

To: DEMARTY Jean-Luc (TRADE); PETRICCIONE Mauro Raffaele (TRADE); [*]
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 (TRADE); REDONNET Denis (TRADE); [*] (TRADE); [*]
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 [*] (TRADE); ASENIUS Maria (CAB-MALMSTROM); NYMAN Jon
 (CAB-MALMSTROM); [*] (SJ); [*] (SJ)

Subject: MEETING REPORT Informal technical meeting with Member States –
 Multilateral Investment Court (MIC) project. 22 November 2016

Summary – informal meeting with MS as COM continues work on the MIC. The meeting was to update MS on progress on the MIC, and in particular on the next steps of the impact assessment and on the upcoming Geneva meeting. MS generally showed support for COM action, asked questions on the UNCITRAL questionnaire, MIC scope of application, institutional set-up, costs, and negotiating forum and process. MS also asked questions on support from third countries and external communication. COM answered questions and confirmed repeatedly that it will revert to MS to present the matters that will arise in future discussions in EU-internal and external fora more thoroughly and in detail.

The informal technical meeting with Member States was structured in two main parts:

1. An overview of the internal EU and external process for the establishment of a Multilateral Investment Court (MIC).
2. A presentation of the structure, attendance, and expected follow-up of the Geneva meeting, followed by a discussion on the non-paper circulated to Member States.

In the first part of the meeting, COM [*] updated the Member States on the latest developments of the MIC project: EU-internally, on expected meetings with Member States and with the European Parliament, on the progress of the Impact Assessment process, and on the subsequent Council process; EU-externally, on the UNCTAD World Investment Forum and the OECD Investment Treaty Dialogue meetings with third countries (co-hosted with Canada for building support on the multilateral reform), on the upcoming Geneva expert meeting, on a possible ministerial meeting and on possible next steps.

[**] emphasised the importance of an effective external communication of the Commission's work, especially in light of past failures in the multilateralisation of investment rules (e.g. MAI project). [**] and [**] asked for guidance in replying to question n. 8 of the UNCITRAL questionnaire. Several Member States asked about countries supporting the MIC project. [**]

[**] expressed their concern that other countries' own reform projects could prevail over the EU one, and [**] warned about the necessity of having a sufficiently wide critical mass before engaging in a very complex process. Asked by [**] whether COM expects Member States' participation in Geneva, COM replied that the Geneva meeting is primarily designed to foster discussions with and between third countries and should not become an intra-EU discussion.

In the second part of the meeting, COM [∗] described the structure and attendance of the Geneva meeting and then debriefed about the content of the Discussion Paper on a point-by-point basis: the introduction, the rationale of the initiative, the technical issues relating to the functioning of the multilateral system, and the next steps of the process.

[∗∗] and [∗∗] expressed their full support to COM action, with [∗∗] asking about the nature of the Court design (whether it is intended to be a permanent *court* or an *arbitral* institution, especially with regards to enforcement and review rules). [∗∗] and [∗∗] strongly supported the presence of the WTO in the panel of speakers in Geneva. On scope of application, [∗∗] and [∗∗] pushed for introducing flexibilities in the system, [∗∗] and [∗∗] asked questions about the suitability of the Mauritius Convention as a model for the MIC and proposed to add further reference to alternative texts (e.g. OECD Convention on Taxation) in the Discussion Paper. On institutional set-up, [∗∗] recommended to analyse the membership, rules of procedure of the decision-making process, and internal dynamics of existing international organisations and institutions to potentially dock the MIC onto. [∗∗] suggested preparing a comparative outline of these institutions for facilitating the discussions and decision. [∗∗] argued that the amount of States initiating the MIC and the amount of cases expected to be brought are two criteria to be taken into account for deciding whether establishing a new international mechanism completely independent from existing institutions or docking it onto an already existing framework and which may also impact on costs. [∗∗]

On costs, [∗∗] (echoed by [∗∗] and [∗∗]) underlined the importance of providing for user fees, as deterrent against abuses of actions, and an alleviation mechanism for SMEs. Lastly, as per the negotiating forum and process, [∗∗] asked COM to be cautious in showing clear signs of interest towards the UNCITRAL at this preliminary stage and [∗∗] (echoed by [∗∗] and [∗∗]) suggested preparing a comparative outline of possible negotiating fora.