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zur öffentlichen Konsultation der Europäischen Kommission über eine multilaterale Reform der Beilegung von Investitionsstreitigkeiten

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Rat der Europäischen Union
Ständige Vertretungen der Bundesrepublik Deutschland bei der EU
Justizreferenten der Landesvertretungen
Rat der Europäischen Anwaltschaften (CCBE)
Europäische Bürgerbeauftragte

Deutschland

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Die Bundesrechtsanwaltskammer ist die Dachorganisation der anwaltlichen Selbstverwaltung in Deutschland. Sie vertritt die Interessen der 28 Rechtsanwaltskammern und damit der gesamten Anwaltschaft der Bundesrepublik Deutschland mit etwa 164.000 Rechtsanwältinnen und Rechtsanwälten gegenüber Behörden, Gerichten und Organisationen – auf nationaler, europäischer und internationaler Ebene.

Die Bundesrechtsanwaltskammer bedankt sich für die Möglichkeit, an der Konsultation über eine multilaterale Reform der Beilegung von Investitionsstreitigkeiten teilnehmen zu können. Auf den Fragebogen der Konsultation möchte sie wie folgt antworten:

Public consultation on a multilateral reform of investment dispute resolution

Questions

27. The inclusion of an Investment Court System (ICS) in all relevant EU agreements has raised questions relating to the long-term efficiency of managing multiple bilateral dispute settlement instances in EU trade and investment agreements. There is also a cost aspect for the EU due to the fixed annual costs generated by each ICS (for each ICS approximately EUR 0.5 million/year on account of the remuneration of the permanent tribunal members and members of the appeal tribunal).

To what extent do you consider that seeking to include an ICS in each EU agreement may be less optimal for the EU from the point of view of complexity and cost?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not problematic) to 5 (very problematic)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Die Idee, für jedes Investitionsschutzabkommen ein eigenes stehendes Investitionsgericht zu schaffen, wird zu beachtlichen Kosten führen. Zwar gibt es bislang auf EU-Ebene noch wenige Investitionsschutzabkommen, aber es ist zu erwarten, dass sich das in den kommenden Jahren ändern wird. Wenn man sich vorstellt, dass viele Mitgliedsstaaten mehr als 100 bilaterale Investitionsschutzabkommen abgeschlossen haben, kann man sich leicht ausrechnen, wie hoch in einigen Jahren die Kostenposition sein wird, wenn pro stehendes Investitionsgericht eine halbe Million Euro pro Jahr veranschlagt wird. Es ist weiterhin nicht schwierig, vorherzusagen, dass viele stehende Investitionsgerichte keine Fälle haben werden, wenn man die Erfahrungen der Mitgliedstaaten mit bilateralen Investitionsschutzabkommen als Vergleichsmaßstab heranzieht. Viele dieser Investitionsschutzabkommen sind bislang überhaupt noch nicht Gegenstand von Schiedsverfahren gewesen, weil es zu keinen Streitigkeiten zwischen Investor und Gaststaat gekommen ist.

28. The EU's reformed approach for investment dispute settlement can naturally only apply to future EU agreements. It leaves open the issue of what to do with the many existing investment treaties in force worldwide (3320 in force, as of November 2016 according to UNCTAD figures^[1]), a very high number of which contain traditional ISDS provisions and could give rise to disputes using those dispute settlement provisions. Treaties between EU Member States and third countries

alone account for around half of these existing treaties (1400 bilateral investment treaties (BITs) with third countries). The EU itself is party to the Energy Charter Treaty (ECT). It is not conceivable that such a high number of investment treaties could be renegotiated to allow to make changes to the ISDS provisions. At EU level, this raises a particular issue, as there would be two sets of investment dispute resolution rules applicable in the EU and Member States' investment relations with third countries depending on which treaty is at issue: (i) ISDS provisions would apply if a dispute is brought by an investor under one of the existing Member State BITs or the ECT; (ii) ICS would apply if a dispute is brought by an investor under an EU level trade and investment agreement with a third country.

