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13. Argentina

[Original: Spanish]
[Date: 9 January 2017]

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Yes, Argentina is a Party to treaties on the protection of foreign investments, which 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 - Question 3: Provisions on appeal to investor-State arbitral awards in IIAs - 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.

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

IIAs concluded by Argentina contain provisions on amendment of the IIA. They do not contain provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIA.

Example of treaty provisions:

Bilateral Investment Treaty (BIT) between Argentina and the Russian Federation (1998): "Article 14.3. Amendments may be made to this Convention by mutual agreement between the Contracting Parties. Any amendment shall enter into force after each Contracting Party notifies the other Contracting Party in writing of the completion of the procedures required by its legislation for the entry into force of the said amendments."

BIT between Argentina and Denmark (1992): "Article 11 Amendments. On the date of entry into force of this Agreement or at any time thereafter, its provisions may be amended in the manner agreed upon by the Contracting Parties. Any such amendments shall enter into force once the Contracting Parties have notified each other of the completion of the respective constitutional requirements."

BIT between Argentina and Senegal (1993): "Article 10. Each Contracting Party may request, in writing, the total or partial amendment of this Agreement. The agreed amendments shall enter into force as of notification of their approval by both Contracting Parties."

BIT between Argentina and Qatar (2016, has not yet entered into force): "Article 19 Entry into force - 1. This Treaty and its amendments shall enter into force on the date of receipt of the last notification given in writing by either Contracting Party providing notice, through diplomatic channels, of the completion of its domestic legal procedures required for the entry into force of this Treaty and its amendments. 2. This Treaty may be amended by written agreement between the Contracting Parties."

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)

No specific regime has been established to recognize and enforce international judgments, but there is a specific regime to recognize and enforce foreign arbitral awards.

Nevertheless, it should be clarified that article 75 (22) of the National Constitution provides that treaties concluded by the Argentine Republic have supra-legal status. Furthermore, certain human rights treaties have constitutional status. Consequently, if a treaty concluded by Argentina establishes the jurisdiction of an international court over the settlement of disputes and rules on the recognition and enforcement of international awards or judgments, the provisions of that treaty should be observed for the purposes of recognition and enforcement of judgments. In this respect, for instance, reference may be made to article 54 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of the International Centre for Settlement of Investment Disputes (ICSID), and the statement made by the Argentine Republic pursuant to article 54 (2), which establishes the national judicial authority for federal administrative litigation (Justicia Nacional en lo Contencioso Administrativo Federal) as the competent authority for the recognition and enforcement of ICSID awards.

Domestic courts have been requested to recognize or enforce judgments of international courts; for example, Compania de concesiones de infraestructura SA (CCI) regarding Peition for bankruptcy (Republic of Peru), Case No. 8030/2015, National Commercial Court of Appeals, judgment of 18 August 2015.

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

No.

14. Jamaica

[Original: English]
[Date: 5 January 2017]

A/ International Investment Agreements (IIAs)

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

Jamaica is a party to a number of bilateral treaties on the protection of foreign investments. Jamaica is also a party to the Revised Treaty of Chaguaramas ("RTC"), which establishes the Caribbean Community ("CARICOM") and the CARICOM Single Market and Economy ("CSME"), that contains provisions that would be applicable to investors within CARICOM. In particular, the RTC contains National Treatment (Article 7) and Most Favoured Nation Treatment (Article 8) standards that are commonly found in IIAs. Though these standards as articulated in the RTC are of general application, the provisions would still be applicable in a case where an investor brings a claim against a CARICOM State for failure to adhere to those standards. The RTC essentially allows for investor-State arbitration by providing that natural or juridical persons of any CARICOM Member State may bring a claim before the Caribbean Court of Justice in relation to any of the rights under the RTC where all the criteria for espousing the claim have been met. There is also an extensive chapter on competition matters (Chapter 8) in the RTC. However, all the IIAs in force contain

provisions for investor-State dispute settlement; (the BITs reviewed in preparation for answering this questionnaire are: Jamaica-Argentine Republic, Jamaica-Korea, Jamaica-Germany, Jamaica-Netherlands, Jamaica-Switzerland, Jamaica-China, Jamaica-United Kingdom and Jamaica-United States of America).

