

120 academic experts has spoken out against planned provisions on investment protection and investor-state dispute settlement in the Transatlantic Trade and Investment Partnership

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120 SCHOLARS SPEAK OUT AGAINST PLANNED ISDS PROVISIONS IN TTIP

A group of 120 academic experts in trade and investment law, EU law, international law and human rights, constitutional law, private law, political economy and other fields has spoken out against planned provisions on investment protection and investor-state dispute settlement in the Transatlantic Trade and Investment Partnership.

The full text and list of signatories can be found here:

https://www.kent.ac.uk/law/isds_treaty_consultation.html [1]

The scholars, from leading universities in Europe and worldwide, have contributed to the public consultation which the European Commission launched in the face of strong public interest and growing concern about the issue. They criticise the Commission for failing to make a plausible case for the need for investment protection provisions in TTIP in the first place, and for excluding views not in their desirability from the consultation exercise.

They welcome, on the other hand, the Commission's recognition of the many serious flaws and shortcomings of the international investment arbitration regime as it has developed over the last few decades. In launching the consultation, Commissioner De Gucht acknowledged these problems and announced the ambition to 're-do' investment law, make the system 'more transparent and impartial', 'build a legally water-tight system', and 'close these legal loopholes once and for all.' These objectives may be laudable, but the Commission's approach falls far short of achieving them.

Specifically, the scholars find that the proposed text, amongst other shortcomings,

- Allows for unwarranted discretion for arbitration tribunals in the application of various 'necessity' tests;
- Fails to exclude acquisitions of sovereign debt instruments from the scope of the Treaty;
- Allows anyone with a substantial business activity in the home state who holds any 'interest' in an enterprise in the host state to bring a claim;
- Fails to spell out legal duties of investors in host states;
- Fails to control the expansion of investment arbitration to purely contractual claims;

- Fails to protect the 'right to regulate' as a general right and as a component of the Fair and Equitable Treatment (FET) and Expropriation standards of protection of investors;
- Fails to further the stated principle of favoring domestic court proceedings, and
- Fails to regulate conflicts of interest in the arbitration process.

Proponents of ISDS have suggested that the proposed provisions in TTIP may serve as a 'Goldstandard' for the European Union's use of its new competences regarding FDI under the Common Commercial Policy. The scholars show this claim to be misleading at best, and express the hope that the current controversy over ISDS in TTIP will prompt broad and serious debate about a sensible EU policy on existing and new investment Treaties in accordance with the values of Articles 2 and 3 of the Treaty on European Union that the Union is to promote in its relations with the wider world. Investment law is far too important to leave to just trade officials and investment lawyers.

The submission was written by Peter Muchlinski (SOAS School of Law), Horatia Muir Watt (Sciences Po Law School), Harm Schepel (Kent Law School), and Gus van Harten (Osgoode Hall Law School).

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The text is available on ESSF (article 32506), [Statement of Concern about the Transatlantic Trade and Investment Partnership and the Planned Investment Protection and Investor-State Dispute Settlement](http://www.europe-solidaire.org/spip.php?article32506)
<http://www.europe-solidaire.org/spip.php?article32506>
