




EUROPEAN COMMISSION
Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and
Public Procurement

B1 – Services

B2 – Investment

Brussels, 20 December 2018

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REPORT

**Subject: Trade Policy Committee (Services and Investment),
Brussels – 7 December 2018**

SUMMARY

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III. Session on Investment OUT OF SCOPE

4. UNCITRAL Working Group III – Multilateral Investment Court

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4. UNCITRAL Working Group III – Multilateral Investment Court

The Committee will discuss draft papers from the Commission for phase III of the discussions.

COM ([Art. 4.1(b)]) briefly summarised what had been discussed the day before at the informal technical meeting on 6 December 2018. Two papers are to be prepared for UNCITRAL Working Group III.

The first paper on the proposed four-step process of Working Group III, which was distributed to the TPC SI delegates on 4 December 2018, is intended to ensure efficient functioning and to show how WG III is progressing. Step 1 would invite governments to identify and propose substantial options in conceptual form for which they would like the working group to eventually develop solutions. In step 2, the working group would identify which of the options proposed in step 1 should be the subject of further work. Step 3 would include a discussion and decisions on the priority to be given, the sequence of consultations, the possibility of multiple-tracks, coordination with other international organisations and inter-sessional work on the options mentioned in step 2. Step 4, in the light of the decisions that the Working Group could take in Step 3, would include the development of concrete solutions that could be adopted or supported by the UNCITRAL Commission and finally by the United Nations General Assembly.

We then moved on to the content paper. The second paper on the proposed reform in Phase III of the Working Group's mandate, which deals with the possible establishment of a permanent mechanism for resolving international investment disputes, was transmitted to the TPC SI delegates on 4 December 2018. This consists of 3 elements.

First, we explain what reform UNCITRAL has identified as desirable. This is followed by a conceptual and detailed description of the MIC, which is based on the negotiation directives. In a final step, we explain why only a permanent body can effectively respond to the

concerns. The crucial question is how much openness we should show. COM thinks that openness is useful.

[Art. 4.1(a)]

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COM suggests that a translation will not be initiated until we have a stable version of the document in English. Since the next meeting of WG III will take place in April 2019, this document needs to be approved at the next TPC meeting (on 19 December, 2018 so that all necessary steps can be taken early and the document can be completed as soon as possible. To this end, the Member States should submit proposals for comments by 14 December 2018. If it turns out that this is not possible in time, COM would suggest scheduling a TPC meeting on 9 January 2018.

The next meeting should take place on 19 December 2018.

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Contact:
[Art. 4.1(b)] , TRADE/B2, Tel. [Art. 4.1(b)]