

Presentation of Studies on

# **Investor-State Dispute Settlement Provisions in the EU's International Investment Agreements (ISDS)**

European Parliament  
JURI/INTA Joint Public Hearing on the  
Transatlantic Trade and Investment Partnership (TTIP):  
Regulatory Aspects and Investor-State Dispute  
Settlement/Arbitration  
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# Key findings I

- The EU should **include state-of-the art investment chapters in all of its comprehensive free trade agreements or**, where appropriate, **should negotiate stand-alone investment agreements**
- Substantive commitments should be backed up by an **investor-State dispute settlement mechanism**
- Progress made by the European Union in improving the current investment protection regime - **CETA breaks new ground**

# Key findings II

**Five significant challenges** remain to be resolved in respect of the CETA model as it

1. **insufficiently incorporates national legal systems,**
2. **does not establish an appeals facility but only vaguely alludes to it,**
3. **does not sufficiently dispel a possible public perception of a tribunal's bias in favour of investors,**
4. **leaves administrative issues potentially critical to procedural outcomes to an international organization in which European forces are traditionally of no dominance, and**
5. **the dispute settlement mechanism in the CETA model might not fully be compatible with the EU Treaties**

## Key findings III

- **Europe needs an independent, innovative ISDS model, which protects investors and observes European and Member State interests**
- **A European model**
  1. sufficiently **incorporates functioning national and European courts** in the settlement of disputes between investors and their host State **by means of an elastic local remedies rule**
  2. **creates a permanent appeals facility** for investment disputes, also **open to third country agreements**

## Key findings IV

- **A European model (continued)**
  3. **mitigates the perception of bias in favour of investors in ad hoc arbitral tribunals by a significant increase in the group of potential arbitrators who shall be nominated to sit in an arbitration based on their placement on a respective list,**
  4. **delegates administrative decisions crucial to arbitral outcomes, such as the appointment of arbitrators, to an international (arbitral) institution based in Europe,**
  5. **must sufficiently safeguard the autonomy of EU law and the CJEU's judicial monopoly.**

# Thank you for your attention!

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