In your view how important is it that the same procedural rules for investment dispute settlement apply in EU Member States' existing BITs with third countries and in EU level trade and investment agreements with third countries?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not important) to 5 (very important)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Vor dem Hintergrund, dass die bilateralen Investitionsschutzabkommen der EU-Mitgliedstaaten im Laufe der Zeit durch Abkommen auf EU-Ebene ersetzt werden, sind Unterschiede nur noch eine Frage der Zeit. Auch heute müssen sich Investoren auf unterschiedliche Ausgestaltungen der Rechtsschutzmöglichkeiten bei Investor-Gaststaatauseinandersetzungen einstellen. Zwar wird meist ein Schiedsverfahren vorgesehen, die Ausgestaltung im Einzelnen hängt aber von den anwendbaren Schiedsregeln ab.

29. If you consider it important to have the same procedural rules apply, please indicate why:

From 0 (not important) to 5 (very important)

	0	1	2	3	4	5	I don't know / I don't have an opinion
Increases legal certainty for investors and states in the EU and in third countries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provides uniformity to the applicable dispute settlement rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Improves investment climate in the EU and in third countries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It is important for the EU's credibility that reform of ISDS also applies at the level of EU Member States' BITs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Possible features of a new multilateral system for investment dispute resolution

30. The specific features below are some of the most important elements at the basis of the EU's bilateral ICSs to be included in the EU's trade and investment agreements with third countries. If a multilateral reform were to be started to what extent do you consider that these elements should also be reflected?

From 0 (should not be included) to 5 (should certainly be included)

	0	1	2	3	4	5	I don't know / I don't have an opinion
Permanent dispute resolution structure (i.e. not disbanded after issuing a ruling)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal instance to correct errors of law and manifest errors of fact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Full-time adjudicators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fixed remuneration for adjudicators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
High qualification criteria for selecting adjudicators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Random allocation of cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transparency / full documentation disclosure requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

High ethics standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Safeguards for independence (e.g. random allocation, tenure, etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

31. Can you identify other possible features that you believe should be included in a new multilateral system?

Text of 1 to 500 characters will be accepted

Das System sollte Qualität, Integrität und Transparenz sicherstellen, ansonsten sollte es so flexibel und kosteneffizient ausgestaltet sein wie möglich.

32. An important criticism commonly made of the current investment dispute settlement system is that developing or transition economies do not always have the resources and legal expertise to defend themselves effectively and adequately against claims made by investors.

Do you think that discussions on a new multilateral system for investment dispute resolution should include special assistance to developing countries?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (should not be addressed) to 5 (should certainly be addressed)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Eine Schulung von Gaststaaten, was konkret die eingegangenen Verpflichtungen in den Investitionsschutzabkommen bedeuten, wäre als Unterstützung der Entwicklungsländer durch die Europäische Union sinnvoller als die Unterstützung dieser Staaten bei der Abwehr von Ansprüchen der Investoren. Die Einhaltung von Investorenrechten, wie das Verbot willkürlichen staatlichen Handelns oder die Gewährung von Vertrauensschutz, würde insgesamt die Rechtstaatlichkeit in den Gaststaaten fördern. Vielfach unterhalten Gaststaaten Agenturen zur Gewinnung von Auslandsinvestitionen, stellen aber keine Unterstützung nach Tätigung der Investition zur Verfügung. Ein „After-Investment“-Service würde sicherlich helfen, Probleme und Fehlvorstellungen von Investoren frühzeitig zu erkennen, und so dazu beitragen, Streitigkeiten zu vermeiden.

33. If the issue of special assistance for developing countries should be addressed, do you consider that centres that provide assistance to developing countries (such as the Advisory Centre on WTO Law - ACWL) which provide legal service and support in WTO dispute settlement proceedings, provide a useful model in this regard?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not a useful model) to 5 (certainly a very useful model)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

34. Please provide any additional comments that you may wish to add on how to take account of the special needs of developing countries within a multilateral reform of investment dispute settlement.

