relevant expenditure or implement the relevant expenditure first and be reimbursed by the Member States concerned after. Use of both of these mechanisms of budgetary treatment should be possible, depending on what is feasible, in particular in terms of timing. For both mechanisms, the contributions or reimbursements paid by the Member States should be treated as internal assigned revenue of the Union budget. The appropriations arising from this internal assigned revenue should not only cover the relevant expenditure but they should also be eligible for replenishment of other parts of the Union budget which provided the initial appropriations to implement the relevant expenditure under the second mechanism.

Or. en

#### *Justification*

*To align the recital to the definition of Article 2(d).*

#### **Amendment 5**

##### **Proposal for a regulation Article 8 – paragraph 2 – point c**

###### *Text proposed by the Commission*

(c) *it is likely that* similar claims *will be brought* under the same agreement against treatment afforded by other Member States and the Commission is best placed to ensure an effective and consistent defence; or,

###### *Amendment*

(c) similar claims *have been lodged* under the same agreement against treatment afforded by other Member States and the Commission is best placed to ensure an effective and consistent defence; or,



## Amendment 6

### Proposal for a regulation Article 8 – paragraph 2 – point d

*Text proposed by the Commission*

(d) the dispute raises ***unsettled*** issues of law which may ***recur in other disputes under the same or other Union agreements concerning treatment afforded by the Union or other Member States.***

*Amendment*

(d) the dispute raises ***sensitive*** issues of law ***the resolution of which may affect the future interpretation of the agreement in question or other agreements.***

## Amendment 7

### Proposal for a regulation Article 9 – paragraph 2

*Text proposed by the Commission*

2. The Commission may, at any time, require ***the*** Member State ***concerned*** to take a particular position as regards any point of law raised by the dispute or any other ***element having a Union interest.***

*Amendment*

2. ***Where overriding interests of the Union so require,*** the Commission may, at any time ***after consultations with the Member State concerned,*** require ***that*** Member State to take a particular position as regards any point of law raised by the dispute or any other ***issue of law, the resolution of which may affect the future interpretation of the agreement in question or other agreements.***

## Amendment 8

### Proposal for a regulation Article 9 – paragraph 3

*Text proposed by the Commission*

3. When an agreement, or the rules referred to therein, provide for the possibility of annulment, appeal or review of a point of law included in an arbitration award, the Commission may where it considers that the consistency or correctness of the interpretation of the agreement so warrant, require **the** Member State to lodge an application for such annulment, appeal or review. In such circumstances, representatives of the Commission shall form part of the delegation and may express the views of the Union as regards the point of law in question.

*Amendment*

3. When an agreement, or the rules referred to therein, provide for the possibility of annulment, appeal or review of a point of law included in an arbitration award, the Commission may where it considers that the consistency or correctness of the interpretation of the agreement so warrant, **after consultations with the Member State concerned,** require **that** Member State to lodge an application for such annulment, appeal or review. In such circumstances, representatives of the Commission shall form part of the delegation and may express the views of the Union as regards the point of law in question.

Or. en

## Amendment 9

### Proposal for a regulation Article 17 – paragraph 1

*Text proposed by the Commission*

1. Where the Union acts as respondent pursuant to Article 8, and the Commission considers that the award or settlement in question should be paid, in part or in full, by the Member State concerned on the basis of the criteria laid down in Article 3(1), the procedure set out in paragraphs 2 to 5 shall apply.

*Amendment*

1. Where the Union acts as respondent pursuant to Article 8, and the Commission considers that the award or settlement in question should be paid, in part or in full, by the Member State concerned on the basis of the criteria laid down in Article 3(1), the procedure set out in paragraphs 2 to 5 **of this Article** shall apply. **That procedure shall also apply where the Union, acting as respondent pursuant to Article 8, is successful in the arbitration but has to bear any costs arising from the arbitration.**

## Amendment 10

### Proposal for a regulation Article 18 – title

*Text proposed by the Commission*

*Amendment*

*Advance* payment of arbitration costs

Payment of arbitration costs

## Amendment 11

### Proposal for a regulation Article 18 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Commission may adopt a decision requiring the Member State concerned to make financial contributions to the budget of the Union in respect of **any** costs arising from the arbitration **where it considers that the Member State will be liable to pay any award pursuant to** the criteria set down in Article 3.

1. **Where the Union acts as respondent pursuant to Article 8, and unless an arrangement has been entered into pursuant to Article 11,** the Commission may adopt a decision requiring the Member State concerned to make **advance** financial contributions to the budget of the Union in respect of **foreseeable or incurred** costs arising from the arbitration. **Such a decision on financial contributions shall be proportionate, taking into account** the criteria set down in Article 3.

## Amendment 12

### Proposal for a regulation Article 19

#### *Text proposed by the Commission*

A Member State's reimbursement or payment to the budget of the Union, for the payment of an award or a settlement or any costs, shall be considered as internal assigned revenue in the sense of **[Article 18 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the General Budget of the European Communities]**. It may be used to cover expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for *investor-state* dispute settlement or to replenish appropriations initially provided to cover the payment of an award or a settlement or any costs.

#### *Amendment*

A Member State's reimbursement or payment to the budget of the Union, for the payment of an award or a settlement or any costs, ***including those referred to in Article 18(1) of this Regulation***, shall be considered as internal assigned revenue in the sense of **Article 21(4)** of Regulation (EU, Euratom) **No 966/2012**. It may be used to cover expenditure resulting from agreements concluded pursuant to Article 218 of the Treaty providing for *investor-to-state* dispute settlement or to replenish appropriations initially provided to cover the payment of an award or a settlement or any costs.

Or. en

## Amendment 13

### Proposal for a regulation Article 20 – paragraph 1

#### *Text proposed by the Commission*

1. The Commission shall be assisted by ~~the~~ Committee for Investment Agreements established by Regulation **[2010/197 COD]**. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

#### *Amendment*

1. The Commission shall be assisted by the Committee for Investment Agreements established by Regulation (EU) **No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries<sup>1</sup>**. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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Or. en

#### Amendment 14

##### Proposal for a regulation Article 21 – paragraph 1

*Text proposed by the Commission*

1. The Commission shall submit a report on the operation of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than **three** years after the entry into force of this Regulation. Subsequent reports shall be submitted every three years thereafter.

*Amendment*

1. The Commission shall submit a **detailed** report on the operation of this Regulation to the European Parliament and the Council at regular intervals. **That report shall contain all relevant information including the listing of the claims made against the Union or the Member States, related proceedings, rulings and the financial impact on the respective budgets.** The first report shall be submitted no later than **five** years after the entry into force of this Regulation. Subsequent reports shall be submitted every three years thereafter.

Or. en

#### Amendment 15

##### Proposal for a regulation Article 21 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. The Commission shall annually submit to the European Parliament and to the Council a list of requests for consultations from claimants, claims and arbitration rulings.**

Or. en

