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Settlement of commercial disputes

Investor-State Dispute Settlement Framework

Compilation of comments

Addendum

Contents

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III. Compilation of comments

18. Algeria

[Original: French]
[Date: 10 January 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

At the bilateral level, Algeria has signed 29 treaties with European countries, 29 treaties with Arab countries, 9 treaties with Asian countries, 3 treaties with American countries and 13 treaties with African countries.

The treaties signed and ratified by Algeria include provisions on the settlement of investor-State disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

The use of permanent tribunals for the resolution of disputes between investors and Algeria is provided for by both the bilateral and multilateral international agreements signed and ratified by Algeria.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

The IIAs concluded by Algeria do not contain provisions whereby investor-State arbitral awards may be subject to appeal.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

The IIAs signed and ratified by Algeria do not address the possible creation in the future of a bilateral or multilateral appellate mechanism for investor-State arbitral awards, or a bilateral or multilateral permanent investment tribunal or court.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

The IIAs signed and ratified by Algeria contain provisions on the amendment of the IIA.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Algerian domestic law recognizes and enforces judgments of international courts, subject to certain conditions. See article 605 of the Code of Civil and Administrative Procedure of Algeria.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

Algerian legislation on international arbitration contains provisions on appeal in articles 1055 to 1061 of the Code of Civil and Administrative Procedure.

19. Czech Republic

[Original: English]
[Date: 10 January 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

The Czech Republic is currently a Party to about 80 bilateral investment treaties and to the Energy Charter Treaty. All of them include provisions on the protection of foreign investment and on the settlement of investor-State disputes.

The Czech Republic is also a Party to the EU-Canada Comprehensive Trade and Economic Agreement (CETA) and the EU-Vietnam Free Trade Agreement. Both agreements contain provisions on the protection of foreign investment and on the settlement of investor-State disputes, but they are not yet in force. However, in respect of this questionnaire, the Czech Republic will only provide information regarding bilateral investment treaties concluded by the Czech Republic with a third State.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

None of the IIAs concluded by the Czech Republic provide for permanent courts or tribunals.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

None of the IIAs concluded by the Czech Republic allow appeal.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

None of the IIAs concluded by the Czech Republic contain the possible creation of a bilateral or multilateral appellate mechanism for investor-State arbitral awards or a bilateral or multilateral permanent investment tribunal or court. The only option how to incorporate the bilateral or multilateral appellate mechanism for investor-State arbitral awards or a bilateral or multilateral permanent investment tribunal or court is to amend the IIAs (see question 5).

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

Article 13(5) of the Czech — Chinese BIT, Czech — Bosnia and Herzegovina BIT and Czech — Bahrain BIT contains provisions on the amendment of the agreement, which states: "This agreement may be amended by a written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering in force of the present Agreement."

Article 15 of the Czech — Azerbaijan BIT contains provisions on the amendment of the agreement, which states: "Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the provision of Article 16 of this Agreement."

Article 12 of the Czech — Indonesian BIT contains provisions on the amendment of the agreement, which states: “This Agreement may be amended at any time, if deemed necessary, by mutual consent.”

Article 12(4) of the Czech — North Korean BIT contains provisions on the amendment of the agreement, which states: “This Agreement may be amended by mutual consent in writing between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all legal requirements for entry into force of such an amendment.”

Article 13(4) of the Czech — Lithuanian BIT contains provisions on the amendment of the agreement, which states: “This Agreement can be amended at any time as may be agreed by written notice between two Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that all necessary juridical formalities for entry into force have been completed.”

Article 11 of the Czech — Malaysian BIT contains provisions on the amendment of the agreement, which states: “This Agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.”

Article 25(5) of the Czech — Mexican BIT contains provisions on the amendment of the agreement, which states: “This Agreement may be modified by mutual consent of the Contracting Parties and the agreed modification shall come into effect in conformity with the procedures established in paragraphs (1) and (2).”

Article 12(3) of the Czech — Turkish BIT contains provisions on the amendment of the agreement, which states: “This agreement may be amended by a written agreement between the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other that it has completed all internal requirements for entry into force of such amendment.”

Despite other BITs which the Czech Republic concluded do not contain explicit provisions on the amendment of the agreement, these BITs may be amended as well.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Generally speaking, recognition and enforcement of judgments of international courts is based on the Article 1 paragraph 2 of the Constitution of the Czech Republic.

