



**EUROPEAN COMMISSION**

Directorate-General for Trade

Directorate F - WTO, Legal Affairs and Trade in Goods  
**Dispute Settlement and Legal Aspects of Trade Policy**

Brussels, 24 July 2017  
F.2/[REDACTED] (2017) 2583374

**Subject: Meeting with Business Europe Market Access WG  
(20<sup>th</sup> February 2017)**

**Participants:** [REDACTED]

(COM); BusinessEurope Secretariat and Market Access WG (BE – see list of attendants in the annex below).

**This meeting follows a series of meetings (October 2016, December 2016 and January 2017) with BE where the COM gives an update and clarifies aspects of its work on the multilateral investment court initiative. There are a number of substantive and procedural issues that are recurrent in these meetings.**

COM gave some background on the multilateral investment court project and its rationale. It explained the ongoing EU external work (exploratory discussions with third countries where further work at the technical level is needed) and internal process (Impact Assessment, public consultation open and stakeholder meeting to be held the following week).

BE is concerned that the multilateral investment court may unduly expand states' right to regulate and that the possibility to appeal may run counter to investors' interests. BE is sceptical that one single court will interpret rules included in different instruments. COM clarified that the multilateral investment court preserves the substantive protection rules in investment agreements and explained that the right of appeal will benefit investors which presently are compelled to seek annulment and start the dispute from scratch in case of errors of the tribunal. COM referred to the high similarity if not identity of substantive rights across agreements and stressed that effective enforcement of decisions will be fundamental.

On the scope of cases that the multilateral investment court will be competent to hear, COM recalled that it considers intra-EU BITs illegal and it hopes the outcome the ACHMEA case will provide additional guidance.

BE showed interest on the initial positions of international organisations and third countries in relation to this initiative, and one member stressed the importance that key countries [Art. 4.2] be on board. BE recalled that the COM is being very active on investment issues and suggested that it approaches them in a more horizontal manner. COM explained that the accession mechanism to a possible multilateral investment court would be similar to the Mauritius Convention.

Participants also sought clarifications on the questionnaire. A **BE** member expressed disagreement with its formulation.

[REDACTED]

C.c: D. Redonnet, [REDACTED]  
[REDACTED]  
[REDACTED]

## Annex

**BUSINESSEUROPE**



ATTENDANCE LIST

20 February 2017

### MARKET ACCESS WORKING GROUP

**20 FEBRUARY 2017**

Time: 14:00-17:30

Venue: BusinessEurope, 168 av. Cortenbergh, Room Adenauer

#### CHAIRMAN:



#### GUESTS



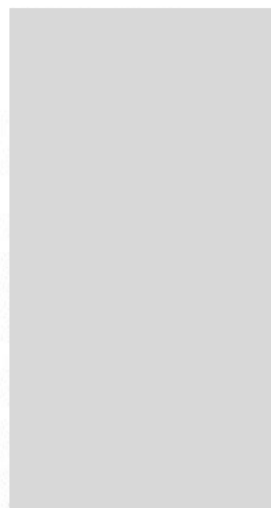
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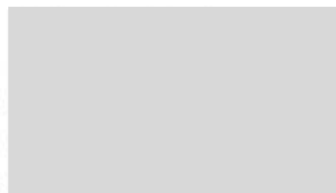
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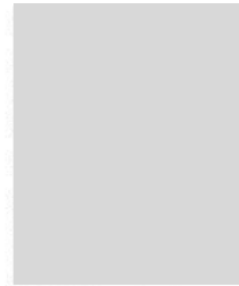
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