

23 July 2026

European Commission

European AI Office

Directorate-General for Communications Networks, Content and Technology (DG
CONNECT)

Re: Targeted consultation on the draft Commission Guidelines on the classification of high-risk AI systems (Article 6 of Regulation (EU) 2024/1689) — Joint submission of international arbitration institutions

Dear Madam or Sir,

We write in our respective capacities as representatives of the undersigned international arbitration institutions, in response to the targeted consultation on the draft Commission Guidelines on the classification of high-risk AI systems under Article 6 of Regulation (EU) 2024/1689 (the “Draft Guidelines”). We warmly welcome the Commission’s initiative to bring clarity to this important area, and we are grateful for the opportunity to offer a small number of observations, made in a constructive spirit and out of a shared concern for the sound administration of international dispute resolution.

Our observations concern the treatment of arbitral institutions within the notion of “ADR bodies” for the purposes of Annex III, point 8(a) of Regulation (EU) 2024/1689 (the “AI Act”), and the characterisation of investment dispute bodies. We respectfully suggest that these are areas in which the Draft Guidelines would benefit from refinement before they are finalised.

1. The essence of international arbitration and the role of arbitral institutions

International arbitration is a consensual means of resolving cross-border disputes, in which the parties agree to submit their dispute to an independent and impartial arbitral tribunal as an alternative to the national courts. The arbitral tribunal is constituted for each dispute in accordance with the procedure agreed by the parties, and includes one or more individuals (arbitrators). The decision on the merits of the dispute (an arbitral award), which generally has binding and final effect on the parties, as stated at paragraph 431 of the Draft Guidelines, is rendered by that arbitral tribunal.

Arbitral institutions, by contrast, perform a distinct function: they administer proceedings (e.g., receiving the request for arbitration, assisting with the constitution of the tribunal, managing the costs of the arbitration, and safeguarding the integrity and efficiency of the process) thereby rendering administrative and organisational services to the parties and to the arbitral tribunal. They do not decide the merits of the dispute. This remains the case notwithstanding that an arbitral institution, or one of its constituent bodies, may use terms such as “court”, “commission”, or similar designations in its name.¹

2. Paragraphs 428—429: the risk of attaching obligations to the wrong actor

Paragraph 428 of the Draft Guidelines correctly observes that the AI Act does not define which entities constitute “ADR bodies.” Paragraph 429 then includes within that notion “commercial

¹ We note that Article I(2) of the 1958 New York Convention extends the term “arbitral awards” to awards “made by permanent arbitral bodies to which the parties have submitted”, and that courts have on occasion described certain arbitral institutions in those terms. That provision ensures the enforceability of institutionally administered awards; it does not suggest that the institution exercises the tribunal’s adjudicative function. In all such cases, the award remains one rendered by the arbitrators.

arbitration institutions (e.g. national and international arbitration bodies) or investment dispute bodies that resolve disputes between businesses.”

We would respectfully suggest that this might lead to misunderstandings. Because arbitral institutions administer proceedings and do not decide the merits of the dispute, as set out in the previous section, treating the arbitral institution as the relevant “ADR body” for the purposes of Annex III, point 8(a) of the AI Act risks attaching the resulting obligations to a wrong actor.

3. Paragraphs 411—412: consistency with the treatment of judicial administration

Concerning judicial activities, paragraphs 411—412 of the Draft Guidelines state that judicial administration (i.e., “institutions or bodies that are responsible for the management, governance, and support of the judiciary, rather than for the adjudication of cases themselves”) is not covered by the AI Act. We respectfully submit that the same should apply to arbitral institutions, whose role is analogous: the management, governance and support of the arbitral process, rather than the adjudication of the cases themselves.

The same reasoning applies to other forms of ADR where the relevant body’s role is confined to administering proceedings, without any power to determine or influence the merits of the dispute. This may include, by way of example, bodies administering mediation, expert determination, or dispute board proceedings, where the outcome has legal effects for the parties within the meaning of paragraph 431 of the Draft Guidelines.

Such an approach is consistent with Recital 61 of the AI Act, which excludes from high-risk classification AI systems intended to be used solely for ancillary administrative activities that do not affect the actual administration of justice in individual cases.

4. The characterisation of investment dispute bodies

Relatedly, we respectfully suggest that the Commission might consider the implications of the statement at paragraph 429 of the Draft Guidelines that “investment dispute bodies [...] resolve disputes between businesses”. Investment tribunals typically resolve disputes involving not only businesses, but also sometimes individuals as claimants and, most importantly, States as respondents. By their very nature, investment disputes are typically seen as disputes between an investor and a host State, rather than disputes “between businesses.”

5. Conclusion

For the reasons set out above, we would respectfully suggest the Commission (i) clarify that, where the high-risk classification under Annex III, point 8(a) of the AI Act is engaged in respect of alternative dispute resolution, it attaches to the AI system used by, or on behalf of, the arbitral tribunal in the exercise of its adjudicative function, rather than to the AI system used by the arbitral institution for rendering administrative and organisational services to the parties and to the arbitral tribunal; and (ii) revisit the characterisation of investment dispute bodies.

We would be glad to elaborate on any of the above in writing or in an in-person meeting, and we remain at the Commission’s disposal for any further information that may be of assistance.

Yours faithfully,

For and on behalf of the undersigned institutions:

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