Article 1:” (1) The Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens. (2) The Czech Republic shall observe its obligations resulting from international law.”

The relevant national legal framework for effective execution of ECHR judgments is based on the Act no. 186/2011 Coll., on Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies, and on the Government Agent`s Statute annexed to Government Resolution No. 1024/2009 of 17 August 2009. The Act stipulates that all branches of the Government as well as the judiciary are required to take without undue delay both individual and general measures to put an end to violations of the relevant international instrument found in individual cases. The Government Agent`s Statute specifies that after the translation of the respective judgment, the Government Agent submits a report to the Minister of Justice and recommends to, and consults with,

public authorities concerned what steps should be taken following the finding of a violation by the Court. Furthermore, in 2015, the Office of the Government Agent established the Committee of Experts on the Execution of Judgments of the European Court of Human Rights. Its legal basis stems from Article 5 § 5 of the Statute of the Government Agent. The Committee of Experts is composed of all key actors, including representative of all ministries, Parliament, the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Supreme Public Prosecutor`s Office, the Public Defender of Rights, the Czech Bar Association, academia and NGOs. The legal representative of the petitioner might be summoned as well. Once the consensus regarding measures that need to be taken to execute the Court`s judgment is reached, the Office of the Government Agent is then responsible for the drafting of action plans and reports for the Committee of Ministers.

Moreover, following the Court`s judgment, the Constitutional Court Act allows for the reopening of the proceedings before the Constitutional Court. It is possible to reopen the proceedings in any case, be it criminal, civil, commercial, administrative, etc. More information is available on the designated Council of Europe website.

As regards the judgments of European Court of Justice, these are legally binding and national courts follow them in their decision-making practice.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

According to the Czech law the arbitral award is final and binding and is not subject to appeal. However, according to Art. 27 of the Act No. 216/1994 Coll., on Arbitration, as amended, the parties to the arbitration agreement may agree in the arbitration agreement that a revision of the arbitral award by another arbitral tribunal may take place on the basis of a request by one of the parties after the arbitral award is rendered. Such request for revision shall be made in a time limit as specified in the arbitration agreement or by default in 30 days after the receipt of the arbitral award by requesting party. The revision proceedings are part of arbitral proceedings and shall be conducted in accordance with the above mentioned Act on Arbitration.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

The CIDS research paper is very useful for an initial debate how to approach the issue of multilateralization of investor-State dispute settlement system. The Czech Republic as a Member State of the EU is fully engaged in a process of reform of international investment regime, where a multilateral mechanism for settlement of investment disputes is an assumed future element. In this effort, the EU and its Member States currently discuss internally a possibility of such mechanism and related next steps.

20. Ecuador

[Original: Spanish]
[Date: 27 December 2016]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

Response of the Office of the Counsel General of the State: The Republic of Ecuador is a State Party to bilateral investment protection treaties that include provisions on the settlement of investor-State disputes. A total of 16 bilateral investment treaties are currently in force and 10 have been terminated.

Response of the Office of the President of the Republic: Those IIAs include provisions on the settlement of investor-State disputes. Generally, such disputes are resolved through a tribunal composed of a representative of the State that has received the investment, a representative of the investor and a third party chosen by the two representatives by mutual consent. If the two representatives are unable to reach an agreement, the arbitration administration centre will appoint the third arbitrator, who will preside over the arbitral proceedings. Those arbitrators generally belong to an exclusive club of professionals who are chosen repeatedly by investors and the respective arbitration centres. Their privately practicing lawyers, who come from large firms based in Paris, New York and London, usually defend big transnational corporations and therefore generally tend to rule in their favour and interpret the protection of investors broadly, to their benefit. Arbitrators' decisions are not open to appeal, even if they grossly violate Ecuadorian and comparative law, and arbitrators are also accorded immunity, which makes them — like European monarchs — exempt from liability with regard to all the decisions they take, even if such decisions lead to the State losing billions of dollars, in flagrant violation of law and equity.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

Response of the Office of the President of the Republic: The courts and tribunals draw their personnel from that exclusive club of lawyers who come from legal firms that tend to defend the rights of the investor.