Text of 1 to 500 characters will be accepted

Den Gaststaaten muss deutlich gemacht werden, dass die Gewährung von Investorenrechten zu justiziablen Verpflichtungen führt, die mit einer Einschränkung der staatlichen Souveränität einhergeht. Dies ist Gaststaaten vielfach nicht bewusst.

35. Similarly, critics of the system have consistently argued that it is difficult for SMEs to access the investment dispute settlement system considering the associated costs (although these are largely made up of legal costs) and perceived complexity.

In the context of a multilateral reform, do you believe that there should be special provisions for SMEs?

- Yes
- No
- I don't know / I don't have an opinion

36. If yes, please rank the importance of the following proposals for making it easier for SMEs to resolve disputes:

From 0 (not important) to 5 (very important)

	0	1	2	3	4	5	I don't know / I don't have an opinion
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Simplified procedures, including shorter timeframes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If fees are applicable during the procedures, capped fees	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flexible geographical hearing locations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enhanced possibilities to resort to mechanisms of alternative dispute resolution (such as mediation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other ideas for making it easier for SMEs to resolve disputes. Please specify

Text of 1 to 500 characters will be accepted

Soweit kleinere und mittlere Unternehmen einen gut vertretbaren Fall haben, also nachweislich in ihren Investorenrechten verletzt wurden, sollte eine Art Prozesskostenhilfe eingerichtet werden, um zu vermeiden, dass diese Unternehmen aus dem Investorenschutz herausgedrängt werden. Es geht dabei um den effektiven Zugang zur Justiz.

37. Please provide any additional comments that you may wish to add on how to take account of the special needs of SMEs within a multilateral reform of investment dispute settlement.

Text of 1 to 500 characters will be accepted

Es wäre sinnvoll, wenn die Europäische Kommission eine zentrale Anlaufstelle für kleinere und mittlere auslandsinvestierende Unternehmen schaffen würde, wo diese Rat und Unterstützung (u.a. diplomatische Bemühungen um Streitbeilegung) erhalten.

38. In your view, should a multilateral dispute settlement mechanism be limited to investment treaties only?

- Yes
 No
 I don't know / I don't have an opinion

39. If not, please identify what other issues relating to investment could be covered by a permanent multilateral dispute settlement mechanism.

Text of 1 to 500 characters will be accepted

40. In most international judicial systems, the enforcement of the ruling or award is a crucial element for the effectiveness of the system in question. The same applies to investment dispute resolution. Under the current system of ad hoc ISDS arbitration there are a number of ways to enforce arbitral awards. For instance, the rules that apply to dispute settlement under the International Centre for Settlement of Investment Disputes (ICSID) Convention ensure that the enforcement of pecuniary awards is obligatory in the domestic courts of every state party to the ICSID Convention. Consequently, domestic courts cannot refuse the enforcement of an ICSID award and their power is limited to verifying that the award is authentic. 159 countries signatory to the ICSID [Convention](#) have subscribed to this system, which ensures an effective enforcement system. Other awards can be enforced via the [United Nations New York Convention on the Enforcement of Arbitral Awards](#).

Do you consider that in the context of discussions on a multilateral reform (which would include an appeal mechanism) a mechanism comparable to ICSID for the enforcement of decisions (i.e. that enforcement is not subject to domestic review) should be sought?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (no, this is not needed) to 5 (yes, this is certainly needed)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Die Frage setzt bereits voraus, dass es einen Berufungsmechanismus gibt. Soweit dies der Fall ist, besteht kein weiterer Bedarf für eine Kontrolle der Entscheidung des Investitionsgerichts durch staatliche Gerichte. Anderenfalls verlängert sich der Streitbeilegungszeitraum und damit die rechtlichen und finanziellen Unwägbarkeiten für Unternehmen. Was unter jedem Umstand vermieden werden sollte, ist eine Situation, in der Gaststaaten die Möglichkeit eingeräumt wird, unter Verweis auf den eigenen Ordre Public die Vollstreckung von Entscheidungen von Investitionsgerichten zu verweigern.

