

Comments of the Slovak Republic on the Amendment of ICSID Rules

The Slovak Republic hereby submits preliminary comments to the Amendment of ICSID Rules. These comments are additional to those submitted by the European Commission on behalf of the EU and its Member States and should be read together.

The Slovak Republic together with the EU and its other Member States are also actively engaged in the on-going work of the UNCITRAL Working Group III on the reform of investor-state dispute settlement and are pursuing the objective of establishing a permanent mechanism for the settlement of international investment disputes.

Notwithstanding the above stated, the Slovak Republic considers it important to contribute to the ICSID amendment process due to overall significance of ICSID dispute settlement rules as well as experience with investment arbitration under ICID rules.

General approach

- Para 3 – we appreciate electronic submission of documents. This will contribute not only to expedite the proceeding but also will save environment.

Institutional Rules

- Para 16 – we appreciate the detailed checklist contained in the Request to initiate proceedings. We also support the concept of recommended and not mandatory points as additional source of information. This should enable the respondent to have a clearer picture about the dispute contribute to faster dispute resolution.
- Para 17 - under 13(2) AR The requesting party may elect to have the Request for arbitration considered as the memorial. We are concerned that such step could prevent the state as respondent from due preparation of its reply. Additionally, the link to creation of the tribunal at that time is unclear.

Arbitration Rules

- Para 23 – We are understand that the withdrawal from automatic reply and rejoinder could make the proceeding more efficient, saving both time and financial resources. Nevertheless, it is important to remain cautious since parties should have preserved access to justice. Hence, the grounds for allowing reply/rejoinder should be described in detail (it is noted that generally, only new facts/facts, which could not have been submitted earlier, should be allowed. Speed should not prevail quality.
- Para 28, 29 – the Slovak Republic supports, as a part of general reform, the creation of permanent dispute settlement body with random allocation of cases to a panel of adjudicators selected from a roster. Nevertheless, as a preliminary step, constitution of tribunals should be more efficient.
- Para 32 – the 20 days period to accept appointment and send declaration by arbitrators should contribute to transparency and speed of the proceeding

Initial Procedures

- Para 39 –bifurcation – we appreciate this option, as it might make the proceeding more efficient

Evidence

- Para 42 – Is there any special mechanism for the allocation of costs of tribunal-appointed experts or only para 26 applies?

Special procedures

- Para 52 - We appreciate inclusion of provision on suspension. This may contribute to amicable dispute settlement
- Para 53 – we also support provision on discontinuance for failure to take a step. This would prevent prolongation of dispute by dormant/speculative claimants.

Award and Post award remedies

- Para 54 – we appreciate deadlines for awards. There should however be some control mechanisms for failure to comply with deadlines

Expedited arbitration

- This tool might be effective for claimants. Nevertheless, respondents, being states may face lack of time for preparing submissions. We recommend to keep it as optional proceeding, based on mutual consent of the parties to dispute

These comments are of preliminary nature only and may be changed/supplemented at a later stage.