Response of the Directorate of International Instruments, Ministry of Foreign Affairs and Human Mobility : The text of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment states that: "Art. VI. 2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute, under one of the following alternatives, for resolution: (a) To the courts or administrative tribunals of the Party that is a party to the dispute; or (b) In accordance with any applicable, previously agreed dispute-settlement procedures; or (c) In accordance with the terms of paragraph 3. 3. Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration: (i) To the International Centre for the Settlement of Investment Disputes ('Centre') established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 ('ICSID Convention'), provided that the Party is a party to such Convention; or (ii) To the Additional Facility of the Centre, if the Centre is not available; or (iii) In accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or (iv) To any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute. (b) Once the national or company concerned has so consented, either party to the dispute may initiate arbitration in accordance with the choice so specified in the consent."

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

Response of the Office of the President of the Republic: No. The only option that exists in some arbitration centres to which Ecuador has referred disputes is the possibility of requesting the annulment of arbitral awards. However, annulment action does not necessarily have suspensive effect and it is the annulment tribunal that must decide on the matter, either by suspending the effects of the appealed judgment, or by establishing a guarantee to ensure its enforcement.

Yet more concerning is the fact that, in arbitration that takes place in accordance with the UNCITRAL Arbitration Rules, annulment proceedings are not conducted before the arbitral tribunal, but before the courts of the Netherlands, which represents an excessive and disproportionate relinquishment of sovereignty in favour of another country that is also a recipient of investments.[1]

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

Response of the Office of the Counsel General of the State to questions 2, 3 and 4: The IIAs concluded by the Republic of Ecuador do not contain provisions: (i) on the settlement of investor-State disputes through permanent courts or tribunals; (ii) whereby investor-State arbitral awards may be subject to appeal; (iii) on the possible creation in the future of a bilateral or multilateral appellate mechanism for investor-State arbitral awards, or on the creation of a bilateral or multilateral permanent investment tribunal or court.

Response of the Office of the President of the Republic: The IIAs do not address the creation in the future of a bilateral or multilateral appellate mechanism for investor-State arbitral awards, or a bilateral or multilateral permanent investment tribunal or court. However, the Republic of Ecuador agrees with that proposal as an alternative to the current system, with the proviso that it must be aligned with the Inter-American System for the protection of human rights; that is, recourse should be made to international tribunals only once all domestic judicial bodies have been exhausted.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

Response of the Office of the Counsel General of the State: Examination of the IIAs signed and ratified by the Republic of Ecuador reveals that they do not contain provisions on the amendment or reform of the IIA, thus entailing implementation of article 39 of the Vienna Convention on the Law of Treaties, which states: "A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide."

Response of the Office of the President of the Republic: None of the IIAs concluded conflict with any provisions on their amendment.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Response of the Office of the Counsel General of the State: In respect of foreign judgments, article 102 of the General Code of Procedure states that "The recognition and homologation of foreign judgments, arbitral awards and mediation instruments which have the effect of a judgment in their legislation of origin shall be the responsibility of the specialized chamber of the provincial court of the place of domicile of the respondent.

"The enforcement of foreign judgments, arbitral awards and mediation instruments (actas de mediación) shall be the responsibility of the judge of the court of first instance of the place of domicile of the defendant which has jurisdiction over the case due to its subject matter.

[1] Note by the Secretariat of UNCITRAL: The UNCITRAL Arbitration Rules provide that the place of arbitration is determined by agreement of the parties (article 18); annulment procedures would take place before the courts at the place of arbitration as determined by the parties.

"If the defendant is not domiciled in Ecuador, the judge of the court of first instance of the place in which the assets are located or in which the judgment, arbitral award or mediation instrument should have effect shall have jurisdiction."

However, judgments rendered by international courts (the Court of Justice of the Andean Community or the Inter-American Court of Human Rights) are directly applicable and Ecuadorian law does not provide for a judicial mechanism for their enforcement or recognition.

In particular, article 91 of the Statute of the Court of Justice of the Andean Community, published in Official Register No. 384 on 6 August 2001, provides confirmation of that as follows: "The judgment shall have binding force and be considered res judicata from the day following its notification, and it shall be applicable in the territory of member countries, without homologation or an exequatur being necessary."