41. Please provide any additional comments that you may wish to add on the enforcement of awards.

Text of 1 to 500 characters will be accepted

Options for a reform at multilateral level

42. A crucial aspect would be that such a single Multilateral Investment Court could potentially adjudicate disputes arising not just under future investment treaties but also under existing international investment treaties. This could for instance be achieved through a system of opt-ins where countries agree in the Treaty/Legal Instrument establishing the single Multilateral

Investment Court to subject their investment treaties to the jurisdiction of the Court (a model could be the [United Nations Mauritius Convention on Transparency for Investor-State Dispute Settlement](#)). The single Multilateral Investment Court would thus in effect supersede ISDS provisions included in investment treaties of EU Member States with third countries or in investment treaties in force between third countries. It would also replace the ICS that would have been included in EU level agreements with third countries.

Do you share the view that such a single Multilateral Investment Court should also be competent to adjudicate disputes arising under existing investment treaties, including EU Member State BITs with third countries, EU level trade and investment agreements and investment treaties in force between third countries?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not important) to 5 (very important)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

43. A number of potential positive effects have been identified which could result from centralising international investment dispute settlement in a single Multilateral Investment Court.

Please indicate to what extent you agree that centralisation could contribute to the following:

From 0 (not likely) to 5 (very likely)

	0	1	2	3	4	5	I don't know / I don't have an opinion
More predictability in investment dispute resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Higher degree of legitimacy for this type of dispute settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased consistency of case law and legal correctness through the permanent appeal tribunal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Higher level of efficiency in the adjudication procedure (more efficient adjudication)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lower costs for users (assuming some or all procedural costs would be borne by the states Party to the agreement)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other contributions which could be achieved by centralisation. Please specify

Text of 1 to 500 characters will be accepted

Eine Zentralisierung der Streitbeilegung würde zumindest die (unsinnige) Kostenexplosion vermeiden, die unweigerlich mit der Einrichtung von zu vielen ad hoc Investitionsgerichten einhergehen würde.

A permanent Multilateral Appeal Tribunal

44. Another option that has emerged is the establishment of a permanent Multilateral Appeal Tribunal, i.e. without changing the existing first instance tribunals. Thus a Multilateral Appeal Tribunal would be limited to deal with ISDS awards appealed on the grounds of errors of law and manifest errors of fact, which the current ISDS system does not allow for. This would address the issue of ensuring legal correctness and assist with consistency of case law. The Multilateral Appeal Tribunal would rule on ISDS awards rendered under the ad hoc ISDS tribunals established under existing investment treaties (e.g. EU Member States' BITs) and under investment treaties in force between third countries. Such a Multilateral Appeal Tribunal would also replace the Appeal Tribunals included in the EU's ICSs in EU trade and investment agreements with third countries.

Do you agree that the creation of a permanent Multilateral Appeal Tribunal would already be an important tool to improve legal correctness in investment dispute resolution as argued above?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (completely disagree) to 5 (completely agree)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

45. **Do you consider that establishing a Multilateral Appeal Tribunal (i.e. without a multilateral tribunal at the level of the first instance) would be sufficient to satisfactorily reform the current investment dispute settlement system?**

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (completely disagree) to 5 (completely agree)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Design, composition and features of a single Multilateral Investment Court or a Multilateral Appeal Tribunal

46. Do you consider that it is important to ensure that each country party to the agreement establishing the single Multilateral Investment Court or Multilateral Appeal Tribunal should have the possibility to appoint one or more adjudicators?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not important) to 5 (very important)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

47. Do you consider it important that the number of adjudicators should be tailored to the likely number of cases and not linked to the number of countries signatory to the agreement?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not important) to 5 (very important)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

48. Do you have any further comments on the manner in which adjudicators should be selected?

Text of 1 to 500 characters will be accepted

Schlichter sollten auch aus der Anwaltschaft rekrutiert werden, um sicherzustellen, dass auch Erfahrungen aus der freien Wirtschaft vorhanden sind. Dies gilt insbesondere für Anwälte, die Investoren bei ihren Auslandsinvestitionen begleitet haben und entsprechend mit den rechtlichen und kulturellen Herausforderungen vertraut sind.