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

Jamaica does not have a model IIA. However, some IIAs concluded by Jamaica contain provisions whereby the parties to a dispute may submit the dispute to the courts or administrative tribunals of the host State. For example, Article VI(2)(a) of the Jamaica-USA BIT provides for this form of dispute settlement method. Further, Article 8(2) of the Jamaica-China IIA provides that where an investor-State dispute is not initially settled through negotiations, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment. Another variation is the Jamaica-Swiss Federation IIA that provides that a Contracting Party may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration which would require resort to permanent national courts or tribunals (Article 9(4)). See also Article 11(1) of the Jamaica-Germany IIA which permits parties to pursue local remedies if disputes cannot be settled amicably. We are not aware of any decisions rendered by any Court or Tribunal in Jamaica under any of those IIAs.

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

In the IIAs reviewed, there was no provision in any of them concerning appeals from awards of arbitral tribunals.

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

In none of the IIAs in force was there any provision regarding the possible creation in the future of any bilateral or multilateral appeal mechanism for investor-State arbitration or for 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

There is generally no provision regarding the amendment of the respective agreements.

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)

The Judgments and Awards (Reciprocal Enforcement) Act provides for the registration and enforcement in Jamaica of any judgment obtained in a Superior Court in the United Kingdom on a reciprocal basis. Under the Judgments (Foreign)(Reciprocal Enforcement) Act, judgments from a Superior Court in any foreign jurisdiction may be recognised and enforced in Jamaica on the basis of an assurance that any such judgment rendered by a Superior Court in Jamaica would be given reciprocal treatment in the other jurisdiction.

The following are two Court of Appeal cases in which foreign judgments were determined to be enforceable in Jamaica. It should be noted that Jamaica has a separate legal framework for the recognition and enforcement of foreign arbitral awards.

(a) DYC Fishing Limited v Perla Del Caribe Inc [2014] JMCA Civ:

http://www.courtofappeal.gov.jm/sites/default/files/judgments/DYC%20Fishing%20Ltd.%20v%20Perla%20Del%20Caribe%20Inc..pdf

(b) Richard Vasconcellos and Jamaica Steel Works Limited and Others SCCA No. 01 of 2008

http://www.courtofappeal.gov.jm/sites/default/files/judgments/Vasconcellos%20(Richard)%20v.%20Jamaica%20Steel%20%20Works%20Ltd.%20%20et%20al_0.pdf

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

The recognition and enforcement of foreign arbitral awards in Jamaica is governed by The Arbitration (Recognition and Enforcement of Foreign Awards) Act. That Act incorporates the provisions of the New York Convention on the Recognition of Foreign Arbitral Awards. There is no reference in that Act, and by extension the New York Convention, to appeals 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 State acknowledges the consideration by the United Nations General Assembly of possible reformation of the Investor State Dispute Settlement System. The State further acknowledges that uniformity, transparency and predictability are desirable objectives in any Investor-State Dispute Settlement system. We note, however, that Jamaica is not a party to the Mauritius Convention which formed the basis of the CIDS research paper which indicates that we have not adopted a formal position with regards to the application of the Mauritius Convention to our IIAs.

The State recognizes, as the CIDS research paper does, that the incoherence within the present investor-state dispute settlement mechanisms continue to undermine support for IIAs. There are awards in which different arbitral panels have ruled differently on sometimes very similar facts. This has created an atmosphere of uncertainty for investors and States.

The proposals based on the Mauritius Convention are interesting and we continue to study them.

15. Portugal

[Original: English]
[Date: 4 January 2017]

A/ International Investment Agreements (IIAs)

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

Portugal has signed and ratified approximately fifty Bilateral Investment Agreements (hereinafter BIT), most of which are currently in force. At the pluri-lateral level, Portugal is currently a Party to the Energy Charter Treaty. These treaties contain provisions on the protection of foreign investments and on the settlement of investor-State disputes.

As a member of the European Union (EU), Portugal has also concluded the negotiations of two other agreements containing provisions on investment protection and on the settlement of investor-State disputes, which are not yet in force. These said

agreements are the EU-Canada Comprehensive Trade and Economic Agreement (CETA) and the EU-Vietnam Free Trade Agreement.

Please note that, in order to conclude other "IIAs", several negotiations with third countries are currently underway, both bilaterally and within the framework of the European Investment Policy.

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

Portugal has sustained the possibility for investors to use state courts to claim their rights. Hence, in its BITs and in its BIT model, this possibility has been duly foreseen; (accordingly to Portuguese BIT model "the investor may submit the dispute to: a) The national courts of the Party in whose territory the investment was made;"). As an alternative to domestic courts, investors may submit disputes to international arbitration.

The CETA, signed on 30 October 2016, establishes a Tribunal composed of fifteen Members to adjudicate claims submitted with regard to alleged breaches of the investment protection provisions of the agreement (Article 8.27 CETA). The same mechanism is also provided for in the EU-Vietnam Agreement, despite some adjustments (the numbering of the Chapters, Sections and Articles is currently subject to legal revision).