In relation to decisions emanating from the Inter-American System for the protection of human rights and the Universal Human Rights System, article 68 of the American Convention on Human Rights establishes that the States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties, which, in Ecuador, is reflected in Executive Decree No. W 1317, published in Official Register No. 428 on 18 September 2008. Namely, article 1 of that Decree provides as follows: "The Ministry of Justice and Human Rights shall be responsible for coordinating the enforcement of judgments, interim measures, provisional measures, amicable agreements, recommendations and resolutions originating in the Inter-American System for the protection of human rights and in the Universal Human Rights System, and other obligations arising out of international commitments in that area."

Response of the Office of the President of the Republic: This is governed by articles 102 to 106 of the General Code of Procedure, the text of which is transcribed below:

"Art. 102 — Jurisdiction. The recognition and homologation of foreign judgments, arbitral awards and mediation instruments which have the effect of a judgment in their legislation of origin shall be the responsibility of the specialized chamber of the provincial court of the place of domicile of the respondent.

"The enforcement of foreign judgments, arbitral awards and mediation instruments shall be the responsibility of the judge of the court of first instance of the place of domicile of the defendant which has jurisdiction over the case due to its subject matter.

"If the defendant is not domiciled in Ecuador, the court of first instance of the place in which the assets are located or in which the judgment, arbitral award or mediation instrument should have effect shall have jurisdiction.

"Art. 103 — Effect. In Ecuador, foreign judgments, arbitral awards and mediation instruments which have been homologated and rendered in contentious or non-contentious proceedings shall have the force granted to them by the international treaties and agreements currently in force, without the need for review of the substance of the case they concern. "With regard to children and adolescents, the provisions of the law on the subject and the international instruments ratified by Ecuador shall apply.

"Art. 104 — Homologation of foreign judgments, arbitral awards and mediation instruments. For the homologation of foreign judgments, arbitral awards and mediation instruments, the competent chamber of the provincial court shall ascertain whether: 1. They have undergone the necessary external formalities to be considered

authentic in the State of origin; 2. The judgment became res judicata in accordance with the laws of the country where it was rendered and the necessary supporting documents have been duly authenticated; 3. They have been translated, where appropriate; 4. The relevant procedural documents and certifications prove that the respondent was legally notified and the proper defence of the parties was ensured; 5. The request indicates the place of summons of the natural or legal person against whom the foreign decision is to be enforced.

"For the purposes of recognizing judgments and arbitral awards against the State, since they do not relate to trade issues it must also be demonstrated that they are not contrary to the provisions of the Constitution and the law, and that they comply with the international treaties and agreements currently in force. In the absence of international treaties and agreements, they shall be regarded as compliant if they are referred to in the letters rogatory concerned or if the national law of the country of origin recognizes their effectiveness and validity.

"Art. 105 — Homologation procedure. In order for foreign judgments, arbitral awards and mediation instruments to be homologated, the applicant shall submit an application to the competent chamber of the provincial court, which, after ensuring that the conditions of this article have been met, shall summon the applicant to the location indicated for that purpose. Once the person against whom the judgement is to be enforced has been summoned, that person shall have five days to submit and provide supporting evidence for any objection to the homologation.

"The judge shall reach a decision within thirty days of the date on which the summons was issued. If a well-founded and acceptable objection is submitted and if the complexity of the case so warrants, the court shall convene a hearing, which shall be conducted and a decision reached in accordance with the general rules of this Code. The hearing shall be convened within a maximum of 20 days of submission of the objection.

"The chamber shall reach a decision at the same hearing. Appeals against the judgment of the chamber of the provincial court may be made only before the same judge.

"Once the issue of homologation has been resolved, foreign judgments, arbitral awards and mediation instruments shall be enforced as provided for in this Code.

"Art. 106 — Evidentiary effects of foreign judgments, arbitral awards and mediation instruments. A party that, as part of a proceeding, seeks to avail itself of the evidentiary effects of a foreign judgment, arbitral award and mediation instrument must first have them homologated in the manner provided for in this Code."

With regard to the request to provide information on court decisions relating to recognition of the judgments of foreign courts, owing to the nature of my role I have no information in that regard, nor am I aware of whether any such judgment has been recognized or enforced.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

The legislation on international arbitration of the Republic of Ecuador does not contain any provisions on appeal by State courts or arbitral tribunals against arbitral awards.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

The Office of the Counsel General of the State has two comments regarding the CIDS research paper on reform of the investor-State arbitration regime.