49. Also common to both proposals whether to establish a single Multilateral Investment Court or a Multilateral Appeal Tribunal, are considerations on the qualifications required to be a permanent adjudicator. In the EU's Investment Court System (ICS), there are a number of criteria that adjudicators must meet for being eligible, including being qualified to hold judicial office in their country or being recognised jurists, as required by the International Court of Justice (ICJ) or the European Court of Human Rights (ECHR). Under the ICS, judges must also have expertise in public international law and previous experience in international investment law. It is assumed that adjudicators would be able to call on experts for technical or scientific information.

Do you consider that these qualifications would also be appropriate for a permanent multilateral mechanism, whether a single Multilateral Investment Court or a Multilateral Appeal Tribunal?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not appropriate) to 5 (fully appropriate)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

50. **Do you have any further comments on the qualifications of adjudicators under such a mechanism?**

Text of 1 to 500 characters will be accepted

Wichtig ist ein Verständnis für die Situation von Investoren und die Notwendigkeit von Schutzmechanismen. Es reicht nicht aus, dass lediglich Schlichter mit einem staatsnahen Erfahrungshorizont tätig werden, denen die notwendige Empathie für Investoren fehlt. Im heutigen System trägt die Auswahl eines Schiedsrichters durch den Investor bzw. Staat zu einer guten Balance bei, die durch die Reformen verloren zu gehen droht.

51. An important consideration would be the remuneration and conditions of employment of these adjudicators. Judges in the International Court of Justice (ICJ), the World Trade Organisation (WTO) Appellate Body or the Court of Justice of the EU (CJEU) receive a regular monthly salary

which is not linked to their workload.

Do you consider that adjudicators in a single Multilateral Investment Court or a Multilateral Appeal Tribunal should be remunerated in a similar manner?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (completely disagree) to 5 (completely agree)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Bei einer sehr attraktiven Vergütung der Tätigkeit besteht die Gefahr, dass die Schlichter staatsnah entscheiden, um sich eine Fortsetzung der Tätigkeit zu sichern. Entsprechend sollte die Amtszeit auf eine Periode beschränkt sein.

52. Under the EU's ICS set out in EU level agreements, tribunal members must adhere to high standards of ethical conduct. In particular, they cannot act as counsel in investment disputes (so-called "double hatting"). This is also a safeguard ensuring their impartiality. The legal text in EU agreements establishing the ICS foresees the possibility that tribunal members become full-time and hence would, in principle, not be allowed to have external activities.

Do you agree that adjudicators in a single Multilateral Investment Court or in a Multilateral Appeal Tribunal should be full-time with no external activities?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (completely disagree) to 5 (completely agree)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Eine Vollzeitposition muss nicht geschaffen werden, um das „Double-Hatting“ zu vermeiden. Allerdings wäre genau zu bestimmen, welche sonstigen Tätigkeiten oder Vergütungen zulässig sind.

53. In most international and domestic courts, including under the EU's ICS, disputes are allocated on a random basis to divisions of adjudicators to ensure impartiality and independence.

