



# Multilateral structure for ISDS reform

UNCITRAL Working Group III Webinar, 23 April 2020

*European Union and its Member States*

# Why a multilateral approach ?

effective reform of ISDS requires establishing permanent bodies to adjudicate

predictability and consistency is important across investment treaties – states are typically party to multiple investment treaties

therefore need a mechanism which covers multiple parties and multiple treaties

- 1) EU + MS submission to WGIII (<https://undocs.org/en/A/CN.9/WG.III/WP.159/Add.1>)
- 2) EU + MS presentation – Vienna, January 2020  
[https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158600.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158600.pdf)

# Open architecture

Open to all countries who choose to use standing mechanism – positive consent from each country necessary

Would operate between 2 countries when both have chosen to use the standing mechanism and agreed that it applies to the treaty between them

# Open architecture

A certain level of **flexibility** could be built into a standing mechanism:

- Some countries might want to use a standing mechanism only for State-to-State dispute settlement (and not ISDS)
- Some countries might want to use only the appellate instance of a two-tier standing mechanism
- Some countries might want to use only first instance and not appeal of a standing mechanism

# Open architecture

## Structure could include (e.g.):

- advisory centre mechanism
- mechanisms for binding interpretations

## Structure can include rules on specific issues (e.g.):

- third-party funding
- reflective loss

# Open architecture

Would require ratification and positive opt-in for specific treaties. Examples of “opt-in” model:

- UNCITRAL Mauritius Convention on Transparency in ISDS
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “BEPS Convention”)

# EU and Member State papers/website

Interlinked nature of concerns:

<https://undocs.org/en/A/CN.9/WG.III/WP.145>

Establishing a standing mechanism for the settlement of international investment disputes

<https://undocs.org/en/A/CN.9/WG.III/WP.159/Add.1>

European Commission, DG TRADE, Multilateral Investment Court project:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1608>

# Thank you

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