



**EUROPEAN COMMISSION**

**PRESS RELEASE**

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## **European Commission launches public online consultation on investor protection in TTIP**

As part of its ongoing efforts to make its negotiations with the US the most open and transparent trade talks to date, the European Commission today launches a public consultation on investor protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP).

In addition, the European Commission felt it was necessary to launch this particular public consultation as a response to the growing public debate and increased concerns over ISDS within TTIP.

The aim of the consultation is to better define the EU's approach to investor protection and ISDS in the proposed TTIP negotiation by allowing all stakeholders an opportunity to provide their reflections.

The Commission intends to ensure that investment protection and ISDS reflect best practice, not just in the TTIP but in all new EU investment agreements. The aim is to make the situation regarding investor protection in TTIP and other future investment agreements signed by the EU much clearer than it is in the more than 3,000 investment agreements currently in force worldwide. The Commission also wants to make ISDS in TTIP more transparent and accountable than existing practice, including than that provided for in the current bilateral investment agreements between EU Member States and the US, which TTIP would replace. The same intention applies to other future investment agreements the EU signs with non-EU countries.

It is important to recognise that the European Commission negotiates investment provisions in TTIP following the instruction of its Member States. The issues of investor protection and ISDS are part of the negotiating directives unanimously given by EU Member States to the European Commission in June 2013. In the EU-US trade negotiations - as in all trade negotiations - it is the institutional role of the European Commission to negotiate on behalf of all the EU 28 member states under their supervision and democratic oversight. The European Parliament also provides democratic oversight during the negotiation process with access to all the same documents provided to the Member States. Most importantly, the European Parliament will decide ultimately through a vote at the end of the entire negotiation process whether the concluded deal should be accepted.

While the current public debate is very welcome and important, there have been a number of misconceptions and even misrepresentations as to the aims of ISDS within TTIP negotiations. For example, it is often claimed that investor protection being negotiated under the TTIP would allow business to sue governments whenever new laws reduced their profits. A number of high-profile ongoing cases, under existing international agreements have raised concerns about the right of governments to legislate to protect the environment or consumers without business challenging them in court.

The public consultation clarifies the points the EU aims to improve to ensure that ISDS in TTIP guarantees the right of governments to legislate in the public interest. The Commission's public consultation explains how it is seeking to have state-of-the-art investment protection and ISDS provisions in TTIP which can set a precedent for future trade agreements and asks respondents to provide their feedback and views on a series of detailed questions.

*"I hope that when people look at the detail of what we want to put in the agreement, they will see that we are pushing for a better and improved system than exists at the moment,"* said EU Trade Commissioner Karel De Gucht. *"I now invite the interested public to share with us ideas and comments on whether the EU's proposed approach for TTIP achieves the right balance between protecting investors and safeguarding the EU governments' absolute right and ability to regulate in the public interest."*

## **How will the consultation work?**

As usual, the Commission's public consultation will be held purely on-line. The questionnaire covers some 12 key issues of interest, including the right to regulate, fair and equitable treatment for investors, and transparency of the ISDS system. There is also an open question allowing for more general comments.

In addition to a general explanation of investment protection and ISDS and of how the Commission wants to improve matters, each question comes with an explanation of the issue and problem it addresses, of the situation under existing investment agreements, and of the improvements the EU is proposing under TTIP. The questions are also accompanied by relevant legal texts that the EU proposes would serve as a negotiating basis for TTIP.

The consultation will be available online in English as of today. All other EU languages will be made available as soon as possible. The public consultation will last 90 days from the moment the last official EU language translation of the 'consultation text' goes online. This system will ensure that no European citizen or organisation will be disadvantaged because of the language he or she speaks.

## **Background**

The Commission's public consultation on investment protection and ISDS for the TTIP explains how the Commission's proposed negotiating approach has drawn on lessons learnt from existing investment treaties and on how the existing ISDS arbitration system works. The EU's proposed approach addresses the concerns and shortcomings that have featured prominently in public discussions about investment protection and ISDS.

The Commission wants to develop a new and innovative approach to address those concerns through two sets of actions:

1. Clarifying and improving investment protection rules so as to guarantee that the right to regulate is not undermined.
2. Building a modern, transparent and efficient ISDS system, through the following:
  - Preventing the risk of abuse of the system
  - Making the arbitration system more transparent
  - Preventing conflicts of interest or bias in arbitrators
  - Ensuring better consistency and control
  - Keeping control of the agreement
  - Making clear that ISDS will only apply to breaches of investment protection provisions and to no other part of TTIP

These improvements will clarify and improve the balance between the protection of investors and states' right to regulate. With these public policy elements, the proposed TTIP investment and ISDS provisions will correct the apparent weaknesses in existing investment agreements.

## **For more information**

[Questions and Answers: Public online consultation on investor protection in TTIP \(MEMO/14/206\), 27 March 2014](#)

[Access to the public consultation](#)

[In a nutshell: Investment Protection and Investor-to-State Dispute Settlement \(ISDS\) in EU agreements](#)

This [Factsheet](#) summarises the EU's changes to existing investment protection rules and the ISDS system.

[Press Release](#): Commission to consult European public on provisions in EU-US trade deal on investment and investor-state dispute settlement, 21 January 2014

For more information on the Transatlantic Trade and Investment Partnership (TTIP):

<http://ec.europa.eu/trade/policy/in-focus/ttip/>

Public consultations by the European Commission's DG Trade

<http://trade.ec.europa.eu/consultations/>

"Investment protection does not give multinationals unlimited rights to challenge any legislation" – Statement by EU Trade Spokesman John Clancy, 20 December 2013

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1008>

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