

	<b>BRIEFING</b> <i>Origin: DG TRADE</i>	<ul style="list-style-type: none"><li>○ <b>Subject:</b> EU–Egypt trade and investment relations</li><li>○ <b>Meeting with the</b> Egyptian Minister of Investment and International Cooperation, Ms Sahar Nasr</li><li>○ <b>Date:</b> 17.10.2018</li><li>○ <b>Place:</b> Brussels</li></ul>	 Ref. Ares(2019)5225987 - 20/05/2019
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## SCENE SETTER

# Out of Scope

The meeting would provide also an opportunity to thank Egypt for a positive collaboration at technical level on the Multilateral Investment Court initiative and the UNCITRAL process. DG Trade/F2 had several exchanges on the objectives of the reform with the Egyptian Ministries of Trade and Foreign Affairs. [Art. 4.1(a)]

# Out of Scope

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## Out of Scope

- I would also like to take this opportunity to thank the Egyptian side for the constructive bilateral discussion we currently have on the Multilateral Investment Court initiative and the UNCITRAL reform process.
- We had several meetings with Egyptian officials working on the investor-state dispute settlement (ISDS) and the UNCITRAL reform process in Cairo in June 2018. [Art. 4.1(a)]
- We look forward to further coordinating on this file in view of the UNCITRAL sessions and therefore hope that Egypt will actively participate in the next UNCITRAL discussions starting on 29 October 2018 supporting the idea of systemic reform by creation of a new multilateral court.

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Out of Scope

#### **4. Multilateral Investment Court initiative**

	<p><b>BRIEFING</b></p> <p><i>Origin: DG TRADE</i></p>	<ul style="list-style-type: none"> <li>○ Subject: EU–Egypt trade and investment relations</li> <li>○ Meeting with the Egyptian Minister of Investment and International Cooperation, Ms Sahar Nasr</li> <li>○ Date: 17.10.2018</li> <li>○ Place: Brussels</li> </ul>
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[Art. 4.1(a)]

- We believe that support should be made available to ensure that developing and least developed countries can operate effectively in the investment dispute settlement regime.
- The EC is following the initiative launched by the Dutch Government to discuss the possible establishment of an Advisory Centre for International Investment Law (ACIIL), similar to the WTO experience of the Advisory Centre on WTO Law (ACWL). The center would provide administrative and legal assistance to respondents that face investor claims and are not in a position to defend themselves adequately.
- We support this initiative and we will have to see how to coordinate it with the initiatives and inputs coming from other countries, [Art. 4.1(a)].

*Does the Commission plan to include procedural provisions such as the definitions of “investor” and “investment”, “counterclaims”, or “State-to-State dispute settlement” in the Convention establishing the Multilateral Investment Court?*

- The Commission’s position is that similar provisions would be included only in the underlying investment treaties that would be subject to the jurisdiction of the Court.

[Art. 4.1(a)]

*Does the Commission foresee to have a one-size-fits-all model or more flexible rules on transparency to be applied to investment proceedings before the Court?*

- The Commission’s position is that the UNCITRAL Rules on Transparency (or similar ones) should apply to the Court’s proceedings.
- The Commission understands and shares the need to protect confidential information, but believes that the UNCITRAL Rules on Transparency already provide for effective exceptions for confidential or protected information, as well as in cases where disclosure of the information to the

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public would be contrary to the State's essential security interests or jeopardize the integrity of the arbitral process (Article 7 of the Rules).

***On 6 March 2018, the Court of Justice of the European Union (CJEU) ruled in the Achmea case that the ISDS mechanism established in bilateral investment treaties between Member States ("intra-EU BIT") undermines the autonomy of the EU legal order and is therefore incompatible with the EU Treaties. Does the judgement have any impact on the EU's external investment policy, including on ICS and the multilateral investment court project?***

- No, the Court's judgment only concerns intra-EU disputes and the Commission has been very clear that different legal considerations apply to external EU investment policies.
- In any event, the Court is also currently considering legal issues relating to the EU's external investment policy. This happens in the framework of the procedure triggered by Belgium to obtain the Court's opinion concerning the compatibility of the Investment Court System under CETA with the EU Treaties. We expect that the Court will give its Opinion on CETA in early 2019, but the timing is of course in the hands of the Court. In any event, we remain convinced that any possible Opinion of the Court would confirm the compatibility of the Investment Court System with the Treaties.