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

In the Portuguese BIT model "the awards shall be binding, but they may be subject to appeal or any other review procedure solely as provided by law and the applicable rules" (Article 24, paragraph 1).

Differently, the EU-Canada Comprehensive Trade and Economic Agreement as well as the EU-Vietnam Free Trade Agreement establish Appeal Tribunals to review awards rendered by the Tribunals established under those agreements (Article 8.28 CETA, Article 13 EU-Vietnam FTA).

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

Portuguese new Model BIT states that "Upon the entry into force of an international agreement providing for a multilateral investment tribunal and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Agreement shall cease to apply subject to the agreement of both Parties." (Article 25, paragraph 1). Portugal has not yet concluded a BIT incorporating this language, for the time being.

In both the EU-Canada Comprehensive Trade and Economic Agreement and the EU-Vietnam Free Trade Agreement, the Contracting Parties have committed to work towards the creation of a multilateral investment tribunal and/or appellate mechanism (Article 8.29 CETA, Article 15 EU-Vietnam FTA).

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 amendment of Portuguese BIT requires the consent of both parties and follows the same formalities regarding the entry into force of the agreement. In case of termination of the BIT, a sunset clause is foreseen, which guarantees the extension of the protection provided in the agreement for periods ranging from 10 to 20 years.

The provisions on amendments to the Energy Charter, the CETA and the EU-Vietnam Agreement are enshrined in Article 42, Article 30.2 and Article X.6 of Chapter 17, respectively.

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)

Notwithstanding the international treaties signed and ratified by Portugal, pursuant to the Portuguese Civil Procedure Code, no decision issued by a foreign court or arbitrator shall have any effect in Portugal, regardless of the nationality of the parties involved, unless it has been reviewed and confirmed by the competent Portuguese court.

The court responsible for the recognition of foreign decisions is the Regional Appeal Court. The court must verify that: (i) the foreign decision is authentic; (ii) it does not contain decisions in conflict with Portuguese public order; and (iii) if the situation was resolved under Portuguese law (in accordance with the rules of conflicts of law), it would not violate its provisions.

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

We are not aware of the existence of requests to domestic courts to recognize or enforce judgments of international courts.

The primary source of statutory Law is Law No. 63/2011 of 14 December 2011, which approved the Voluntary Arbitration Law (hereinafter "VAL"). The VAL sets out a specific chapter for the enforcement of domestic arbitration awards (Chapter VIII) and another for the recognition and enforcement of foreign arbitral awards (Chapter X). The VAL governs both domestic and international arbitration proceedings.

However, there is a chapter in the VAL dedicated to international arbitration which sets forth certain specific rules, namely:

i. the inadmissibility of pleas based on domestic law of a party that is a State, a State-controlled organization or a State-controlled company;

ii. a more "pro-validity" rule regarding the substantial validity of the arbitration agreement;

iii. the possibility of choosing the rules of law to be applied by the arbitrators, if they have not authorized them to decide ex-aequo et bono;

iv. a more restrictive approach regarding appeals, pursuant to which the award is not appealable unless the parties have expressly agreed on the possibility of an appeal to another arbitral tribunal and regulated its terms; and

v. the possibility of setting aside an award made in Portugal, in an international arbitration in which non-Portuguese law has been applied to the merits of the dispute, if such award is to be enforced or produce other effects in national territory, whenever such enforcement leads to a result that is manifestly incompatible with the principles of international public policy.

Despite what is provided in that chapter, the provisions on domestic arbitration also apply to international arbitration, with the necessary adjustments. The VAL is essentially based on the UNCITRAL Model Law on International Commercial Arbitration (with the amendments adopted in 2006).

Awards issued in arbitrations seated in Portugal do not require submission to previous recognition and are enforceable in terms that are, in general, equivalent to decisions of the Portuguese state courts.

Without prejudice to the mandatory provisions of the New York Convention as well as to other treaties or conventions that bind the Portuguese State, arbitral awards issued in arbitrations seated abroad shall only be effective in Portugal if they are recognized by the competent Portuguese state courts.

The party wishing to recognize a foreign arbitral award, namely in order to have it enforced in Portugal, shall provide the original of the award dully authenticated or a copy dully certified of the same, as well as the original of the arbitration agreement or a duly authenticated copy of the same. If the award or the arbitration agreement is not in Portuguese, the requesting party shall provide a duly certified translation in this language. Once the application for recognition is filled, together with the documents identified above, the opposing party is summoned to, within 15 days, submit its opposition. The trial is conducted pursuant to the rules applicable to appeals.