The establishment of a supranational judicial body by means of a multilateral treaty would reduce inconsistencies in arbitral awards that settle similar cases, thus providing parties with uniform interpretations and legal certainty.

It is important to determine the legal status of the international investment tribunal, that is, whether it is a supranational judicial body or a private arbitral body. This clarification would lead to different outcomes with regard to the recognition and enforcement of a judgment (in the case of an international permanent investment tribunal or court) or an award (in the case of a tribunal or court that retained some of the advantages of international arbitration), depending on the case. With regard to the first scenario, prima facie, recognition and enforcement would be governed by the provisions of the multilateral treaty that created the aforementioned judicial body. In the second scenario, recognition and enforcement of an award could take place through the existing Convention on the Recognition and Enforcement of Foreign Arbitral Awards [done in New York on 10 June 1958].

21. Germany

[Original: English]
[Date: 6 January 2017]

A/ International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

Germany is party to 129 bilateral investment promotion and protection treaties (BITs) currently in force. The majority of these treaties contains provisions on investor-state dispute settlement (ISDS). In addition, Germany is party to the Energy Charter Treaty which also contains provisions on investment protection and ISDS.

The Comprehensive Economic and Trade Agreement between the EU, its Member States and Canada (CETA), as well as the Free Trade Agreement between the EU, its Member States and Vietnam (EU-VNM FTA), neither of which has been ratified, yet, each also contain provisions on investment protection and provide for an investment court to settle investor-State disputes.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs

No. However, CETA as well as the EU-VNM FTA each provide for a permanent investment court.

Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

No. However, CETA as well as the EU-VNM FTA each provide for a permanent appellate tribunal to review awards rendered by the court of first instance provided for by these agreements.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

No. However, in both CETA and the EU-VNM FTA the Contracting Parties have committed to work towards the creation of a multilateral investment court and/or appellate mechanism.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

Article 42 of the Energy Charter Treaty contains provisions on the amendment of the agreement. In addition, Article 30.2 of CETA and Article X.6 of Chapter 17 of the EU-VNM FTA each contain provisions on the amendment of the respective agreement and of its annexes. Furthermore, IIAs can be modified or amended pursuant to general principles of public international law.

The German BITs contain so-called "sunset-clauses" providing protection when the respective BIT is terminated. According to such clauses investments made before the expiry of a terminated BIT remain protected by the provisions of the BIT for a certain time after the expiry of the BIT. In case an IIA was negotiated to replace an existing IIA, the IIAs usually provided for the more recent IIA to apply to existing investments from the date of its entry into force.

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Judgments of the European Court of Justice against Member States like Germany are automatically enforceable (Art. 280 Treaty on the Functioning of the European Union, TFEU). The order for enforcement shall be appended to the decision of the European Court, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose (in Germany the Ministry of Justice) and shall be made known to the Commission and to the Court of Justice of the European Union. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Some decisions of the International Court of the Sea shall be enforceable in the Contracting States of the Convention of the Law of the Sea. In Germany the Law on the Enforcement of Decisions by International Courts in Matters of the Law of the Sea (*Gesetz über die Vollstreckung von Entscheidungen internationaler Gerichte auf dem Gebiet des Seerechts (Seegerichtsvollstreckungsgesetz — SeeGVG), BGBl. I 1995, p. 778, 786*) applies to the enforcement of such decisions. An enforcement clause (writ of enforcement) will be issued by the competent German court in case the authenticity of the decision has been verified, the content of the decision is enforceable and according to German law suitable to be enforced. After issuance of the enforcement clause the creditor will be able to proceed to enforcement in accordance with the national law.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

The German law on arbitration (§§ 1025-1066 Civil Procedure Law) follows the UNCITRAL Model Law on Arbitration of 1985. No appeal to the regular courts against an arbitral award is laid down in the German arbitration law. An appeal against an arbitral award to another arbitral tribunal remains possible if the parties have included such a measure into their arbitral agreement or have agreed upon it during the arbitral proceedings.

Question 8: Any comments regarding the possible options for reform of the investor-State arbitration regime discussed in the CIDS research paper

Some features of ISDS have become subject to increased scrutiny in recent years. Investment policy makers, stakeholders and international organizations in many countries are engaged in a reflection process about possible reforms of the system.