Do you agree that a similar approach should be followed for the distribution of cases in a potential multilateral investment mechanism, whether a single Multilateral Investment Court or in a Multilateral Appeal Tribunal?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (completely disagree) to 5 (completely agree)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

54. Another important consideration relates to the financing of a single Multilateral Investment Court or a Multilateral Appeal Tribunal, including salaries for adjudicators, staff and related administration expenses. For instance, under the EU's ICS, the Parties to the Agreement (i.e. the EU and the other country signing the trade and investment agreement) share the fixed operational costs of the ICS. A repartition key, for instance based on the level of economic development, is often used to determine the contribution of states that are members of international organisations.

In your view, would it be appropriate to employ a repartition key to determine the share of the contracting Parties in the operational costs?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not appropriate) to 5 (fully appropriate)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

55. **In your view, should it also be considered that some of the operational costs could be funded in part by user fees (i.e. by investors and/or states)?**

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (not appropriate) to 5 (fully appropriate)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Possible impacts

56. Do you consider that the establishment of a single Multilateral Investment Court or a Multilateral Appeal Tribunal could contribute in a positive way to improving the global investment climate?

	0	1	2	3	4	5	I don't know / I don't have an opinion
From 0 (no contribution at all) to 5 (very strong contribution)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Die positive Auswirkung des Investitionsgerichts wird letztlich davon abhängen, wie ausbalanciert die Entscheidungen sind. Wird das Investitionsgericht eine zu staatsfreundliche Haltung einnehmen und damit den Zweck des Investorenschutzes letztlich untergraben, werden sich die finanzstarken Investoren anderweitige Schutzmechanismen suchen, wie z.B. den klassischen Investitionsvertrag mit einem Gaststaat, in dem die herkömmliche Schiedsgerichtsbarkeit für die Streitbeilegung vereinbart wird. Die Besonderheit des heutigen Investorenschutzes besteht darin, dass es keiner vertraglichen Vereinbarung zwischen Investor und Gaststaat bedarf, um in den Schutzbereich zu fallen. Wer letztlich bei einer einseitigen Rechtsprechung zugunsten von Gaststaaten auf der Strecke bleiben würde, sind die kleinen und mittleren Investoren, die nicht die entsprechende Marktmacht besitzen, um den Gaststaat zum Abschluss von Verträgen zu bringen, um eine Investition anzuziehen.

57. If yes, please indicate the specific reasons:

From 0 (no impact) to 5 (strong impact)

	0	1	2	3	4	5	I don't know / I don't have an opinion
Higher acceptability of investment dispute settlement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Higher consistency of case law	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unified dispute settlement system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

58. The following preliminary economic impacts have been identified as resulting from the creation of a single Multilateral Investment Court or a Multilateral Appeal Tribunal for the settlement of investment disputes.

Please indicate to which extent you share this assessment.

From 0 (disagree) to 5 (fully agree)

	0	1	2	3	4	5	I don't know / I don't have an opinion
Reduced budgetary expenditure for the EU as a result of phasing out multiple Investment Court Systems (ICSs) in EU agreements in favour of a single multilateral mechanism	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reduced costs for users (investors, states) from having one single multilateral mechanism because of increased predictability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reduced costs because arbitrators' fees and fees of arbitral institutions (in current ISDS system) no longer necessary because remuneration of permanent adjudicators and court borne by Parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

59. No environmental impacts have been identified that would result from the creation of a single Multilateral Investment Court or a Multilateral Appeal Tribunal.

Do you consider that there could be any environmental impacts?

- Yes
- No
- No opinion

60. If you consider there would be any environmental impacts, please specify and explain the link with the establishment of a single Multilateral Investment Court or a Multilateral Appeal Tribunal.

Text of 1 to 500 characters will be accepted

61. No social impacts have been identified that would result from the creation of a single Multilateral Investment Court or a Multilateral Appeal Tribunal since there would be no change to the substantive investment rules.

Do you consider that there could be any social impacts?

- Yes
- No
- I don't know / I don't have an opinion

62. If yes, please specify the social impacts and explain how they are linked to the establishment of a single Multilateral Investment Court or a Multilateral Appeal Tribunal.

Text of 1 to 500 characters will be accepted