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**OPINION OF THE LEGAL SERVICE<sup>(\*)</sup>**

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Subject : Commission Proposal for a Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the Union is a party COM (2012) 335 final  
- Legal Basis

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**A. INTRODUCTION**

1. The Commission presented on 21 June 2012 a proposal for a Regulation of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the Union is a party.<sup>1</sup>

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<sup>\*</sup> "This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and **not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.**"

<sup>1</sup> ST 11868/12 COM (2012) 335 final.

9. The Commission has proposed a legislative act in the form of a Regulation to provide a framework for the allocation between the Union and its Member States of the financial responsibility arising out of investor-to-state dispute settlement conducted pursuant to agreements to which the Union is a party (Chapter I- General provisions). To date the Union is a party to only one international agreement (alongside EU Member States) which provides for the possibility of such investor-state dispute settlement: the Energy Charter Treaty.<sup>9</sup>
10. The European Commission is currently negotiating a series of international agreements with third countries which may contain a chapter on investment protection and may also provide for investor-state dispute settlement.<sup>10</sup> It is proposed that the Regulation, once adopted, will apply to these future agreements as well.
11. The framework proposed in Chapter II of the Regulation aims at setting out rules for the apportionment of financial responsibility between the Union (represented by the European Commission) and the relevant Member State. The following basic criterion is proposed for this apportionment: if the treatment complained of originates in a Union act, the financial responsibility will be borne by the Union, and if the treatment originates in an act of a Member State, then the financial responsibility will be borne by that Member State, unless the treatment was required by Union law. The Commission's proposal contains several exceptions to this basic criterion of apportionment.

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<sup>9</sup> The Energy Charter Treaty is an international agreement establishing a legal framework to promote long-term cooperation in the energy sector based on the principles enshrined in the European Energy Charter. The key provisions of the Treaty concern the protection of investment, trade in energy materials and products, transit and dispute settlement. It was concluded as a mixed agreement by the European Community, Euratom and its then Member States. Currently the European Union, Euratom and all EU Member States are party to the Energy Charter Treaty.

<sup>10</sup> The Council has taken the preliminary view that these agreements will need to be concluded as mixed agreements in view of the shared competences that they entail including in particular when including chapters on investment liberalisation, investment protection and investor-state dispute settlement.