The idea of a multilateral system for the resolution of investment disputes has emerged in order to improve the current system and address its perceived limitations in terms of legitimacy, transparency, consistency and predictability.

The establishment of an International Court for Investments and/or an Appeal Mechanism to the arbitration system, as proposed in the research paper, could be a further step to improve the current ISDS system. An important step has already been undertaken with the introduction of an Investment Court System with permanent judges (as opposed to an ad-hoc tribunal) and an appellate mechanism as undertaken by CETA, the EU-VNM FTA and the European Commission's draft proposal for TTIP (http://trade.ec.europa.eu/doclib/docs/2015/september/tradoc_153807.pdf). Following this development we could also support the just opened discussions on the establishment of a Multilateral Investment Court, as proposed by the European Commission and Canada. As many of the design options for an International Court for Investments and/or an Appeal Mechanism are interdependent, at this early stage of exploration we do not have a position on a concrete concept for such institutions.

However, and without prejudice to a future German position, the following aspects should be taken into consideration:

(a) The design of such institutions should ensure that their awards can be reliably executed also in States that do not adhere to these institutions but are party to the ICSID Convention and / or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(b) An institutional system containing both a court of first instance and an appeal mechanism could provide for a greater consistency and predictability than only an appeal mechanism;

(c) An opt-in-convention may be a possible mechanism for establishing an International Court for Investments and/or an Appeal Mechanism. This approach would be more adaptable to the specific needs and interests of states and could enable a greater number of states to accede to such institutions.

22. Latvia

[Original: English]
[Date: 6 January 2017]

B/ Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

Latvian legislation does not prescribe requirements for recognition of judgements of international courts (as opposed to decisions of a foreign court). Thereby, there are no judicial mechanism and court rulings with regards to recognition or enforcement of judgements of international courts.

Cabinet Regulation No. 355 of 1 July 2014 "Regulations Regarding Representation in International Human Rights Institutions" prescribes the procedures by which representation of the interests of Latvia shall be ensured before the European Court of Human Rights (hereinafter "the Court") and in the framework of the United Nations Organization (hereinafter "the UN") human rights treaty monitoring mechanisms. Representation of the interests of Latvia before the Court and in the framework of the UN human rights treaty monitoring mechanisms shall be ensured by an authorized representative of the Cabinet. According to the Regulation functions of the representative, among other, is to submit an appeal of the government to the Grand

Chamber of the Court on the basis of a Cabinet decision; if the court makes a ruling finding a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols in Latvia, to submit an informative report to the Cabinet on evaluation of the ruling of the Court, indicating measures necessary for execution of the ruling; on the basis of the information provided by responsible authorities, to prepare and submit a position of the government to the Committee of Ministers of the Council of Europe on execution of the ruling of the Court finding a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols in Latvia.

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

According to Latvian legislation, recognition of decisions of foreign arbitration courts takes place in accordance with international agreements that are binding for the Republic of Latvia, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), and, respectively, in accordance with the Civil Procedure Law. There are no provisions on appeal by national courts against arbitral awards.

The order of recognition of foreign arbitrary judgements is similar to recognition of foreign court judgements. Procedure for Recognition and Enforcement of a Decision of a Foreign Court is regulated in Chapter 77 of the Civil Procedure Law. If some specific questions are not regulated by *lex specialis* in Chapter 77, general provisions of Civil Procedure Law shall apply. An application for the recognition and enforcement of a decision of a foreign arbitration court must be submitted for examination to a district (city) court on the basis of the place of enforcement of the decision or also based on the declared place of residence of the defendant, but, if none, the place of residence of the defendant or legal address. Having examined an application for the recognition and enforcement of decision of a foreign arbitration court, a court shall take a decision to recognize and enforce the decision, or to reject the application. An application can only be dismissed in the cases provided for by international treaties, binding upon the Republic of Latvia — Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Decision of a foreign arbitration court after its recognition must be enforced in accordance with the general procedures laid down in Civil Procedure Law.

There are no specific provisions on recognition or appeal concerning decisions of international arbitration. The procedure described above also applies to decisions of international arbitration in so far as it is not otherwise provided for in international agreements that are binding for the Republic of Latvia.