Portuguese courts are generally favourable to the recognition and enforcement of arbitration awards. An arbitral award granted by an arbitral tribunal is binding upon the parties in the same terms prescribed for a domestic final judgment rendered by a state court and may be enforced similarly. Thus, issues raised that have been finally determined by a competent arbitral tribunal constitute res judicata. Only in exceptional circumstances is it possible to re-hear those issues in a national court. Those circumstances, which are also applicable to state courts' decisions, include, for instance, the existence of another final decision attesting that the award was the result of a crime committed by the arbitrators in the performance of their functions.

Please note that Portugal signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID") in 1984 and the same is in force since 1 August of that year, and also ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on 18 October 1994 and entered a reservation further to Article I(3) of the same: Portugal shall only apply the Convention in cases where the arbitral awards were rendered in the territory of States bound by the Convention.

Furthermore, Portugal is bound by the Geneva Convention on Execution of Foreign Arbitral Awards, dated 26 September 1927 (ratified by Portugal in 1931), the ICSID Convention and the Inter-American Convention on International Commercial Arbitration, signed in Panama in 1975 (ratified by Portugal in 2002). In addition to these Conventions, there are multiple Bilateral Investments Treaties in force between Portugal and other countries, some of which deal with enforcement issues.

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 sets out a number of interesting options for reforming the existing investor-State dispute settlement system. The main options range from creating an International Tribunal for Investments to the creation of an Appeal Mechanism for reviewing investor-state arbitral awards. Different alternatives for reviewing decisions or awards are discussed, as are different options with regard to the composition of the Tribunal, the nomination of Tribunal Members, the enforcement of decisions, or the applicable law. The paper also examines different ways of applying any such new mechanism to existing investment treaties in the form of an opt-in convention modeled on the Mauritius Convention.

To a certain extent, the different aspects discussed in the CIDS research paper are inter-linked and adopting a particular position on the options presented for one aspect will have implications on the policy choices available for other aspects. It is therefore difficult to express a preference for any of the detailed options presented in the paper before further discussions about the main goals and priorities of the overall reform project have taken place.

The EU and its Member States, including Portugal, have already been engaged in a process of reform of investment policy and in particular of investor-State dispute settlement over the past years. One important element of that reform is the creation of a multilateral mechanism for the settlement of investment disputes which would seek to address some of the concerns which have arisen as regards the existing system. The EU and its Member States are currently engaged in exploratory discussions and reflections on the main goals and priorities of the creation of such a mechanism, both EU-internally and with non-EU countries and we welcome the opportunity to pursue further discussions.

16. Slovak Republic

[Original: English]
[Date: 5 January 2017]

A/ International Investment Agreements (IIAs)

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

Slovak Republic is a party to Energy Charter Treaty, the ICSID Convention and various bilateral investment treaties with investor-state dispute settlement provisions (in total, 32 extra EU IIAs and 20 intra EU IIAs).

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs - Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

No.

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 Slovak Republic Model BIT does provide for possible future creation of a bilateral or multilateral investment court or tribunal. Such provision was included upon the requirement of the European Commission.

Here we provide the respective provisions included in the current IIAs between the Slovak Republic and Islamic Republic of Iran and the Slovak Republic and United Arab Emirates that have been negotiated, signed but not yet entered into force.

IIA between the Slovak Republic and the Islamic Republic of Iran: “Upon the entry into force between the Contracting Parties of an international agreement providing for a multilateral investment tribunal and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Agreement shall cease to apply.”

IIA between the Slovak Republic and the United Arab Emirates: “Contracting Parties may consider implementation of future developments in policy of investment protection of either Contracting Party, including a multilateral investment court

provided that both Contracting Parties are signatories of the Convention establishing such a 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

In case of IIAs concluded by the Slovak Republic, these do not usually contain any specific provisions on amendment process. The amendment is left to the regime provided by the Vienna Convention on the Law of the Treaties.

However, please see below couple of sample provisions provided in the IIAs between the Slovak Republic and Kenya (which has not been ratified yet) and the Slovak Republic and Turkey entered into force in 2013.

IIA between the Slovak Republic and Kenya: "This Agreement may be amended in writing 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."

IIA between the Slovak Republic and Turkey: "This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all internal requirements for entry into force of such 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)

No. The Slovak law governs the recognition and enforcement of court judgments of foreign countries.

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

No.

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

First of all, please be informed that the Slovak Republic consistently supports the ongoing efforts on reforming the current ISDS regime. Based on the discussions within the EU, outcomes reached in the EU investment agreements as well as after studying various investment protection models worldwide, the Slovak Republic successfully implemented many balanced provisions into its Model BIT with the primary aim to provide investment protection for responsible and non-speculative investors while providing sufficient space for state regulatory powers in dealing with the public legitimate objectives.

