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Sent: Thursday, November 12, 2020 3:13 PM

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Subject: AW: Ares(2020)6157524 - Investment protection and facilitation: follow-up to our call

Dear [REDACTED],

Thank you for following up on our conference call with these specific questions. We are very glad to see that our contribution to your public consultation has been examined in such detail.

Please find our answers in the attached document, which we prepared together with our experts in Frankfurt. We hope that this is useful for your further analysis of the EU Investment Protection framework. As explained during our recent call, we largely refer to our experiences in the Central and Eastern European region. We thus take a broader perspective that relates to larger-scale disputes with national governments.

Please let us know in case you have any further questions regarding our answers. We look forward to continuing the fruitful exchange on this issue with you in the next months.

Kind regards,

[REDACTED]

[REDACTED]

Commerzbank AG

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Von: [redacted] <[redacted]@ec.europa.eu>

Gesendet: Friday, October 30, 2020 16:47

An: [redacted] <[redacted]@commerzbank.com>; [redacted]

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Betreff: Ares(2020)6157524 - Investment protection and facilitation: follow-up to our call

[Ares\(2020\)6157524 - Investment protection and facilitation: follow-up to our call](#)

Sent by [redacted] (FISMA) <[redacted]@ec.europa.eu>. All responses have to be sent to this email address.

Envoyé par [redacted] (FISMA) <[redacted]@ec.europa.eu>. Toutes les réponses doivent être effectuées à cette adresse électronique.

Dear [redacted], dear [redacted], dear [redacted], der [redacted],

Thank you for your interest in our initiative on investment protection and facilitation intra-EU and for your contribution to our public consultation.

As discussed during the phone call last week with my team, we have prepared some specific follow-up questions on the basis of your response to the public consultation.

- Your contribution reads: *"In a majority of Member States, judicial proceedings are slow in comparison with business cycles, depriving investors from a timely compensation. In addition, a number of Member States still do not guarantee a fair and equitable treatment to investors originating in another Member State. Litigations are often treated in a biased manner since the judicial system is exposed to interferences by the executive branch. As explained above, national courts prove often insufficiently specialised in this type of litigation"*.

We understand that in your practice the concerns about independence and impartiality have been limited to some Member States, while concerns relating to the length of proceedings and specialization of judges in this field seem relevant to the "majority of" Member States. Could you please confirm if this understanding is correct.

Could you also specify if possible concrete issues relating to efficiency and specialization you have faced in practice.

- Your contribution states: *"It would thus be helpful to put in place a harmonised and specified notion of the extent to which measures interfere with the distinct and reasonable expectations of investors and how this relates to claims for compensation."*

Can you point to positive examples in this respect based on your practice?

- You state that: *"The principle of good administration is regularly used in broad terms without reference to concrete rights stemming thereof. Thus, we believe that specifications could help investors to better benefit from the general clause. This relates e.g. to the treatment of requests of investors before national administration."*

Could you please specify the type of request and administrative procedures that are particularly relevant in your practice (e.g. authorisations, enforcement activities such as inspections, etc)

- Your contribution refers to *discrepancies that arise from diverging legal opinions of national courts*. Can you point to specific areas where you have identified such discrepancies in case-law in different MS?

- You state that the below *“remedies have been recognised either at the EU level via the case law of the CJEU or/and in Member States legal order. Unfortunately, it can be observed that in practice, not many of those remedies are being applied by Member States courts.”*

(Provisional measures (interim relief) | Annulment of national measures | Request to interpret national law in a way that is consistent with EU law | Disapply national provisions that are contrary to EU law | Award damages | Restitution (e.g. of the claimed good)

Could you please specify which remedies in your experience have not been effectively applied in practice?

- You refer to difficulties in finding information more specifically, stating:

“While the main EU initiatives contain enough information to facilitate investments in general, it is difficult to find any references to specific FDI laws and regulations regarding public administration in the respective Members States (e.g. in YourEurope portal) as well as procedures for circumstances negatively affecting existing investments.”

We understand that in your view further information is necessary (on Your Europe portal) than that provided in the Communication on protection of intra-EU investment. Could you please specify what kind of procedures and circumstances should also be specified (e.g. examples of how the rules are relevant in specific situations?)

- Your contribution states: *“For some common issues of institutional investors, SOLVIT is not able to give relevant guidance.”*

Are you referring to issues in relations with the government or private operators? What limitations in the SOLVIT service have prevented you from using it in practice in disputes with national authorities?

We would much appreciate clarifications on these aspects, either in writing or in a follow-up phone call at technical level if more convenient.

Many thanks in advance.

Kind regards,



European Commission

DG Financial Stability, Financial Services and Capital Markets Union



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Find us on the web: http://ec.europa.eu/finance/index_en.htm

The views expressed in this e-mail are my own and may not, under any circumstances, be interpreted as stating an official position of the European Commission.