As a part of these efforts, the Slovak Republic welcomes the discussions on the multilateral solution options with extensive potential on the reform needed. All of the presented options, if chosen, would be preceded by a period of negotiations and meetings of the negotiating contracting parties. In case of a reform of ISDS, it is desired that the initiative for future proposal for multilateral reform of ISDS does have wide support from Contracting Parties. Therefore, it may be advisable to explore negotiation history of successful projects such as ICSID Convention, WTO Appellate body or process preceding Marrakesh Agreement.

You may be aware that the EU and its Member States have already been engaged in a process of reform of investment policy and in particular of investor-State dispute

settlement over the past years, including the creation of a multilateral mechanism for the settlement of investment disputes. The EU and its Member States are currently engaged in exploratory discussions and reflections on the main goals and priorities of the creation of such a mechanism, both EU internally and with non-EU countries and we welcome the opportunity to pursue further discussions.

We appreciate the preparation of the said CIDS research paper in this regard, which we consider as a great basis for further expert discussions.

17. Spain

[Original: English]
[Date: 30 December 2016]

A/ International Investment Agreements (IIAs)

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

Spain is currently a party in 76 bilateral investment agreements (BIAs) and Spain is also a party to the Energy Charter Treaty. All of these agreements contain provisions on the protection of foreign investments and on the settlement of investor-State disputes.

The EU has concluded the negotiations of two other agreements, in which Spain is also a Party, containing provisions on investment protection and on the settlement of investor-State disputes, which are not yet in force. These agreements are the EU-Canada Comprehensive Trade and Economic Agreement (CETA) and the EU-Vietnam Free Trade Agreement.

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

Spain does not have any BIA containing provisions on permanent courts instead of investor-State arbitration for the resolution of disputes. However, the CETA agreement as well as the EU-Vietnam FTA establish Tribunals that will decide claims submitted with regard to alleged breaches of the investment protection provisions of these agreements.

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

Spain does not have any BIA containing provisions whereby investor-State arbitral awards may be subject to appeal. However, the CETA agreement as well as the EU-Vietnam FTA establish Appeal Tribunals to review awards rendered by the Tribunals established under those 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

Spain does not have any BIA addressing the possible creation of a bilateral or multilateral appellate mechanism or a permanent institution. However, Spain is working in coordination with the European Commission and the other Member States towards the creation of a multilateral investment mechanism. The CETA agreement as well as the EU-Vietnam FTA contain provisions in this regard.

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

Only seven BIAs concluded by Spain contain provisions on the amendment of the agreement: Bosnia and Herzegovina; Republic of Korea; People's Republic of China; Indonesia; Lebanese Republic; Republic of Lithuania and Republic of Trinidad and Tobago.

None of the BIAs concluded by Spain contain provisions safeguarding investor's rights or providing for transitional arrangements in case of modifications.

On the other hand, the Energy Charter Treaty, the CETA and the EU-Vietnam FTA contain provisions on the amendment of the agreement.

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)

Articles 21 and 22 of the Spanish organic law of Judicial Power stipulate that the judgments of international courts are enforceable in Spain provided that the jurisdiction of the International Tribunal is determined by an International Treaty of which Spain is a party or accepted by Spain unilaterally.

It is the case of the acceptance by Spain of the jurisdiction of the International Court of Justice (ICJ), which was made unilaterally by a Declaration of 15 October 1990.

The organic law of Judicial Power can be found at: http://www.boe.es/buscar/act.php?id=BOE-A-1985-12666

The unilateral declaration accepting the jurisdiction of the International Court of Justice can be found at: http://www.boe.es/buscar/doc.php?id=BOE-A-1990-27553

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

There is no appeal mechanism of arbitral awards in our legislation.

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

Spain supports the idea of working towards the creation of a multilateral investment dispute settlement mechanism that counteracts on the perceived limitations of the current ad hoc Investor-State Dispute Settlement. The new mechanism should be built without any doubt in terms of its legitimacy, neutrality, independence, transparency, affordability and consistency.

This multilateral mechanism should apply to multiple existing or future agreements and we think that a good option to do this would be on the basis of an opt-in system, similar to the "Mauritius Convention on Transparency". This would avoid the need to modify the investment agreements one by one.

Spain, the EU and its Member States are currently engaged in exploratory discussions and reflections on the main goals and priorities of the creation of such mechanism and we welcome the opportunity to pursue further discussions.